

A PRIMER ON CHARTER SCHOOL CONTRACTS IN MINNESOTA

HISTORY

Since the enactment of Minnesota’s Charter School Law in 2001, there has been a slow but steady evolution in the definition of the legally required components of charter contracts. The most significant changes have occurred since 2009 when the law was revamped through the collaborative effort of the association and authorizers. There continue to be changes regularly to charter school contracts based on the lived experience of chartering.

The common thread of those changes has been to require that the charter school contract more clearly define: to what goals the school will be held accountable; how the authorizer will carry out its oversight responsibilities; and the specific conditions, terms, and processes for renewal and non-renewal of a charter.

DEFINITIONS

Charter – A charter is a grant of authority from the State to exercise certain rights. In the case of a charter school, a charter is the written grant of authority by a state-approved authorizing body to a nonprofit organization composed of licensed teachers, parents, and community members to operate a public school within the state of Minnesota.

Contract – A contract is a legally enforceable agreement between two or more parties with mutual obligations. A contract must have the elements of mutual assent, offer and acceptance, consideration and sufficiency.

Charter Contract – A charter contract is a **legally enforceable written agreement** between a state approved authorizer and the board of directors of the nonprofit corporation granted a charter by the authorizer.

Affidavit – An affidavit is a written statement the authorizer submits to the commissioner for approval to establish a charter school under MN Statutes 124E.06, subdivision 4 attesting to its review and approval process before chartering a school.

PARAMETERS

LENGTH OF CHARTER SCHOOL CONTRACTS:

Initial Charter Contracts– An authorizer may grant an initial charter contract for **up to five (5) years** plus an additional pre-operational planning period.

Contract Renewals – An authorizer may grant a renewal contract or a contract with a new authorizer after a transfer of authorizers, if warranted by the school’s academic, financial, and operational performance of **up to five (5) years**.



FINALIZATION OF INITIAL CHARTER CONTRACTS:

The authorization for a charter school must be in the form of a written contract. The contract must be signed by the authorizer and the board of directors of the charter school. The initial contract **must be completed within 45 business days** of the commissioner's approval of the authorizer's affidavit.

SUBMISSION OF INITIAL AND RENEWAL CHARTER CONTRACT TIMELINE:

The authorizer shall submit to the commissioner a copy of the signed charter contract **within ten (10) business days** of the contract's execution.

***Note:** There are two provisions in the Revenue for A Charter School law (MN Statutes 124E.25) aimed at ensuring that charter school contracts are submitted to the MN Department of Education in a timely matter.*

The first provision [Subdivision 2 (c)] requires that a charter school have a valid, signed contract under section 124E.10, subdivision 1 on file at the Minnesota Department of Education (MDE) **at least 15 days prior** to the date of the first payment of state aid for the fiscal year. This means that all charter school contracts must be delivered to MDE **no later than the last business day of June**.

The second provision [Subdivision 2 (d)] establishes a financial penalty for not having the contract in on time. The law provides that State aid entitlements shall be computed for a charter school only for the portion of a school year for which it has a valid, signed contract under section 124E, subdivision 1. **This means that a school will lose all state aid for the length of time that the charter contract is late.**

RECOMMENDATION

*All charter contracts should establish a date of **no later than June 1st** for final action by both the board of directors of the charter school and the authorizing organization. This ensures that there is sufficient time for the authorizer to submit the contract to MDE by the deadline, as it is the legal responsibility of the authorizer to submit the contract to MDE. However, the penalty for failing to do so falls on the school.*

LEGAL REQUIREMENTS OF MINNESOTA CHARTER CONTRACTS

The basic requirements for charter school contracts are outlined in **MN Statutes 124E.10**.

REQUIRED CHARTER CONTRACT REQUIREMENTS:

Subdivision 1. Contents. (a) To authorize a charter school, the authorizer and the charter school board of directors must sign a written contract within 45 business days of the commissioner's approval of the authorizer affidavit. The authorizer shall submit a copy of the contract to the commissioner within ten business days after the contract is signed by the contracting parties. The contract **must** contain at least the following:



- (1) **A declaration** that the charter school will carry out the **primary purpose** in section 124E.01 subdivision 1, and indicate how the school will report its implementation of the primary purpose to its authorizer;
 - (2) **A declaration** of the **additional purpose or purposes** in section 124E.01 subdivision 1, that the school intends to carry out and indicate how the school will report its implementation of those purposes to its authorizer;
 - (3) **A description** of the **school program** and the **specific academic and nonacademic outcomes** that pupils **must** achieve;
 - (4) **A statement of admission policies and procedures**;
 - (5) **A school governance, management, and administration plan**;
 - (6) **Signed agreements from charter school board members to comply with all federal and state laws** governing organizational, programmatic, and financial requirements applicable to charter schools;
 - (7) **The criteria, processes, and procedures that the authorizer will use** to monitor and evaluate the fiscal, operational, and academic performance consistent with subdivision 3, paragraphs (a) and (b);
 - (8) **For contract renewal, the formal written** performance evaluation of the school that is a **prerequisite for reviewing** a charter contract under subdivision 3;
 - (9) **Types and amounts of insurance liability coverage** the charter school must obtain, consistent with section 124E.03 subdivision 2, paragraph (d);
 - (10) Consistent with 124E.09 paragraph (d), a **provision to indemnify and hold harmless from any suit, claim, or liability** arising from any operation of the charter school:
 - (i) the authorizer and its officers, agents, and employees: and
 - (ii) notwithstanding section 3.736, the commissioner and department officers, agents and employees;
 - (11) The **term of the contract**, which, for an initial contract, may be up to five (5) years plus a preoperational planning period, or for renewed contact or a contract with a new authorizer after transfer of authorizers, may be up to five years, if warranted by the school's academic, financial, and operational performance;
 - (12) **How the board of directors or the charter school operators will provide special instruction and services for children with a disability** under sections 125A.03 to 125A.24, and 125A.65, and a **description of the financial parameters** within which the charter school will operate to provide the special instruction and services to children with disabilities;
 - (13) The **specific conditions for contract renewal** that **identify the performance of all students under the primary purpose** of section 124E.01, subdivision 1, as the **most important factor** in determining whether to renew the contract;
 - (14) The **additional purposes** under section 124E.01 subdivision 1, , and **related performance obligations** under clause (7) contained in the charter contract as **additional factors in determining whether to renew the contract.**
- (b) in addition to the requirements in paragraph (a), the charter contract must contain the plan for an orderly closing of the school under chapter 317A, that establishes the responsibilities of the school board of directors



and the authorizer, whether the closure is a termination for cause, a voluntary termination, or a non-renewal of the contract. The plan must establish who is responsible for:

- (1) notifying the commissioner, school district in which the school is located, and parents of enrolled students about the closure;
- (2) providing parents of enrolled students information and assistance to enable the student to re-enroll in another school;
- (3) transferring student records under section 124E.03, subdivision 5, paragraph (b), to the student's resident district; and
- (4) closing financial operations.

(c) A charter school must design its programs to at least meet the outcomes adopted by the commissioner for public school students, including world's best workforce goals under section 120B.11, subdivision 1. In the absence of the commissioner's requirements governing state standards and benchmarks, the school must meet the outcomes contained in the contract with the authorizer. The achievement levels of the outcomes in the contract may exceed the achievement levels of any outcomes adopted by the commissioner for public school students.

OTHER PROVISIONS THAT SHOULD BE IN THE CONTRACT:

- **The agreed upon annual authorizer fee and the payment schedule** of the fee by the school.
(NOTE: The annually assessed fee is a permissible fee that may be negotiated)
- **The process for dealing with conflicts** in the interpretation of contract provisions—this might be a dispute resolution process, a mediation process or an arbitration process. *(This process should also outline which provisions of the contract are and are not subject to whatever type of process is agreed upon)*
- **The process and procedures that the authorizer will implement in holding the school accountable and the process and procedures the charter school board agrees to follow in response to accountability notifications.**
- **The process and procedures for amending the contract**—both for when the law requires changes or the parties mutually agree to amend the contract.
- **The process, procedures and timeline for a school** for a potential mutual agreement to pursue a transfer of authorizer.
- **The process, procedures and timeline for appealing a non-renewal decision** by the authorizer.
- **The format and procedures of appeal hearing in the case of a non-renewal decision.**
The procedures should include that the hearing be recorded
- **The governance (decision making) structure and process of the authorizing organization** as it relates to the re-authorization decisions related to the charter school.
- **The role of the authorizer representative/liaison and other authorizer staff or consultants** hired by the authorizer in the decision-making process of renewals and non-renewals.
- **The responsibilities of the authorizer and the school** in the event of the termination of the contract.



CONTRACT PROCESS

BASICS OF CONTRACT NEGOTIATIONS:

- Negotiation is the consensual bargaining process between the school and authorizer, in which the parties are attempting to reach an agreement in the form of a contract.
- Both the school and authorizer in a negotiation have the opportunity to present proposals and counter-proposals as to the terms of the contract and to modify or reject proposals and counter-proposals as to the terms of the contract proposed by the other party.
- Both the school and authorizer have the opportunity to ask questions about any of the terms of the contract, and provide definitions as to the terms of the contract to ensure that both the school and authorizer are in agreement as to what a specific term or portion of the contract means.
- Important matters to be negotiated include: correct language that both parties agree to, performance goals, dates, timing requirements, length of the contract, consequences for breach of the contract, and any other relevant information as the parties deem necessary.

REVIEW OF CHARTER CONTRACTS:

- The charter school board of directors has a **legal and moral duty to have contracts reviewed** by competent advisors from three perspectives - technical, content, and legal. *These reviews are important for the protection of the school.*
- The MN Association of Charter Schools can provide member schools with technical assistance in reviewing content (goals) and process/procedures in the context of the charter school law.
- Legal counsel should review the contract to ensure protection of the school's rights perspective.

APPROVAL OF CHARTER CONTRACTS:

Given that a charter contract is a legally enforceable agreement between an **authorizing organization** (*not the authorizer representative*) and the **nonprofit charter school board of directors** (*not the school director*), there needs to be **formal board action** on the part of the governing board of directors of both the authorizer and the school. *The scheduling of an appropriate amount of time for boards to act needs to be factored in the renewal timeline. See recommendation above to ensure the school does not incur any financial penalties.*

A charter school board should expect to be provided with a copy of the resolution approved by the authorizer's board of directors to charter or renew the charter of the school with the contract.



MONITORING OF THE CONTRACT:

The charter school board of directors should **at least quarterly** review progress towards the implementation of the charter contract outcomes.

The charter school board of directors should take seriously any issues or questions the authorizer raises regarding the performance of charter contract outcomes or complaints it has shared with the school in writing and in a timely manner.

The charter school board **at least semi-annually** should schedule a formal progress review of the implementation of the charter contract outcomes with the school's authorizer.

The charter school board of directors should conduct its own evaluation of the school's performance on the charter contract outcomes prior to the authorizer conducting its evaluation for contract renewal decisions.

AMENDING THE CONTRACT:

Legal contracts can be amended by **mutual agreement of both parties** to the contract or may need to be amended to be in compliance with new laws.

All amendments to a charter contract need to be in writing and approved by the Charter School Board and the Authorizers Board. Upon approval of both parties, the board chair of the school's board of directors and the legally designated signer of the authorizer need to sign the amendment to the contract.

The **authorizer has the responsibility of submitting an amended contract** to the Minnesota Department of Education.

TERMINATION OF THE CONTRACT:

The termination of a charter contract can come about in **five (5) ways**:

- (1) A decision by the authorizer to not renew the contract for cause at the end of the contract term,
- (2) A mutual nonrenewal decision by the school and authorizer to terminate the contract at the end of the contract term and transfer authorizers in accordance with MN Statutes 124E.10 Subdivision 5.
- (3) A decision by the authorizer to unilaterally terminate the contract during the term of the contract for the reasons outlined in MN Statutes 124E.10 Subdivision 4 (a) and (b).
- (4) A decision by the commissioner to terminate an existing contract between the authorizer and charter school board if the school has a history of certain failures or violations of law outlined MN Statutes 124E.10 Subdivision 4 (g).
- (5) A decision of the school board of directors to voluntarily close the school.

