

December 2019

## Unchartered Territory for the "Bluegrass State": Lessons to be learned from over a Quarter-century of State Charter School Legislation

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### Recommended Citation

Kevin P. Brady & Wayne D. Lewis Jr., *Unchartered Territory for the "Bluegrass State": Lessons to be learned from over a Quarter-century of State Charter School Legislation*, 72 Ark. L. Rev. 363 (2019).  
Available at: <https://scholarworks.uark.edu/alr/vol72/iss2/4>

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# UNCHARTERED TERRITORY FOR THE “BLUEGRASS STATE”: LESSONS TO BE LEARNED FROM OVER A QUARTER- CENTURY OF STATE CHARTER SCHOOL LEGISLATION

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Charter school success or failure is not simply a matter of chance. Both the existence and aggregate quality of charter schools in a state depend on the provisions of state charter school laws. These laws address a wide range of issues and vary from state to state. But the experiences of states with significant charter sectors, as well as those with innovative charter policies, provide

important lessons for the charter school movement as a whole.<sup>1</sup>

## I. INTRODUCTION

On March 22, 2017, current Kentucky Governor Matt Bevin officially signed House Bill (HB) 520 into law authorizing charter schools in “The Bluegrass State,” making the Commonwealth of Kentucky the most recent state in the country to authorize publicly funded and independently managed charter schools.<sup>2</sup> Kentucky’s charter school law passed the state senate

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1. Sara Mead & Andrew J. Rotherham, *A Sum Greater Than the Parts: What States Can Teach Each Other About Charter Schooling*. EDUC. SECT. REP. 1 (SEPT. 2007), <https://www.issuelab.org/resources/1080/1080.pdf>. [https://perma.cc/P962-M9WT].

2. H.B. 520, 2017 GEN. ASSEMB., REG. SESS. (Ky. 2017); Sara Mead, *Kentucky’s Charter Challenge*, U.S. News & World Rep. (Mar. 23, 2017), <https://www.usnews.com/opinion/knowledge-bank/articles/2017-03-23/one-law-wont-create-great-charter-schools-in-kentucky>. Kentucky is nicknamed the “Bluegrass State”

by a margin of 23 to 15, divided almost entirely along political party lines.<sup>3</sup> It is no secret that Kentucky's journey to legalizing charter schools in 2017 has been a long and challenging one. After numerous failed attempts over a course of two decades, the recent passage of charter school legislation in Kentucky faced stiff opposition. Republicans took control of both the Kentucky State Legislature and the governorship in December 2016.<sup>4</sup>

The number of charter schools in the U.S. continues to increase steadily since the state of Minnesota passed the first charter school law in 1991.<sup>5</sup> Since state laws enable and govern charter schools, today's state legislatures are critical to charter school success in their respective states.<sup>6</sup> Defining today's charter schools has become increasingly difficult since the majority of the 44 states as well as the District of Columbia with charter school legislation vary so significantly.<sup>7</sup> Yet, however, there are three characteristics mostly all contemporary charter schools share. These three shared characteristics include:

- (1.) charter schools are considered publicly funded public schools that are part of the state school system;
- (2.) charter schools are schools of choice that do not enroll students exclusively based on where they live;
- (3.) charter schools are managed by an organization that has a charter, or contract with an authorizer.<sup>8</sup>

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based on the bluegrass, or smooth meadow grass found in many of the pastures across the state due to its fertile soil. Central Kentucky is referred to as the Bluegrass Region and is where two of the state's major cities, Louisville and Lexington are located. Elected in 2015, Matt Bevin is a former American businessman and politician serving as the 62nd and current Governor of Kentucky since 2015. Since World War II, Bevin is the third Republican elected Governor of Kentucky.

3. *HB 520 – Authorizes Charter Schools to Operate in Kentucky – Kentucky Key Vote*, VOTE SMART, <https://votesmart.org/bill/22654/58847/authorizes-charter-schools-to-operate-in-kentucky#58847> [<https://perma.cc/PG24-DHBV>].

4. Jack Brammer & Linda Blackford, *Republicans Take The Kentucky House After 95 Years Of Democratic Control*, LEXINGTON HERALD LEADER (Nov. 9, 2016), <https://www.kentucky.com/news/politics-government/article113464563.html>. [<https://perma.cc/PTT7-CKQR>].

5. See MINN. STAT. ANN. § 124E.12 (1991).

6. Josh Cunningham, *Charter Schools: Overview*, NAT'L CONFERENCE OF STATE LEGISLATURES (Dec. 1, 2014), <http://www.ncsl.org/research/education/charter-schools-overview.aspx#one>. [<https://perma.cc/79S5-WBYD>].

7. *Id.*

8. *Id.*

A public charter school is routinely defined as “a publicly funded school that is typically governed by a group or organization under a legislative contract (or charter) with the state, district, or other entity.”<sup>9</sup> Most state laws tend to authorize publicly funded charter schools with increased autonomy in specific areas, including the school curriculum, staffing, and budgetary decisions.<sup>10</sup> Additionally, most state charter school laws include particular provisions allowing families the option of attending a public charter school by participating in a lottery system, especially when student enrollment at a particular charter school exceeds capacity.<sup>11</sup> Interestingly, the public charter school concept was originated by a New England educator named Ray Buddle, who submitted a proposal suggesting that local school boards give some of their teachers “charters,” or contracts allowing them to opportunity to experiment with new and innovative approaches to delivering education to their students.<sup>12</sup> Former and then-president of the American Federation of Teachers (“AFT”), Albert Shanker further refined and publicized Buddle’s notion of public school charters.<sup>13</sup> The idea of charter schools advanced and the state of Minnesota became the first state in the nation to introduce charter school legislation in 1991.<sup>14</sup>

While charter schools are considered the fastest growing option in U.S. public education, there are quite a few misconceptions about charter schools held by the general public. For example, a 2014 Phi Delta Kappan/Gallup poll examining public attitudes toward education revealed that a majority of Americans misunderstand charter schools, including the fact that state charter school laws vary widely across states.<sup>15</sup> While the

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9. *Fast Facts: Charter Schools*, NAT’L CEN. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=30> [<https://perma.cc/XJV5-6BH6>].

10. Joe Nathan, *Heat and Light in the Charter School Movement*, 79 THE PHI DELTA KAPPAN 499, 500 (1998).

11. See Robert Bifulco & Helen F. Ladd, *The Impact of Charter Schools on Student Achievement: Evidence from North Carolina*, 1 EDUC. FIN. & POL’Y 50, 51 (2006).

12. See Nathan, *supra* note 10, at 500.

13. *Id.* Shanker’s more detailed discussion and dissemination of charter school had a significant impact on the 1991 passage of the first charter school legislation in Minnesota.

14. See Cunningham, *supra* note 6.

15. Claudio Sanchez, *Just What Is A Charter School, Anyway?*, NPR News (MAR. 1, 2017), <https://www.mprnews.org/story/2017/03/01/npr-what-is-charter-school> [<https://perma.cc/K296-DUFZ>].

results of this national survey found broad overall support for U.S. charter schools, nearly half of those surveyed were unaware that charter schools were publicly funded.<sup>16</sup> Moreover, approximately 57% of those surveyed believed that charter schools charge tuition and nearly half responded that they believed charter schools were permitted to teach religion in the classroom.<sup>17</sup>

A second misconception concerning charter schools is the assumption that charter school laws are largely identical across states.<sup>18</sup> In fact, there are several studies revealing that state charter school laws vary quite significantly across states.<sup>19</sup> Specifically, state charter school laws vary widely in their legislative purpose, including mission, program structure, as well as a multitude of other characteristics.<sup>20</sup> Research by Michael W. Kirst, a Professor Emeritus of Education and Business Administration at Stanford University states “[i]t is hard to generalize about charter politics because of the extreme variations among 50 states and thousands of local school districts.”<sup>21</sup> Kirst’s research found numerous and significant differences among state charter school laws.<sup>22</sup> For example, Georgia’s charter school law was originally enacted to “deregulate and decentralize education” whereas Michigan’s charter school legislation was enacted with a primary purpose to “create competition with traditional public schools.”<sup>23</sup>

This article examines state charter school law features emerging from the research literature that can potentially lead to the improved academic success of charter schools. Given the inconsistency and variability of academic success across charter schools nationwide, a discussion of factors in charter school

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16. *Id.*

17. *Id.*

18. *Id.*

19. See Jeffrey R. Henig et al., *The Influence of Founder Type on Charter School Structure and Operations*, 111 AM. J. EDUC. 487, 488 (2005).

20. *Id.*; see also *The Essential Guide to Charter School Law: Charter School Laws Across the States 2012*, CTR. FOR EDUC. REFORM (APR. 2012), [https://www.edreform.com/wp-content/uploads/2012/04/CER\\_2012\\_Charter\\_Laws.pdf](https://www.edreform.com/wp-content/uploads/2012/04/CER_2012_Charter_Laws.pdf) [<https://perma.cc/XD8T-VCTU>].

21. Michael W. Kirst, *Politics of Charter Schools: Competing National Advocacy Coalitions Meet Local Politics* 82 PEABODY J. EDUC. 184, 199 (2007).

22. *Id.* at 186, 190.

23. *Id.* at 187.

legislation that have been found to be positively associated with charter school academic success is useful, especially to advocates, policymakers, and researchers who want to strengthen a state's existing charter school legislation or to be considered by the six remaining states that have yet to pass charter legislation but may be considering it.<sup>24</sup> Part II of the article briefly discusses the steady growth and expansion of public charter schools across the United States. Part III details the existing research literature examining factors more strongly and positively associated with student academic success in charter school environments, including charter school characteristics, policies and practices that have been both positively and negatively associated with charter school impacts on student achievement levels. Part IV analyzes the existing and emerging research detailing potential factors in state charter school legislation that may be positively associated with improvements in overall charter school student achievement performance. This section also acknowledges wide inconsistencies and variations among existing state charter school laws. Part V of this article introduces Kentucky's recent charter school legislation and highlights certain important aspects of the state's charter school legislation. Part VI provides a discussion of what lessons can be learned from existing state charter school legislation spanning over a quarter-century of the charter school movement as well as what specific legislative purposes and features have the potential to effectively improve charter school policy, practices, and performance in the "Bluegrass State." Finally, Part VII adds some concluding observations regarding the many factors driving variation in state charter law provisions and the possible effects of those variations on charter school academic performance levels.

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24. The six remaining states without charter school legislation are Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia. See *List of Charter School Authorizers by State*, NAT'L ASSOC. OF CHARTER SCHOOL AUTHORIZERS, <https://www.qualitycharters.org/state-policy/multiple-authorizers/list-of-charter-school-authorizers-by-state/> [https://perma.cc/2D2L-KXWW].

## II. THE EXPANSION OF THE PUBLIC CHARTER SCHOOL LANDSCAPE

### A. The Origins of Public Charter Schools in the U.S.

The nation's first charter school opened in 1991 when Minnesota became the first state to enact charter school legislation.<sup>25</sup> Founded in 1992, City Academy High School, located in St. Paul, Minnesota became the first charter school to open with the ambitious mission to educate “students who have dropped out of school and whose homes were wracked by poverty or substance abuse.”<sup>26</sup> As the nation's first official charter school, City Academy High School was quite innovative in its approach to education, allowing students to participate in activities, including building homes for Habitat for Humanity, studying biology at local nature centers, and permitting students the opportunity to receive their high school diploma or improve their grades to gain admission back to attend traditional high schools.<sup>27</sup>

In a period spanning nearly three decades since City Academy High School opened its doors in St. Paul, Minnesota, public charter schools have grown steadily nationwide. In 2017–18, for instance, more than 7,000 charter schools enrolled approximately 3.2 million students nationwide.<sup>28</sup> Between the years 2016 and 2018, charter school enrollment increased by over 150,000 students, an estimated 5% growth in nationwide charter school student enrollment.<sup>29</sup> Despite the accelerated growth of charter schools across the United States, charter

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25. MINN. STAT. ANN. §124D.10 (1991).

26. MINN. STAT. ANN. § 124E.01-.26 (1991). *See also* Press Release, NAT'L ALLIANCE FOR PUB. CHARTER SCH., *Minnesota Public Charter School Pioneers Inducted into Charter School Hall of Fame* (JUNE 18, 2012), <https://www.publiccharters.org/press/minnesota-public-charter-school-pioneers-inducted-charter-schools-hall-fame> [<https://www.publiccharters.org/press/minnesota-public-charter-school-pioneers-inducted-charter-schools-hall-fame>].

27. *Id.*

28. *See* Rebecca Davis & Kevin Hesla, *Estimated Public Charter School Enrollment, 2017-2018*, NAT'L ALLIANCE FOR PUB. CHARTER SCH. (MAR. 2018), <https://www.publiccharters.org/sites/default/files/documents/2018-03/FINAL%20Estimated%20Public%20Charter%20School%20Enrollment%2C%202017-18.pdf> [<https://perma.cc/QV9Q-KURW>].

29. *Id.*

schools still face serious challenges, including equitable access to public funding, struggles with local school board control, and finding appropriate locations to open.<sup>30</sup> Additionally, charter schools vary significantly across states in their missions, structure, goals as well as many other characteristics.<sup>31</sup> Similarly, student enrollments in today's public charter schools are significantly higher in some states compared to others. For instance, there are regions of the country with particularly high student enrollments in charter schools, including the following states: California, Florida, and the District of Columbia.<sup>32</sup> Currently, 44 states and the District of Columbia have charter school legislation, leaving only six states: Montana, Nebraska, North Dakota, South Dakota, Vermont and West Virginia without charter school legislation.<sup>33</sup>

Only three short years after Minnesota became the inaugural state in the country to pass charter school legislation, the federal government became increasingly more involved in the charter school movement when former President William J. Clinton proposed the Public Charter Schools Program ("PCSP") legislation.<sup>34</sup> Enacted in 1994, the passage of the PCSP signaled the federal government's willingness to financially assist the nation's charter schools with planning, set-up, and early implementation-related costs.<sup>35</sup> In 1998, Congress reauthorized the PCSP by passing the Charter School Expansion Act of 1998, allowing charter schools already in operation the opportunity to apply for federal grant funding focused on promising charter school practices.<sup>36</sup>

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30. Peter Kelley, *New Report Examines Promises, Pitfalls of Charter School Autonomy*, UW NEWS (FEB. 16, 2011), <http://www.washington.edu/news/2011/02/16/new-report-examines-promises-pitfalls-of-charter-school-autonomy/> [https://perma.cc/2MNK-4HEC].

31. See Henig et al., *supra* note 19.

32. Susan A. Pendergrass et al., *A Growing Movement: America's Largest Public Charter School Communities (12<sup>th</sup> Ed.)*, NAT'L ALLIANCE FOR PUB. CHARTER SCH. (OCT. 2017), <https://www.publiccharters.org/our-work/publications/growing-movement-americas-largest-public-charter-school-communities-twelfth> [https://perma.cc/F7R3-2FJW].

33. *Id.*

34. 20 U.S.C. § 7721(a).

35. See *Evaluation of the Public Charter Schools Program: Year One Evaluation Report*, U.S. DEP'T. OF EDUC. (2000), <https://www2.ed.gov/rschstat/eval/choice/pcsp-year1/year1report.pdf> [https://perma.cc/BV6G-QPZR].

36. Charter School Expansion Act of 1998, Pub. L. No. 105-278, 112 Stat. 2682.



Beginning in 2001, the federal government's endorsement of public charter schools grew under the administration of President H. W. Bush through the passage of the No Child Left Behind Act ("NCLB").<sup>37</sup> Specifically, a primary goal of NCLB legislation was to essentially close the existing achievement gap in traditional public schools and allow students other options, including public charter schools if their neighborhood public school was considered inadequate.<sup>38</sup> By 2003, approximately \$300 million dollars of federal monies was appropriated for the PCSP compared to a substantially less \$6 million dollar allocation under the Clinton administration.<sup>39</sup>

During Barack Obama's Presidency spanning 2009 to 2017, there was ample evidence of continuing federal support for the nation's charter schools. Under President Obama's guidance, the Race to the Top Program ("RTTT"), a federal fund of \$4.35 billion dollars was made available through grants to states with existing charter school laws.<sup>40</sup> In June 2009, United States Secretary of Education Arnie Duncan during the Obama administration informed the 10 remaining states at the time without charter school legislation that they would be at a distinct disadvantage in receiving federal education stimulus money in excess of \$4 billion dollars.<sup>41</sup> Additionally, the

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37. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425. The primary legislative purpose of NCLB "is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments." *Id.* Some critics of NCLB argued that the federal legislation resulted in excessive federal intrusion in the educational policymaking process as well as indirectly leading students away from traditional public schools. See Michael Heise, *The Political Economy of Education Federalism*, 56 EMORY L.J. 125 (2006); see also Joseph O. Oluwole & Preston C. Green, III, *Charter Schools Under the NCLB: Choice and Equal Educational Opportunity*, 22 ST. JOHN'S J. LEGAL COMMENT 165 (2007).

38. See Kate Gallen, *The Role of the Judiciary in Charter Schools' Policies*, 77 MO. L. REV. 1121, 1129 (2012).

39. *Id.*

40. For a detailed description of the Race to the Top Program (RTTP), see *Race to the Top Fund*, U.S. DEP'T. OF EDUC. (JUNE 6, 2016), <https://www2.ed.gov/programs/racetothetop/index.html> [<https://www2.ed.gov/programs/racetothetop/index.html>].

41. See Gary Miron & Leigh Dingerson, *The Charter School Express: Is Proliferation Interfering with Quality?* EDUC. WK. (Oct. 2, 2009), <https://www.edweek.org/ew/articles/2009/10/07/06miron.h29.html> [<https://perma.cc/7AY7-MLLE>] (explaining that Secretary of Education's Arnie Duncan's

distribution of some RTTT federal grant monies addressed failing traditional public schools by assisting them into converting into charter schools.<sup>42</sup> As further evidence of the Obama administration's support for charter schools, the U.S. Department of Education in 2016 awarded a total of \$245 million dollars in support of high quality charter schools acknowledging "[i]nnovative charter schools are continuously developing new and impactful practices to close achievement gaps and provide all students with the skills and abilities they need to thrive."<sup>43</sup> The current administration under President Donald J. Trump are major supporters of the advancement of charter schools. For example, President Trump has recently proposed a nearly 50% increase in charter school funding while simultaneously suggesting a 13% reduction in total federal K-12 public education spending.<sup>44</sup>

### III. OVERVIEW OF THE RESEARCH LITERATURE EXAMINING FACTORS ASSOCIATED WITH ACADEMIC SUCCESS IN CHARTER SCHOOLS

#### A. Examining the Complexity of Measuring Charter School Success

Despite the continued growth of charter school expansion and student enrollment nationwide, ongoing debates over whether or not charter schools are more successful at increasing student achievement compared to traditional public schools

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message to states highlighted the federal administration's importance placed on advancing charter school initiatives).

42. Gallen, *supra* note 38, at 1129-30.

43. *U.S. Department of Education Awards \$245 Million to Support High-Quality Public Charter Schools*, U.S. DEP'T OF EDUC. (SEPT. 28, 2016), <https://www.ed.gov/news/press-releases/us-department-education-awards-245-million-support-high-quality-public-charter-schools> [<https://perma.cc/7ALT-VRFG>].

44. See Louis Freedberg, *Trump's Proposed Cuts to Education Funding Create Friction in Charter School Funding*, EDSOURCE (JUNE 29, 2017), <https://edsource.org/2017/trumps-proposed-cuts-to-education-funding-creates-friction-in-charter-school-community/583796> [<https://edsource.org/2017/trumps-proposed-cuts-to-education-funding-creates-friction-in-charter-school-community/583796>]. The Trump administration is currently proposing a \$168 million increase for funding the federal government's Charter Schools Program while simultaneously cutting funding to K-12 public schools.

abound.<sup>45</sup> To date, an aggregate of empirical studies examining student achievement data in charter schools compared to traditional public schools have yielded inconsistent results.<sup>46</sup> As a result, the research-based question of whether today's charter schools experience higher student academic success compared to traditional public schools varies depending on many factors, including, but not limited to, charter school location (urban, suburban, rural), race/ethnicity, and the socioeconomic background of students.<sup>47</sup>

Two separate multi-state studies conducted in 2009 and in 2013 by Stanford University's Center for Research on Education Outcomes ("CREDO") point out that average, overall charter school student academic performance is fairly comparable to that of nearby traditional public schools.<sup>48</sup> In the more recent 2013 CREDO study, the average student achievement among charter school students observed in 27 states was no more than a

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45. Claudio Sanchez, *The Charter School vs. Public School Debate Continues*, NPR NEWS (JULY 16, 2013), <https://www.npr.org/2013/07/16/201109021/the-charter-school-vs-public-school-debate-continues> [<https://perma.cc/CA77-DVRV>].

46. See, e.g., Julian Betts & Y. Emily Tang, *A Meta-Analysis of the Literature on the Effect of Charter Schools on Student Achievement*, CRT. ON REINVENTING PUB. EDUC. 1 (AUG. 2014), <https://www.crpe.org/publications/meta-analysis-literature-effect-charter-schools-student-achievement> [<https://perma.cc/KR2C-EHDB>] (documenting the discovery of empirical evidence of charter schools where students academically outperform traditional public school students in some locations, grades and subjects and where charter school students underperform traditional public school students in other locations, grades and subjects); see also, Eric A. Hanushek et al., *Charter School Quality and Parental Decision Making with School Choice*, 91 J. PUB. ECON. 823, 824 (2007) (arguing while charter schools are popular with many education reformers, there is little evidence of their impact on student achievement). In response, the National Alliance for Public Charter Schools has published a report of recent research studies detailing charter school effectiveness, see *Public Charter School Success: A Summary of the Current Research on Public Charters' Effectiveness at Improving Student Achievement*, NAT'L ALLIANCE FOR PUB. CHARTER (APR. 23, 2013), <https://www.publiccharters.org/publications/public-charter-schools-success-summary-current-research-public-charters-effectiveness-improving-student-achievement> [<https://perma.cc/FC9S-DTF8>].

47. Joy Resmovits, *Charter Schools Continue Dramatic Growth Despite Controversies*, HUFFINGTON POST (DEC. 10, 2013), [https://www.huffingtonpost.com/2013/12/10/charter-schools\\_n\\_4419341.html](https://www.huffingtonpost.com/2013/12/10/charter-schools_n_4419341.html) [<https://perma.cc/H8TH-6ZXQ>].

48. *Multiple Choice: Charter School Performance in 16 States*, CTR. FOR RESEARCH ON EDUC. OUTCOMES (2009), [https://credo.stanford.edu/reports/MULTIPLE\\_CHOICE\\_CREDO.pdf](https://credo.stanford.edu/reports/MULTIPLE_CHOICE_CREDO.pdf) [<https://perma.cc/A6LG-VC92>] [*hereinafter* 2009 CREDO Study]; Edward Cremata et al., *National Charter School Study 2013*, CTR. FOR RESEARCH ON EDUC. OUTCOMES (2013), <http://credo.stanford.edu/documents/NCSS%202013%20Final%20Draft.pdf> [<https://perma.cc/6XKL-7GLL>] [*hereinafter* 2013 CREDO Study].

0.01 standard deviation's difference from similar traditional public school students.<sup>49</sup> A second study examining charter school student achievement in seven states, found that in the majority of instances there was no statistically significant charter school affects.<sup>50</sup> In 2015, an Institute of Education Sciences ("IES") study examined a total of 36 charter schools in 15 states and also found no statistically significant student achievement effects between charter schools and traditional public schools.<sup>51</sup>

Early research detailing the effects of charter schools on student achievement have often yielded mixed results.<sup>52</sup> However, more recent emerging national studies of charter schools, especially those involving charter school lotteries have provided more nuanced results, detailing significant variability among charter schools.<sup>53</sup> The understanding of significant variations in the effects of charter schools, especially across states has become a major challenge for researchers studying today's charter schools.<sup>54</sup> For example, a 2013 CREDO Study found that between 25-29% of the charter schools examined had positive effects on students' math and reading achievement while between 19-31% had negative effects with the remaining charter schools in the study having no significant effects.<sup>55</sup>

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49. *Id.* at 22. In the CREDO (2013) study, charter school students experienced, on average, a growth in student achievement of .01 standard deviations less compared to their traditional public school student counterparts. While this small-observed difference, which is 1 percent of a standard deviation is significant statistically, it is meaningless from a practical educational policy perspective. As stated in the study's conclusion, differences in student achievement between charter school and traditional public school students could have arisen simply from a measurement error in the state achievement tests which comprises the growth score. Thus, considerable caution is needed in the use of these results.

50. Ron Zimmer et al., *Examining Charter School Achievement Effects Across Seven States*, 31 *ECON. OF EDUC. REV.* 213, 221 (2012). <https://www.sciencedirect.com/science/article/pii/S0272775711000756> [<https://perma.cc/AMK9-47J3>].

51. Melissa A. Clark et al., *Do Charter Schools Improve Student Achievement?* 37 *EDUC. EVAL. & POL'Y ANALYSIS*, 419, 420 (2015), <https://journals.sagepub.com/doi/abs/10.3102/0162373714558292> [<https://perma.cc/Z82Z-DMYU>].

52. See Zimmer, *supra* note 50, at 213.

53. See Clark et al., *supra* note 51, at 419-20.

54. See Philip M Gleason, *What's the Secret Ingredient? Searching for Policies and Practices that Make Charter School Successful*, 11 *J. OF SCH. CHOICE* 559, 560 (2017) (arguing that while the research supports that the average charter school academically performs comparable to nearby traditional public schools, there is significant variation in the effects of charter schools).

55. See 2013 CREDO Study, *supra* note 48, at 42-44.

Moreover, the observed higher student test scores in math and reading at charter schools compared to traditional public schools occurred in the states of Illinois, Indiana, Louisiana, Massachusetts, Michigan, Missouri, New Jersey, New York, Rhode Island, Tennessee, and the District of Columbia.<sup>56</sup> However, this same study found that charter schools, on average, achieved lower student test scores in math and reading compared to traditional public schools in the states of Arizona, Arkansas, Nevada, Ohio, Oregon, Pennsylvania, Texas, and Utah.<sup>57</sup> There is growing evidence of this variability in charter school research results across states. A 2009 study of charter schools in Wisconsin found positive results whereas researchers found no effects for charter schools in North Carolina.<sup>58</sup>

### **B. What Factors Have Been Found to Be Positively Impact Charter School Success?**

An increasing number of studies examine what specific factors contribute positively to charter school success.<sup>59</sup> Some of these studies examine the relationship between charter schools' characteristics, policies and practices and how they can

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56. *Id.* at 52-53.

57. *Id.*

58. See 2009 CREDO Study, *supra* note 48, at 3.

59. While not an exhaustive list of research studies examining the correlational statistical relationship between charter schools' characteristics, policies, and practices with measures of school success, these particular studies represent a variety of research methodologies and charter school samples from various states. See generally Joshua D. Angrist, et al., *Who Benefits from Kipp?* 31 J. OF POL'Y ANALYSIS & MGMT. 837 (estimating the academic impact of 33 charter schools in Massachusetts using survey data on charter school characteristics); see generally Mark Berends et al., *Instructional Conditions in Charter Schools and Students' Mathematics Achievement Gains*, 116 AMER. J. OF EDUC. 303 (2010) (examining a national study of 76 charter schools and obtaining charter school characteristics data from teacher and principal surveys from charter schools as well as a matched set of traditional public schools); see generally Julia Chabrier, et al., *What Can We Learn From Charter School Lotteries?*, 30 J. OF ECON. PERSPECTIVES 57 (2016) (examined factors correlated with charter school academic impacts on student achievement at 113 charter schools); see generally Joshua Furgeson, et al., *Charter-School Management Organizations: Diverse Strategies and Diverse Student Impacts*, MATHEMATICA POL'Y RES. (2012); see generally Caroline M. Hoxby et al., *How New York City's Charter Schools Affect Student Achievement*, Cambridge, NEW YORK CITY CHARTER SCHOOLS EVALUATION PROJECT (2009), (estimated academic impacts of 32 New York City Charter Schools); see generally Christina C. Tuttle, et al., *KIPP Middle Schools: Impacts on Achievement and Other Outcomes*, MATHEMATICA POL'Y RES. (2013).

be possibly correlated with measures of school success. The primary goal of these studies is to estimate the correlation between factors believed to positively influence charter school success and the charter school's impact on student achievement. It is important to point out that a limitation of these particular studies explaining charter school success is that some of the observed charter school characteristics, policies, and practices found to be correlated with successful charter school impacts may actually be correlated with other unobserved charter school practices that are really influencing success at the charter school.<sup>60</sup> Based on existing research examining factors associated with successful charter schools, four charter school policies and practices have emerged as being strongly and positively correlated with impacting student achievement levels in charter school environments.

Based on well-regarded research studies, four charter school characteristics, policies and practices have been shown to be consistently and strongly associated with improving student achievement in charter schools. These four charter school characteristics, policies and practices found in the research literature to be positively associated with efforts to increase student achievement levels in charter schools include:

- (1.) More academically successful charter schools are located in urban areas;<sup>61</sup>

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60. See Gleason, *supra* note 54, at 565.

61. Three research studies specifically examining the relationship between a charter school's urban location and its academic student achievement all found statistically strong and positive results. Specifically, Angrist, *supra* note 59, at 858, found that one year enrolled at an urban Massachusetts charter middle school compared with nearby traditional public schools resulted in statistically significant increases in English/language arts academic achievement for students enrolled in the urban charter school compared to the academic impact experienced by nonurban charter schools, which were negative. A second study of a charter schools from multiple states by Gleason, *supra* note 54, at 569, found that after two years, the academic impact of enrollment in an urban charter school on a student's math achievement was positive and significant and the comparative academic impact of student enrollment in nonurban charter schools was negative and significant. The third study by Chabrier et al., *supra* note 59, at 66-67, found a statistically significant and positive relationship between a charter school's urban status and academic impacts on students in both math and English/language arts achievement. Even research studies that focused solely on urban charter schools generally found positive academic impacts on students, including Hoxby et al., *supra* note 59, examining charter schools located in New York City.

- (2.) More academically successful charter schools implement a comprehensive student behavior policy rewarding positive behavior and disciplining negative student behavior;<sup>62</sup>
- (3.) More academically successful charter schools experience instructional time based on the length of the school day or year;<sup>63</sup>
- (4.) More successful charter schools prioritize increasing student academic achievement above all other educational objectives.<sup>64</sup>

### C. What Factors Show A Moderate or Limited Impact on Charter School Academic Success?

A review of the prior research reveals that some charter school characteristics, policies, and practices produce moderate evidence upon charter school academic success.<sup>65</sup> For example, there is some evidence suggesting that charter schools that

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62. The results of several studies revealed that charter schools with high expectations of student behavior and enforcement of those rules experienced stronger and more positive impacts on student achievement. For example, a study by Furgeson et al., *supra* note 59, at 74, found that student behavior policies at charter schools were positively associated with student achievement impacts. Another study by Hoxby et al., *supra* note 59, at v-3, revealed more positive student academic impacts with charter schools with disciplinary policies that included suspension sanctions for small infractions.

63. Nearly all the studies examining charter school characteristics, policies and practices associated with student achievement impact found a strong and positive correlation between a charter school's instructional time measured by the length of the school day or year and its impact on student achievement. Some of these studies included: Angrist et al., *supra* note 59, at 839; Chabrier et al., *supra* note 59, at 59; Furgeson et al., *supra* note 59, at xxxi; Hoxby et al., *supra* note 59, v-6.

64. Several studies have attempted to measure if charter schools place greater emphasis on increasing student academic achievement in comparison to other goals. For example, a study by Berends et al., *supra* note 59, at 303, 310 measured the degree to which a charter school focuses on academic achievement. The study used teachers' ratings to examine the extent to which students completed assignments as well as the degree to which they set high expectations for their students' academic work. Another study by Hoxby et al., *supra* note 59, at I-7, measured the degree to which a charter school's mission statement highlighted academic performance. A study by Furgeson et al., *supra* note 59, at 67, analyzed school principals reports to determine whether a charter school placed high priority on whether students exceed state academic standards.

65. See Will Dobbie & Roland G. Fryer Jr., *Getting Beneath the Veil of Effective Schools: Evidence From New York City*, 5 AM. ECON. J.: APPLIED ECON. 28 (2013).

provide more frequent feedback and coaching to their teachers experience more positive impacts on student achievement.<sup>66</sup>

Another charter school practice with moderate research evidence of positive impacts on student achievement were charter schools that used student data to facilitate their teachers' instructional practices.<sup>67</sup> Several studies supported the practice of data-driven instruction in charter schools, including the use of internal student diagnostic assessments each year as well as the use of informal tests given to students in order to measure their understanding, which were positively correlated with academic impacts in those charter schools.<sup>68</sup> A charter school practice found to have only limited support in the research for assisting charter schools improve student achievement was the impact of extensive student tutoring.<sup>69</sup> Some existing charter school research shows a positive association between student tutoring and charter school academic success, especially in English/language arts.<sup>70</sup> Additionally, a 2013 research study has found a positive relationship between student tutoring and charter school impacts in math.<sup>71</sup>

#### **D. What Factors Have Been Shown Not to Significantly Impact Charter School Academic Success?**

In addition to charter school characteristics, policies, and practices that appear to be more positively correlated with charter school academic success, six factors involving charter schools have emerged from the research literature where the evidence indicates no significant statistical relationship with positive impacts on student achievement in charter schools. The following six charter school characteristics, policies, and practices have not been shown to be positively associated with

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66. *Id.* at 51, 58. In this study, the authors analyzed the level of coaching and feedback charter school teachers received based on their instructional practices. The major finding of the study was that the most successful charter schools provided teachers with the most comprehensive and detailed coaching and feedback.

67. Hoxby et al., *supra* note 59, at v-8.

68. *Id.*; *see also* Joshua D. Angrist, et al., Explaining Charter School Effectiveness, 5 AMER. ECON. J. APPLIED ECON. 1, 22 (2013).

69. *Id.*

70. *Id.*

71. *Id.*



increasing student achievement in charter schools. These six factors include:

- (1.) Class size;<sup>72</sup>
- (2.) Teacher qualifications;<sup>73</sup>
- (3.) Charter management organization affiliation;<sup>74</sup>
- (4.) Charter school policies advancing parental involvement;<sup>75</sup>
- (5.) The age of the charter school;<sup>76</sup> and
- (6.) Charter school enrollment.<sup>77</sup>

Several policy implications appear to emerge from the recent research examining characteristics, policies, and practices that positively influence academic success in charter school environments. First, charter school effects across the country are highly variable, including a combination of negative and positive effects found in the research literature. Another distinct pattern seen from the research is that charter schools are more consistently effective in urban areas serving low income,

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72. There are several leading charter school studies that have found no statistical relationship between class size and positive impacts in student achievement at charter schools. For example, *see* Hoxby et al., *supra* note 59, at v-5.

73. Several large-scale charter school studies have found no statistically significant association between increasing student achievement in charter schools and teacher qualifications based on two standard measures of teacher qualifications including certification and an advanced Master's degree. *See* Julia Chabrier, et al., *supra* note 59, at 81; *see also* Dobbie & Fryer, *supra* note 65, at 45.

74. Overall, charter school studies have not found a strong statistical relationship between a charter school's charter management organization (CMO) status, which is defined as whether the charter school as part of a CMO or operates independently and positive impacts on student achievement and charter schools. For example, one study found that there was no statistically significant impact of attending a CMO school compared to an independently operated charter school. *See*, Joshua Furgeson, et al., *supra* note 59, at 157.

75. A number of charter school studies have examined parental involvement. For example, *see* Dobbie & Fryer, *supra* note 65, at 45, where the researchers measured parental engagement by capturing feedback provided to parents with students' behavior, academic performance and other issues. In each of these studies, the researchers have found no statistically significant relationship between parental involvement in charter schools and increasing student achievement.

76. While there may be an assumption that charter schools become more academically effective as they age, several research studies found no statistically significant relationship between the age of a charter school and having a positive impact on student achievement. For example, *see* Phillip Gleason, et al., *The Evaluation of Charter School Impacts*, INST. OF EDUC. SCIENCES, U.S. DEP'T OF EDUC. 1, 13 (2010).

77. Several leading charter school studies have found no statistically significant relationship between student enrollment and achievement in charter schools. In fact, one charter school study found a statistically significant negative relationship between total student enrollment and charter school impacts on student achievement. *Id.* at 12.

predominantly minority student populations.<sup>78</sup> Therefore, the existing charter school research seems to suggest there is considerable variability in charter school academic performance across states and provides a useful starting place for examining differences in state charter school laws.

#### IV. FACTORS INFLUENCING VARIATIONS IN STATE CHARTER SCHOOL LAWS

##### A. Various Methods of Evaluating and “Ranking” State Charter School Laws

Members of the general public, including some educators sometimes mistakenly believe that all charter schools as well as the state laws establishing them are identical.<sup>79</sup> It is largely accepted that today’s “[c]harter schools are creatures of state statutes” and vary considerably across states.<sup>80</sup> Despite major differences among state charter school laws, there has been relatively little research comparing individual states based on their charter school academic performance outcomes.<sup>81</sup> Given the notable differences among state charter school laws as well as inconsistencies in charter school academic outcomes across the nation, education reformers, researchers, and scholars have developed multiple and varied methods of evaluating the quality of state charter school legislation, especially in terms of the

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78. *Id.* at 13.

79. See Sarah Yatsko, *Buried Treasure: Inside Charter Schools*, CTR. ON REINVENTING PUB. EDUC.: THE LENS (APR. 9, 2014), <https://www.crpe.org/thelens/buried-treasure-inside-charter-schools> [<https://perma.cc/X455-7UE6>].

80. See Joseph O. Oluwole & Preston C. Green, III, *Charter Schools: Racial Balancing Provisions and Parents Involved*, 61 ARK L. REV. 1, 7 (2008).

81. Three influential and controversial research studies comparing states based on charter school academic performance include: RON ZIMMER ET AL., *CHARTER SCHOOLS IN EIGHT STATES: EFFECTS ON ACHIEVEMENT, ATTAINMENT, INTEGRATION, AND COMPETITION*, RAND 1, III (2009); Caroline M. Hoxby, *A Straightforward Comparison of Charter Schools and Regular Public Schools in the United States*, HARVARD UNIV. & NAT’L BUREAU ECON. RESEARCH 1, 2 (2004), available at <https://www.wacharterschools.org/learn/studies/hoxbyallcharters.pdf> [<https://perma.cc/8Y2U-Z2BT>]; and Gary Miron et al., *Evaluating the Impact of Charter Schools on Student Achievement: A Longitudinal Look at the Great Lakes States*, THE GREAT LAKES CTR. FOR EDUC. RESEARCH & PRACTICE (2007), available at <https://nepc.colorado.edu/sites/default/files/EPSTL-0706-236-EPRU-exec.pdf> [<https://perma.cc/Y6WB-8WHQ>].

relationship between a particular state's charter school laws and student achievement outcomes in those charter schools. Some scholars argue that the characteristics of a strong charter school law should be aligned with the early goals and objectives of charter school advocacy.<sup>82</sup> University researchers, Wendy Chi and Kevin Welner, developed a state charter law evaluation system that ranks individual state charter school legislation by how well the state's charter school laws implement the following seven goals: (1.) instructional innovation; (2.) regulatory waivers; (3.) maintenance of the public nature of charter schools; (4.) increased access to opportunities for at-risk students; (5.) performance-based accountability; (6.) increased student achievement; and (7.) promotion of best practices through evaluation of initial small-scale efforts.<sup>83</sup>

Another university researcher, Gary Miron, has attempted to empirically identify specific characteristics of strong state charter school laws.<sup>84</sup> According to Miron, effective state charter school laws should result in positive charter school outcomes, including increased student academic performance and reducing negative outcomes, including the re-segregation of schools by race.<sup>85</sup> Based on Miron's empirical analysis of charter school legislation in six states, he developed seven components, or characteristics of "strong" charter legislation, including (1.) a rigorous approval process; (2.) rigorous oversight; (3.) provision of technical assistance; (4.) a limited role for charter schools operated by for-profit education management organizations (EMOs); (5.) adequate financial support; (6.) rapid charter school sector growth; and (7.) bipartisan political support.<sup>86</sup>

One method of evaluating the quality of state charter school legislation has been assigning "grades" to individual state

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82. Wendy C. Chi & Kevin G. Welner, *Charter Ranking Roulette: An Analysis of Reports that Grade States' Charter School Laws*, 114 AM. J. EDUC. 273, 282 (2008).

83. *Id.* at 282.

84. Gary Miron, *Strong Charter School Laws Are Those that Result in Positive Outcomes*, THE EVALUATION CTR. 1, 2-4 (2005).

85. *Id.* at 1; see Genevieve Siegel-Hawley & Erica Frankenberg, *Does Law Influence Charter School Diversity? An Analysis of Federal and State Legislation*, 16 MICH. J. OF RACE & LAW 321 (2011) (arguing that confusing legal guidance and lenient enforcement procedures has perpetuated patterns of student racial segregation in charter schools).

86. See Miron, *supra* note 84, at 4-8.

charter school laws based on a variety of criteria.<sup>87</sup> For example, the Center for Education Reform (“CER”) has developed an annual ranking of state charter school laws.<sup>88</sup> The *CER National Charter School Ranking and Scorecard Report* ranks state charter school laws based on four criteria: (1.) The existence of independent and/or multiple authorizer’s; (2.) The number of schools allowed and state caps; (3.) operational and fiscal autonomy; and (4.) equitable funding.<sup>89</sup>

Beginning in 2009, the National Alliance for Public Charter Schools (“NAPCS”) developed an annual system for ranking state charter school laws by developing a model charter school law comprised of twenty-one “essential components of a strong public charter school law.”<sup>90</sup> The NAPCS acknowledges that there is great variability and diversity among charter schools in the United States and not all of the twenty-one essential components will be applicable to every state.<sup>91</sup> Therefore, the primary goal of the NAPCS model charter school law is to provide useful guidance to states that already have charter school legislation in place as well as potentially influence remaining states that have yet to enact charter school legislation.<sup>92</sup> Most recently, in January 2019, a decade after releasing its initial report, the NAPCS released their tenth annual report ranking state public charter school laws based on what they considered were the essential components of a model charter school law.<sup>93</sup> As detailed in the report, there were several key findings. For example, Indiana was ranked the

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87. See *National Charter School Law Rankings & Scorecard 2018: The Essential Guide For Policymakers & Advocates*, CTR. FOR EDUC. REFORM (Mar. 2018), [https://a5f2y4y9.stackpathcdn.com/wp-content/uploads/2019/01/CER\\_National-Charter-School-Law-Rankings-and-Scorecard-2018\\_screen\\_1-30-19.pdf](https://a5f2y4y9.stackpathcdn.com/wp-content/uploads/2019/01/CER_National-Charter-School-Law-Rankings-and-Scorecard-2018_screen_1-30-19.pdf) [https://perma.cc/F4UN-65ZG].

88. *Id.* at 8.

89. *Id.* at 9.

90. Todd Ziebarth, *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, THE NAT’L ALLIANCE FOR PUB. CHARTER SCH. 1, 2 (2009), [https://www.publiccharters.org/sites/default/files/migrated/wp-content/uploads/2014/01/ModelLaw\\_P7-wCVR\\_20110402T222341.pdf](https://www.publiccharters.org/sites/default/files/migrated/wp-content/uploads/2014/01/ModelLaw_P7-wCVR_20110402T222341.pdf) [https://perma.cc/238P-53M3]. According to the developers of NAPCS’s model charter school law, the primary goal of the rankings is to provide useful information to the state jurisdictions with charter laws as well as the remaining 10 states that have not yet enacted charter laws.

91. *Id.* at 3.

92. *Id.* at 2.

93. *Id.* at 12-79.

highest state charter school law in the country for the fourth consecutive year.<sup>94</sup> Based on 2019 results, the top 10 state ranking of charter school laws were a combination of states that passed charter school legislation over a decade ago, including the states of Indiana (ranked #1),<sup>95</sup> Colorado (ranked #2),<sup>96</sup> Minnesota (ranked # 4),<sup>97</sup> Florida (ranked # 7),<sup>98</sup> Washington, D.C. (ranked # 9),<sup>99</sup> and Nevada (ranked # 10)<sup>100</sup> as well as states passing charter school laws more recently, including the states of Washington (ranked # 3),<sup>101</sup> Alabama (ranked # 5),<sup>102</sup> Mississippi (ranked # 6),<sup>103</sup> and Maine (ranked # 8).<sup>104</sup> At the other end of the state charter school ranking, Maryland was identified by the NAPCS report as the country's weakest state charter school law based on criteria such as providing the state's charter schools with little autonomy, insufficient accountability, and inequitable funding.<sup>105</sup> Interestingly, this year's NAPCS report did not include the Commonwealth of Kentucky. Despite enacting its charter school law in 2017, Kentucky has yet to develop a permanent funding mechanism for its charter schools.

More recent legal scholarship has proposed an alternate and innovative approach to analyzing differences across states' charter school legislation and how these variations explain differences in charter school academic performance.<sup>106</sup> While other evaluation methods, including the NAPCS, examine state charter school law quality based on "model" components believed to be the goals of charter school legislation, no

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94. *New State Charter School Law Rankings Reveal Improvements and Opportunities for Growth*, NAT'L ALLIANCE FOR PUB. CHARTER SCH.'S (JAN. 22, 2019), <https://www.publiccharters.org/ranking-state-public-charter-school-laws-2019> [<https://perma.cc/QN8A-JSWZ>] [*hereinafter State Charter School Law Rankings*].

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *See State Charter School Law Rankings*, *supra* note 94.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *See State Charter School Law Rankings*, *supra* note 94.

105. *Id.*

106. *See generally* Elaine Liu, *Solving the Puzzle of Charter Schools: A New Framework For Understanding and Improving Charter School Legislation and Performance*, 2015 COLUM. BUS. L. REV. 273 (2015).

previous study has developed a framework for categorizing state charter school laws based on legislative purpose.<sup>107</sup> The purpose of this framework is to categorize state charter school laws based on a state's underlying legislative purpose(s) which can better explain differences and inconsistencies associated with a particular state's charter school performance and ultimately develop policy recommendations for improving overall charter school student achievement in that state.<sup>108</sup>

The proposed framework for categorizing state charter school laws by legislative purpose(s) contends that there are two primary legislative purposes that distinguish and drive the majority of state charter school laws.<sup>109</sup> The first major legislative purpose underlying state charter school laws is to craft charter school legislation that attempts to close the existing student achievement gaps by improving the student academic outcomes, especially of at-risk student populations, referred to as “gap-closing states” in the study.<sup>110</sup> The second major legislative purpose is to provide parents and local communities increased choice and control in the educational process, which was called “libertarian-oriented states.”<sup>111</sup> In addition to categorizing state charter school laws based on these two legislative purposes, the study added a third classification of state charter school laws that actively promoted both purposes called “mixed states” in the study.<sup>112</sup> In order to better understand what possible policies and practices state legislators should adopt to increase charter school academic outcomes, the study determined key features of state charter school laws that were found in each of the three legislative purpose categories: gap-closing, libertarian-oriented, and mixed.<sup>113</sup> The identified charter school law components were divided into four main groups: (1.) charter school sector flexibility; (2.) charter school

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107. *Id.* at 294.

108. *Id.*

109. *Id.* at 294-95. Given that the study was published prior to the passage of Kentucky's charter school law, a total of forty-three state charter school laws were examined in this study to identify their legislature purpose(s).

110. *Id.* at 295.

111. *See* Liu, *supra* note 106, at 295.

112. *Id.* In the study, “mixed states” were classified as those states with charter school laws that incorporated the legislative purposes of both “gap-closing” and “libertarian-oriented” states.

113. *Id.* at 299.

autonomy; (3.) accountability (the degree to which both authorizers and charter schools are held accountable for student academic outcomes); and (4.) charter school funding.<sup>114</sup> Table One depicts a summary profile of the study's recommended state charter school law features.<sup>115</sup> In terms of the components primarily affecting charter school flexibility, a total of four factors were identified, including the importance of authorizers in the charter school process, the existence of caps on the number of charter schools permitted in a particular state, different types of charter schools, and the role of educational service providers were identified as controversial issues by policymakers, educational reformers, and scholars.<sup>116</sup> The next two components identified as significantly impacting the quality of charter school laws, included autonomy, such as the degree of independence from state and local regulations and accountability in terms of the extent to which authorizers and charter schools are accountable to each other.<sup>117</sup> Finally, the study examined the component of charter school funding and whether that funding was appropriate to support existing charter school operations, student transportation and facilities needs.<sup>118</sup> For example, a topic of considerable debate is whether or not today's charter schools should receive commensurate funding compared to traditional public schools.<sup>119</sup>

**TABLE ONE: SUMMARY OF RECOMMENDED  
CHARTER SCHOOL LAW FEATURES<sup>120</sup>**

Category	Charter School Law Features
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114. *Id.*

115. *Id.* at 300-01. The four categories and accompanying charter school law features were selected because they have been considered important to charter school academic outcomes as well as attracting interest from policymakers, education reformers, and scholars.

116. *See* Liu, *supra* note 106, at 302. In particular, charter school authorizers, or the individuals from which charter school applicants need to obtain official approval prior to officially establishing a charter school play a significant role as a "gatekeeper" in the charter school approval process.

117. *Id.* at 303.

118. *Id.* at 304

119. *Id.*

120. *Id.* at 300-01.

<p><b>Charter School Sector Flexibility</b></p>	<p><b>Multiple Authorizers:</b> Ensure that there is an adequate number of authorizing options available, but there may be a need to place some limits to ensure that only high-quality charter schools are approved</p> <p><b>Caps:</b> Place some limits on the growth of the charter school market, but still provide reasonable room for future expansion</p> <p><b>Types of Schools:</b> Permit both startups and conversions, but limit the establishment of virtual schools until they prove quality of outcomes</p> <p><b>Education Service Providers:</b> Restrict the involvement of for-profit education management organizations, or EMOs and potentially encourage the use of nonprofit charter management organizations, or CMOs</p>
<p><b>Charter School Autonomy</b></p>	<p><b>Independence from State and Local Regulations:</b> Provide automatic exemptions from most state and local regulations, or at the minimum, provide for partial or case-by-case exemptions</p> <p><b>Collective Bargaining Agreement, Teacher Certification Requirements, and Statewide Retirement</b></p>



	<p><b>System Requirements:</b> Provide at least some freedom from these requirements</p>
<p><b>Accountability</b></p>	<p><b>Authorizer Accountability:</b> Ensure authorizers are held accountable by subjecting them to a regular review process and oversight body that has authority to sanction them</p> <p><b>Overall Charter School System Accountability:</b> Provide for periodic evaluations of charter school programs and outcomes</p> <p><b>Charter School Accountability:</b> Require accountability for financial and student performance outcomes, especially by creating charter school oversight bodies, notifying schools of problems, providing schools opportunities to remedy problems, and giving authorizers authority to take corrective actions short of revocation</p>
<p><b>Funding</b></p>	<p><b>Operational Funding:</b> Provide charter schools with funding and access to categorical federal and state grants that are relatively comparable to what are provided to traditional public schools</p> <p><b>Capital Funding and</b></p>

	<p><b>Facilities Access:</b> States are generally similar to one another in that they do not provide equitable funding and access and thus it is unclear whether providing such equity is needed to improve student achievement outcomes</p>
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As the study highlights, any analysis of state charter school legislative purposes in relationship to charter school academic outcomes has inherent limitations and results should be interpreted as suggestive rather than absolute.<sup>121</sup> There is an implied assumption in this study that legislative intent aligns closely with the actual implementation of the various components of state charter school laws are “faithfully carried out.”<sup>122</sup> A 2011 national study appears to support the contention that “‘charter schools have been implemented much as intended by legislation’ and that lack of improvement in student achievement ‘cannot be attributed to a failure to implement the charter school concept.’”<sup>123</sup> Unfortunately, however, there are examples of where the implementation of state charter school laws deviate from legislative intent.<sup>124</sup> In Washington D.C., for example, “‘both Congress and the District of Columbia City Council have passed legislation to give charter schools access to millions of square feet in unused public school space held by the District of Columbia Public Schools, but the city’s Board of Education has resisted releasing the space to charter schools.’”<sup>125</sup>

The study concluded that the data supported the notion that various state charter school laws can be properly distinguished on the basis of their legislative purpose(s).<sup>126</sup> Table Two indicates the range as well as various legislative purposes specified based on a review of forty-three states’ charter school

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121. See Liu, *supra* note 106, at 306.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. See Liu, *supra* note 106, at 346.

legislation.<sup>127</sup> The results indicate that state charter school laws that prioritized efforts to close existing student achievement gaps, or “gap-closing states,” were more positively correlated with improved student academic outcomes in that state’s charter schools.<sup>128</sup> Moreover, the study argued that “gap-closing states” were more likely to regulate the development of the charter school sector, impose greater accountability requirements on authorizers as well as charter schools, and deliver greater equity in operational funding practices to charter schools.<sup>129</sup> The study’s findings suggest that state charter school laws that emphasize closing student achievement gaps by improving the academic outcomes, especially of low achieving or at risk student populations, experienced improved charter school performance outcomes by incorporating certain components in their state charter school laws, including more “restrictions on entrance into the charter school market” as well as “greater oversight of both charter school authorizers and charter schools themselves.”<sup>130</sup>

**TABLE TWO: FREQUENCY OF LEGISLATIVE PURPOSES FOUND IN STATE CHARTER SCHOOL LAWS<sup>131</sup>**

State Legislative Purpose	# States (%)
<b>(1.) Increase Local Control and Flexibility</b>	
Specific charter school components:	
(a.) Facilitate innovation in teaching, governance, etc.	34 (94%)
(b.) Provide greater choice and increase competition	31 (86%)
(c.) Create professional development opportunities for teachers	30 (83%)

127. *Id.* at 308.

128. *Id.* at 346.

129. *Id.* at 342.

130. *Id.* at 274.

131. *See* Liu, *supra* note 106, at 308.

(d.)Deregulate and provide greater autonomy (e.)Increase parental and community involvement	20 (56%) 13 (36%)
<b>(2.)Ensure Accountability and Measure Outcomes</b>	32 (89%)
<b>(3.)Improve Achievement</b> Specific charter school components: (a.)Enhance student learning in general (b.)Improve the existing public education system overall (c.)Serve low-achieving or at-risk student populations	35 (97%) 22 (61%) 17 (47%)
<b>Other</b>	11 (31%)

## V. AN INTRODUCTION TO KENTUCKY'S CHARTER SCHOOL LAW

As the nation's most recent state to pass charter school legislation in 2017, Kentucky has yet to open its first public charter school.<sup>132</sup> Kentucky's charter school law, also known as House Bill 520, officially went into effect on June 29, 2017.<sup>133</sup> It is well-known that the Kentucky Legislature's intense and politically divisive two-decade debate over the passage of charter school legislation resulted in disagreement over many significant aspects of charter school management and regulatory oversight, including who will primarily control the state's

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132. See Laura Fay, *No Charter School Likely To Open In Ky Until At Least 2019, As Lawmakers Spar Over Funding, Regulations*, THE 74 (FEB. 5, 2018), <https://www.the74million.org/no-charter-school-likely-to-open-in-ky-until-at-least-2019-as-lawmakers-spar-over-funding-regulations/> [https://perma.cc/6ZG2-BERS].

133. H.B. 520, 2017 GEN. ASSEMB., REG. SESS. (Ky. 2017).

charter schools, how they will be funded, and how the state's traditional public schools will be affected.<sup>134</sup>

### A. How is a Public Charter School Defined in Kentucky?

Under Kentucky's current charter school law, a public charter school is also referred to as an "achievement academy."<sup>135</sup> A "regional achievement academy" refers to a public charter school that is been established to serve students across multiple school districts.<sup>136</sup> In Kentucky, a public charter school, or achievement academy is defined as having the following nine components:

- (1.)Is a public body corporate and politic, exercising public power, including the power in name to contract and be contracted with, sue and be sued, and adopt by-laws not inconsistent with this section;
- (2.)Has authority over decisions, including but not limited to matters concerning finance, personnel, scheduling, curriculum, and instruction;
- (3.)Is governed by an independent board of directors;
- (4.)Is established and operating under the terms of a charter contract between the public charter schools board of directors and its authorizer;
- (5.)Is a public school to which parents choose to send their children;
- (6.)Is a public school that admits students on the basis of a random and open lottery if more students apply for admission that can be accommodated;
- (7.)Offers a comprehensive instructional program within a public school district;
- (8.)Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and

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134. Emilie Arroyo, *A Closer Look At The Future Of Charter Schools In Kentucky*, WKYT NEWS (APR. 18, 2018), <https://www.wkyt.com/content/news/A-closer-look-at-the-future-of-charter-schools-in-Kentucky-480173603.html> [<https://perma.cc/Y4PN-XS9R>].

135. KY. REV. STAT. ANN. §160.1590(1) (2017).

136. KY. REV. STAT. ANN. §160.1590(15).

(9.) Operates under the oversight of its authorizer in accordance with its charter contract.<sup>137</sup>

Specifically, the Commonwealth of Kentucky has developed two different types of public charter schools, including:<sup>138</sup>

(1.) Regional achievement academy (start-up and conversion): a public charter school established to serve students across multiple school districts.<sup>139</sup>

(2.) Education service providers: 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.<sup>140</sup>

Prior to the state's passage of charter school legislation in 2017, the Kentucky General Assembly, by statute, made expressly clear that the primary purpose for adopting charter school legislation in the Commonwealth of Kentucky is to focus on "[r]educing achievement gaps in Kentucky [] necessary for the state to realize its workforce and economic development potential; . . . Additional public school options are necessary to help reduce socioeconomic, racial, and ethnic achievement gaps; . . . The demand exists for high-quality public charter schools in the Commonwealth."<sup>141</sup> While not an exhaustive list, Kentucky's House Bill 520 has enumerated in its state charter school law, a listing of specific requirements for the state's public charter schools, including:

(1.) Be governed by a board of directors;<sup>142</sup>

(2.) Comply with existing state compulsory attendance laws;<sup>143</sup>

(3.) Hire qualified teachers that are Kentucky Education Professional Standards Board (EPSB) certified;<sup>144</sup>

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137. KY. REV. STAT. ANN. §160.1590(12).

138. KY. REV. STAT. ANN. §160.1590(7), (8), (15), (16).

139. KY. REV. STAT. ANN. §160.1590(15).

140. KY. REV. STAT. ANN. §160.1590(8).

141. KY. REV. STAT. ANN. §160.1591(1)(a), (c), (d) (2017)

142. KY. REV. STAT. ANN. §160.1592(3)(a) (2017).

143. KY. REV. STAT. ANN. §160.1592(3)(c).

144. KY. REV. STAT. ANN. §160.1592(3)(d); *see also* KY. REV. STAT. ANN. §160.1590(14) (2017) (defining qualified teacher as "a person certified by the Education Professional Standards Board pursuant to KRS 161.028, 161.030, 161.046, or 161.048").

- (4.) Participate in the required state assessment, accountability and school report card of student performance;<sup>145</sup>
- (5.) Conducting criminal background checks on all charter school employees;<sup>146</sup>
- (6.) Meet or exceed instructional time of traditional public schools;<sup>147</sup>
- (7.) Operate under the oversight of the charter school's authorizer in accordance with the charter school contract and application;<sup>148</sup>
- (8.) Conduct an admissions lottery if student enrollment capacity is insufficient to enroll all students who wish to attend the public charter school and ensure that the admissions lottery is competently conducted, equitable, randomized, transparent, impartial, and in accordance with targeted student population and service community;<sup>149</sup>

While Kentucky's House Bill (HB) 520 legally went into effect on June 29, 2017, to date, not a single charter school has opened.<sup>150</sup> The primary reason no charter schools have yet to open despite the passage of Kentucky's charter school law two years ago is that lawmakers have been unable to approve a permanent funding mechanism that permits public school funding to follow students to charter schools.<sup>151</sup> Table Three summarizes that Kentucky's 2017 House Bill 520 is divided into a total of 12 sections addressing general areas and provisions impacting the creation of public charter schools in the state. When developing the state's charter school legislation, the Kentucky General Assembly established six primary goals for the Bluegrass State's public charter schools, including:

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145. KY. REV. STAT. ANN. §160.1592(3)(g).

146. KY. REV. STAT. ANN. §160.1592(3)(j).

147. KY. REV. STAT. ANN. §160.1592(3)(m).

148. KY. REV. STAT. ANN. §160.1592(3)(o).

149. KY. REV. STAT. ANN. §160.1592(3)(q).

150. Mandy McLaren, *Wayne Lewis To Press Kentucky Legislature For Charter School Funding*, COURIER JOURNAL (NOV. 9, 2018), <https://www.courier-journal.com/story/news/education/2018/11/09/kentucky-charter-schools-wayne-lewis-push-money/1941765002/> [https://perma.cc/DQM9-9FTC].

151. *Id.*

- (1.) Improve student learning outcomes by creating additional high-performing schools with high standards for student performance;<sup>152</sup>
- (2.) Encourage the use of different, high quality models of teaching, governing, scheduling, or other aspects of schooling that meet student needs;<sup>153</sup>
- (3.) Close student achievement gaps between high-performing and low performing groups of public school students;<sup>154</sup>
- (4.) Allow schools freedom and flexibility in exchange for exceptional levels of results-driven accountability;<sup>155</sup>
- (5.) Increase high-quality educational opportunities within the public education system for all students, especially those at risk of academic failure;<sup>156</sup> and
- (6.) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public education system.<sup>157</sup>

**TABLE THREE: OVERVIEW OF MAJOR SECTIONS OF HOUSE BILL 520<sup>158</sup>**

Section 1	Statutory Definitions <sup>159</sup>
Section 2	Kentucky General Assembly's Purpose and Findings Related to Charter School Enrollment <sup>160</sup> Preferences Prohibition of Virtual Charter Schools <sup>161</sup>
Section 3	Exemptions from Certain Statutes and Regulations <sup>162</sup> Requirements for Health, Safety, Civil and Disability rights <sup>163</sup>

152. KY. REV. STAT. ANN. §160.1591(2)(a) (2017).

153. KY. REV. STAT. ANN. §160.1591(2)(b).

154. KY. REV. STAT. ANN. §160.1591(2)(c).

155. KY. REV. STAT. ANN. §160.1591(2)(d).

156. KY. REV. STAT. ANN. §160.1591(2)(e).

157. KY. REV. STAT. ANN. § 160.1591(2)(f).

158. H.B. 520, 2017 Gen. Assemb., Reg. Sess. (Ky. 2017).

159. KY. REV. STAT. ANN. § 160.1590 (2017).

160. KY. REV. STAT. ANN. § 160.1591 (2017).

161. KY. REV. STAT. ANN. § 160.1591(4)-(7).

162. KY. REV. STAT. ANN. § 160.1592 (2017).



	Athletic and Extracurricular Participation <sup>164</sup>
Section 4	Charter School Application Process <sup>165</sup>
Section 5	Responsibilities for Charter School Authorizers <sup>166</sup>
Section 6	Kentucky Board of Education (“KBE”) Review of Charter School Applications <sup>167</sup> Appeal of Applicants to the KBE <sup>168</sup>
Section 7	Board of Directors for Charter Schools <sup>169</sup> Contract Requirements Between Charter and Authorizer <sup>170</sup>
Section 8	Charter School Operational Provisions <sup>171</sup>
Section 9	Renewal, Nonrenewal, or Revocation of Charter School Contracts <sup>172</sup>
Section 10	Conversion Charter Schools <sup>173</sup>
Section 11	Employee Retirement and Labor Provisions <sup>174</sup>
Section 12	Savings Clause <sup>175</sup>

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163. KY. REV. STAT. ANN. § 160.1592(1).

164. KY. REV. STAT. ANN. § 160.1592(18).

165. KY. REV. STAT. ANN. § 160.1593 (2017).

166. KY. REV. STAT. ANN. § 160.1594 (2017).

167. KY. REV. STAT. ANN. § 160.1595 (2017).

168. KY. REV. STAT. ANN. § 160.1595.

169. KY. REV. STAT. ANN. § 160.1596 (2017).

170. KY. REV. STAT. ANN. § 160.1596.

171. KY. REV. STAT. ANN. § 160.1597 (2017).

172. KY. REV. STAT. ANN. § 160.1598 (2017).

173. KY. REV. STAT. ANN. § 160.1599 (2017).

174. KY. REV. STAT. ANN. § 161.141 (2017).

175. H.B. 520, 2017 Gen. Assemb., Reg. Sess. (Ky. 2017).

### **B. What are the Primary Duties and Responsibilities of Public Charter School Authorizers?**

Charter school authorizers are individuals from which charter school applicants are required to obtain approval prior to legally establishing a charter school. In Kentucky, public charter school authorizers in Kentucky have been statutorily delegated four primary duties and responsibilities, including: (1.) review, approve, or deny charter school applications;<sup>176</sup> (2.) enter into charter school contracts with applicants;<sup>177</sup> (3.) oversee public charter schools throughout the state (including establishing and maintaining policies);<sup>178</sup> and (4.) renew, non-renew, or revoke charter school contracts.<sup>179</sup>

Kentucky's charter school law has designated that public charter school authorizers may include the following individuals: (1.) a local school board in the district where a charter school is located;<sup>180</sup> (2.) a collaborative among local school boards that forms to set up a regional public charter school that is located in an area controlled and managed by those local public school boards;<sup>181</sup> (3.) the mayor of a consolidated local government (which includes Louisville and Lexington), who may authorize public charter schools within the county in which the city is located after submitting notice to the state board;<sup>182</sup> and (4.) the chief executive officer of an urban-county government, who may authorize public charter schools within the county in which the city is located after submitting notice to the state board.<sup>183</sup> There is evidence in the research literature suggesting that today's charter school authorizers play a critical role in the charter school selection process, especially relating to charter school access and who ultimately receives approval in the charter school application process.<sup>184</sup>

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176. KY. REV. STAT. ANN. § 160.1594(1)(d)-(e) (2017).

177. KY. REV. STAT. ANN. § 160.1594(f).

178. KY. REV. STAT. ANN. § 160.1594(g), (i).

179. KY. REV. STAT. ANN. § 160.1594(h).

180. KY. REV. STAT. ANN. § 160.1590(13)(a) (2017).

181. KY. REV. STAT. ANN. § 160.1590(13)(b).

182. KY. REV. STAT. ANN. § 160.1590(13)(c).

183. KY. REV. STAT. ANN. § 160.1590(13)(d).

184. See LOUANN BIERLEIN PALMER & REBECCA GAU, CHARTER SCHOOL AUTHORIZING: ARE STATES MAKING THE GRADE? 1 (Thomas B. Fordham Inst. 2003),

### C. What Kentucky's Charter School Application, Review, and Appeals Process Requires

Those potentially interested in submitting an application to establish a public charter school in Kentucky must file their application simultaneously with the designated authorizer and the Kentucky Board of Education (“KBE”).<sup>185</sup> The information required in Kentucky’s charter school application process is cumbersome, as it sets forth twenty-five distinct provisions,<sup>186</sup> including an additional six provisions if the charter school applicant plans to contract with an education service provider (“ESP”) for educational program implementation or management.<sup>187</sup> Some of the information required of all applicants seeking to establish a public charter school in Kentucky include:

- (1.) A mission and vision statement for the proposed public charter school, including discussion of both the “targeted student population and the community the school hopes to serve”,<sup>188</sup>
- (2.) A description of the proposed public charter school’s proposed academic program as well as instructional methods and how these will be aligned with existing state standards;<sup>189</sup>
- (3.) A proposed plan for using state required assessments to measure student progress as well as how the proposed charter school “will use data to drive instruction and continued school improvement”,<sup>190</sup>
- (4.) A proposed governance structure;<sup>191</sup>
- (5.) A proposed five-year budget;<sup>192</sup>
- (6.) Procedures to be followed in case of public charter school closure or dissolution;<sup>193</sup>

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<https://files.eric.ed.gov/fulltext/ED498009.pdf> [<https://perma.cc/4MAV-R2EW>] (arguing that the role of the authorizer is essential to a charter school’s overall success).

185. KY. REV. STAT. ANN. § 160.1593(2) (2017).

186. KY. REV. STAT. ANN. § 160.1593(3).

187. KY. REV. STAT. ANN. § 160.1593(4).

188. KY. REV. STAT. ANN. § 160.1593(3)(a).

189. KY. REV. STAT. ANN. § 160.1593(3)(b).

190. KY. REV. STAT. ANN. § 160.1593(3)(d).

191. KY. REV. STAT. ANN. § 160.1593(3)(e).

192. KY. REV. STAT. ANN. § 160.1593(3)(g).

193. KY. REV. STAT. ANN. § 160.1593(3)(q).

- (7.) Plans for parental and community involvement;<sup>194</sup>
- (8.) Plans for identifying and successfully serving students with disabilities, English language learners, bilingual students, and academically gifted or those students who are academically struggling;<sup>195</sup> and
- (9.) A process on resolving disputes with the designated authorizer.<sup>196</sup>

In terms of the charter school appeals process, the KBE reviews all designated authorizers' decisions, upon notice of appeal or upon its own motion, to approve, deny, renew, non-renew, revoke or impose unilateral conditions.<sup>197</sup> In Kentucky, any public charter school applicant who wishes to appeal an authorizer's decision must provide both the KBE and the authorizer with a notice of appeal within 30 days after the authorizer's decision.<sup>198</sup> If the designated authorizer still denies, refuses to renew, or revokes the application on appeal, a second appeal may be filed with the KBE.<sup>199</sup>

As the most recent state to enact public charter school law legislation, some of the more notable features of Kentucky's charter school law are that it has no caps on the number of charter schools in the state, permits multiple authorizers, and has a strong appeals process.<sup>200</sup>

## VI. LESSONS TO BE LEARNED FROM EXISTING STATE CHARTER SCHOOL LEGISLATION: IMPLICATIONS FOR KENTUCKY

While there exists no general consensus on what constitutes either "good" or "bad" charter school law, there is increasingly useful research detailing specific features that have been positively correlated with facilitating student academic success in charter schools.<sup>201</sup> For example, recent scholarship has

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194. KY. REV. STAT. ANN. § 160.1593(3)(u).

195. KY. REV. STAT. ANN. § 160.1593(3)(v).

196. KY. REV. STAT. ANN. § 160.1593(3)(x).

197. KY. REV. STAT. ANN. § 160.1595(1) (2017).

198. KY. REV. STAT. ANN. § 160.1595(2).

199. KY. REV. STAT. ANN. § 160.1595(3)(c).

200. KY. REV. STAT. ANN. § 160.1594 (2017); KY. REV. STAT. ANN. § 160.1590 (2017).

201. Mead & Rotherham, *supra* note 1, at 2.

developed a useful framework for understanding inconsistencies among state charter school laws based on analyzing a particular state's underlying purpose for creating the legislation.<sup>202</sup> Using this particular framework, the results revealed that “gap-closing states,” which provide for more oversight of charter school authorizers and greater restrictions on entrance into the charter school market, resulted in improved charter school performance outcomes.<sup>203</sup> To date, research indicates that quality state charter school laws share some common core features, including the following:

- (1.) High-quality “professional” authorizers that are committed to charter school success in a particular state;
- (2.) Reliance on “effective authorizers” instead of regulation to facilitate charter school success;
- (3.) Public oversight and accountability for both authorizers and charters schools;
- (4.) High-quality monitoring and performance data of charter school students;
- (5.) No absolute caps on the number of charter schools in a state;
- (6.) Research-based incentives to help charter schools achieve scale rapidly in underserved, poor communities;
- (7.) Equitable funding for a state's public charter schools, especially for start-up and facilities.<sup>204</sup>

#### **A. Current Perceived Strengths of Kentucky's Charter School Law Targeted for Improving Charter School Academic Success**

In analyzing Kentucky's charter school laws, the authors identified four strengths of the state's legislation, especially in terms of its potential impact on improving student achievement in the state's public charter schools.

##### *1. A Primary Focus on Closing the Student Achievement Gap, Especially of At-Risk Student Populations*

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202. Liu, *supra* note 106, at 273.

203. *Id.* at 274.

204. Mead & Rotherham, *supra* note 1, at 2.

In the process of creating the charter school law, the developers of Kentucky's legislation identified four states that could possibly serve as model states for charter school law.<sup>205</sup> Included in that list of states serving as model charter school states were Alabama,<sup>206</sup> Colorado,<sup>207</sup> Indiana,<sup>208</sup> and Maine.<sup>209</sup> For example, Indiana has developed a fairly successful charter school law and, for the fourth consecutive year, has been ranked the highest out of all the states in school charter school quality.<sup>210</sup> An integral component of all four of these state charter school laws is a focus on serving the specific academic needs of at-risk students. For example, in Indiana, 64% of the state's charter school students qualify for free and reduced lunch, a percentage 15% higher than Indiana's traditional public schools.<sup>211</sup> More significantly, many of Indiana's charter schools have been experiencing higher academic growth in both reading and math compared to the state's traditional public schools.<sup>212</sup> Similar to these other four states, Kentucky's legislation clearly articulates that ". . . [a]dditional public school options are necessary to help reduce socioeconomic, racial, and ethnic achievement gaps . . . and [t]he demand exists for high-quality public charter schools in the Commonwealth."<sup>213</sup> Currently, the State of Louisiana could serve as an exemplar of a state charter school law with an exclusive focus on serving the needs of at-risk students.<sup>214</sup> Louisiana's charter school law states that it wants to serve "the best interests of students who are economically disadvantaged" and is the "overriding

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205. Conversation with Wayne Lewis, Commissioner of Education, Commonwealth of Kentucky.

206. ALA. CODE § 16-6F-6 (2019).

207. COLO. REV. STAT. ANN. § 22-30.5-102 (2019).

208. IND. CODE ANN. § 20-24-1-1 to -13-6 (2018).

209. ME. REV. STAT. ANN. tit. 20-A § 2402-2415 (2018).

210. See Todd Ziebarth, *Measuring Up the Model: A Ranking of State Public Charter Schools Laws*, THE NAT'L ALLIANCE FOR PUB. CHARTER SCHS. 4 (2019), [https://www.publiccharters.org/sites/default/files/documents/2019-02/napcs\\_model\\_law\\_2019\\_web\\_updated.pdf](https://www.publiccharters.org/sites/default/files/documents/2019-02/napcs_model_law_2019_web_updated.pdf) [<https://perma.cc/D4ZP-B9GA>].

211. See Jake Eldemire-Smith, Comment, *Forecasting the Implications of Charter School Legislation in Kentucky: The Economic Impact of Charter School Programs and a Suggestion For the Model Charter School*, 47 J.L. & EDUC. 283, 288 (2018).

212. *Id.* at 289.

213. KY. REV. STAT. ANN. § 160.1591(c)-(d) (2017).

214. Liu, *supra* note 106, at 314.

consideration” in its charter school law.<sup>215</sup> Kentucky’s charter school law has a distinct focus on improving the academic outcomes for the state’s disadvantaged and underachieving students.<sup>216</sup>

*2. Strong Performance-Based Charter Contracts Resulting in Regular Public Oversight and Accountability of Both Authorizers and Public Charter Schools*

Kentucky’s charter school law requires strong performance-based charter contracts. For example, within seventy-five days of the final approval of a submitted charter school application, the board of directors and the charter school authorizer must enter into a legally binding charter contract that “establishes the academic and operational performance expectations and measures by which the public charter school will be evaluated.”<sup>217</sup> Kentucky’s strong performance-based charter contracts reflect one of the key features of charter school accountability. Specifically, this provision in Kentucky’s charter school law allows for oversight through attention to data-driven measures as well as regular evaluations monitoring the overall performance of the public charter school.<sup>218</sup>

*3. Clear Process of Authorizer Criteria for Public Charter School Renewal, Non-Renewal, and Revocation*

As the charter school movement has grown in scope and complexity, the role and significance of designated charter school authorizers has also increased. Today’s charter school authorizers are crucial, especially in decisions involving whether or not to renew or revoke a public school charter.<sup>219</sup> When making renewal, non-renewal, or revocation decisions concerning public charter schools, designated authorizers in Kentucky are required to: (1.) make decisions within established timelines; (2.) make decisions based on the evidence of the

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215. LA. REV. STAT. ANN. § 17:3972 (2011).

216. KY. REV. STAT. ANN. § 160.1591(1)(a), (c) (2017).

217. KY. REV. STAT. ANN. § 160.1596(1)(b) (2017).

218. Liu, *supra* note 106, at 301.

219. Palmer & Gau, *supra* note 184, at 1.

public charter school's aggregate performance over the term of the charter contract based on the performance framework required in the charter contract; (3.) ensure that data is used in making renewal decisions is available to the public charter school as well as the public; and (4.) provide a detailed, evidence-based public report summarizing the basis for each decision.<sup>220</sup> Similar to Kentucky's strong performance-based charter contracts, the authorizer criteria for public charter school renewal reflects the preferred charter school law feature of accountability. The degree of transparency of the process to the public is another important aspect of Kentucky's charter school authorizer criteria for renewal, non-renewal, or revocation.

#### *4. Detailed Authorizer Criteria for Approving Public Charter School Applications*

Some argue that today's charter school authorizers play the role of proverbial gatekeeper for public charter school applications.<sup>221</sup> A distinguishing characteristic of Kentucky's authorizer criteria for approving public charter school applications is that it encourages designated authorizer's to "give preference to applications that demonstrate the intent, capacity, and capability to provide comprehensive learning experiences to . . . [s]tudents identified by the applicants as at-risk of academic failure . . . or [s]tudents with special needs . . ." <sup>222</sup> This provision of Kentucky's charter school law reflects one of the distinguishing features of gap-closing states' charter law legislation, namely the imposition of increased accountability requirements on its states authorizers and charter schools.<sup>223</sup>

### **B. Current Areas of Consideration for Improvement in Kentucky's Charter School Law Targeted for Improving the State's Charter School Academic Success**

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220. KY. REV. STAT. ANN. § 160.1598(5)(a)-(d) (2017).

221. Liu, *supra* note 106, at 302.

222. KY. REV. STAT. ANN. § 160.1594(2)(a)-(b) (2017).

223. Liu, *supra* note 106, at 342.



*1. Kentucky's Lack of a Permanent, Equitable Mechanism for Funding the State's Public Charter Schools*

The equitable funding of charter schools is a necessary condition for charter school success. In its most recent 2019 National Alliance for Public Charter School (“NAPCS”) rankings, Kentucky was excluded. The rationale for this omission was justified. In 2018, only one year after passage of the state’s charter school legislation, the Kentucky State Legislature failed to enact a new, permanent funding mechanism for funding the state’s public charter schools. Additionally, the research literature tends to support that today’s public charter schools, on average, receive less funding per student compared to students at traditional public schools.<sup>224</sup> The fact that charter school funding is often not commensurate with traditional public schools is problematic, especially since public charter schools in the majority of states overwhelmingly serve minority and disadvantaged students.<sup>225</sup> Similarly, funding charter school facilities is also an area of particular inequity and a major impediment to public charter school growth.<sup>226</sup> If the State is unable to develop and pass a permanent and equitable funding mechanism, including operational, capital, and facilities funding for the state’s public charter school laws, the future of charter schools in the “Bluegrass State” will be unclear.

*2. Add a Provision Requiring Transportation Services Be Provided to Enrolled Public Charter School Students*

Currently, Kentucky’s charter school law does not include a provision requiring transportation services be provided to enrolled public charter school students.<sup>227</sup> Given Kentucky’s public charter school focus on at-risk students, the lack of free transportation services is problematic. Currently, the majority of state charter school laws do not include provisions providing

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224. Mead & Rotherham, *supra* note 1, at 12.

225. *Id.*

226. *Id.* at 13.

227. KY. REV. STAT. ANN. § 160.1592 (2017).

free transportation services to public charter school students.<sup>228</sup> However, there are some states, including Connecticut,<sup>229</sup> Delaware,<sup>230</sup> and Florida<sup>231</sup> that do contain specific provisions in their charter school laws allowing for the free transportation of public charter school students. For example, in Florida, charter schools are required to provide transportation to students residing within a reasonable distance from the charter school.<sup>232</sup>

### *3. Expand Eligibility and Access Options Available for Public Charter School Students to Participate in Extracurricular and Interscholastic Activities*

Presently, Kentucky's charter school law affords no legal obligation to "provide extracurricular activities or access to facilities for students enrolled in . . . public charter school[s]."<sup>233</sup> Moreover, if a Kentucky public charter school does not offer any interscholastic athletic activities sanctioned by the board of education, the only available option for this student is to "participate at the school the student would attend based on the student's residence."<sup>234</sup> The opportunity for students to participate in extracurricular and interscholastic activities is invaluable.

## CONCLUSION

One benefit of being the most recent state to pass charter school legislation is that you are afforded the unique opportunity to learn about successful features of charter school legislation from other states. While Kentucky's charter school law assigns high priority to closing student achievement gaps within the state, the current absence of a permanent funding mechanism does significantly impair the "Bluegrass State's" ability to

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228. Phillip Geheb & Spenser Owens, *Charter School Funding Gap*, 46 FORDHAM URB. L.J. 72, 118-19 (2019); Mead & Rotherham, *supra* note 1, at 12; James E. Ryan, *Charter Schools and Public Education*, 4 STAN. J.C.R. & C.L. 393, 404 (2008).

229. CONN. GEN. STAT. ANN. § 10-66aa(f) (1996).

230. DEL. CODE ANN. tit. 14, § 508 (2012).

231. FLA. STAT. ANN. § 1002.33(2)(c) (2018).

232. FLA. STAT. ANN. § 1002.33(2)(c).

233. KY. REV. STAT. ANN. § 160.1592(18)(b) (2017).

234. KY. REV. STAT. ANN. § 160.1592(18)(d).

provide any meaningful level of equitable capital, operational, or facilities funding. Notwithstanding, a review of Kentucky's charter school laws shows some promising features, especially in the categories of charter school accountability and autonomy. Specific components of Kentucky's charter school law, including a comprehensive performance-based charter contracts system and a detailed and transparent process of authorizer criteria for renewal, non-renewal, and revocation, demonstrate Kentucky's understanding that "quality authorizing is the critical link in the chartering chain."<sup>235</sup> While it is clear that the primary shortcoming and main area of improvement of Kentucky's charter school law is the development and passage of a permanent and equitable funding system, a deeper understanding of how state charter school law purposes can positively influence student academic outcomes in public charter schools can serve as a legislative catalyst to improving a state's charter school policies and overall academic performance.

#### APPENDIX A:

#### TWENTY-ONE ESSENTIAL COMPONENTS OF A STRONG CHARTER SCHOOL LAW<sup>236</sup>

*Based on the National Alliance of Public Charter Schools Model Law (January 2019 Results)*

<b>Model Charter School Law Component</b>	<b>State Charter School Laws Addressing Specific Model Law Component</b>
1. No caps on state charter school growth	Alaska, Arizona, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maryland, Minnesota, Nevada, New Hampshire, New Jersey, North Carolina, Oregon, South

235. Mead & Rotherham, *supra* note 1, at 16.

236. See Charter Law Database – Components, THE NAT'L ALLIANCE FOR PUB. CHARTER SCH. (JAN. 2019), <https://www.publiccharters.org/our-work/charter-law-database/components> [<https://perma.cc/963W-2TLN>].

	Carolina, Tennessee, Virginia, Wyoming <b>(Total: 23 states)</b>
2. A variety of charter schools allowed	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, Wyoming <b>(Total: 42 states)</b>
3. Non-district authorizers available	Arizona, Arkansas, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Louisiana, Maine, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, South Carolina, Texas, Utah, Washington, Wisconsin <b>(Total: 24 states)</b>
4. Authorizer and overall program accountability system required	Alabama, Arkansas, Connecticut, District of Columbia, Hawaii, Indiana, Mississippi, Missouri, Nevada, North Carolina, Ohio, Washington <b>(Total: 12 states)</b>

5. Adequate authorizer funding, including provisions for guaranteed funding from the state or authorizer fees and public accountability for such expenditures.	Colorado, Florida, Louisiana, Maine, Minnesota, Nevada, Ohio, Tennessee, Washington <b>(Total: 8 states)</b>
6. Transparent charter school application, review, and decision-making processes	Alabama, Louisiana, Mississippi, Washington <b>(Total: 4 states)</b>
7. Performance-based Charter School Contracts Required	Alabama, District of Columbia, <b>Kentucky</b> , Maine, Mississippi, Missouri, Washington <b>(Total: 7 states)</b>
8. Comprehensive charter school monitoring and data collection processes	Washington <b>(Total: 1 state)</b>
9. Clear processes for renewal, nonrenewal, and revocation decisions	Alabama, Arkansas, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Mexico, New York, North Carolina, Oklahoma, Washington <b>(Total: 21 states)</b>
10. Transparency Regarding Educational Service Providers	Florida <b>(Total: 1 state)</b>
11. Fiscally and Legally Autonomous Schools with Independent Charter School Boards	Alabama, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Indiana, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina,

	Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Washington, Wisconsin <b>(Total: 29 states)</b>
12. Clear Student Enrollment and Lottery Procedures	Alabama, California, District of Columbia, Maine, Massachusetts, Minnesota, New Hampshire, New York, Ohio, South Carolina, Tennessee, Washington, Wisconsin <b>(Total: 13 states)</b>
13. Automatic Exemptions from Many State and District Laws and Regulations	Alabama, Arizona, District of Columbia, Louisiana, Oklahoma <b>(Total: 5 states)</b>
14. Automatic Collective Bargaining Exemption	Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, Washington, Wyoming <b>(Total: 25 states)</b>
15. Multi-school Charter Contract and/or Multi-charter School Contract Boards Allowed	Alabama, Arkansas, Colorado, Delaware, Hawaii, Idaho, Indiana, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Nevada, New York, Oklahoma, Texas, Washington, Wisconsin <b>(Total: 18 states)</b>
16. Extracurricular and Interscholastic Activities Eligibility and Access	Colorado, Florida, Minnesota, South Carolina, Utah, Washington

	<b>(Total: 6 states)</b>
17. Clear Identification of Special Education Responsibilities	California, Indiana, Ohio, Pennsylvania <b>(Total: 4 states)</b>
18. Equitable Operational Funding and Equal Access to All State and Federal Categorical Funding	Colorado, Illinois, New Mexico, Utah <b>(Total: 4 states)</b>
19. Equitable Access to Capital Funding and Facilities	California, Colorado, District of Columbia, Florida, Indiana, Tennessee, Texas, Utah <b>(Total: 8 states)</b>
20. Access to Relevant Employee Retirement Systems	Arizona, California, Delaware, Florida, Indiana, Maine, Michigan, Mississippi, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Utah <b>(Total: 14 states)</b>
21. Full-time Virtual Charter School Provisions	<b>(Total: 0 states)</b>