

FORMING A NON-STOCK AND TAX EXEMPT 501(c)(3) CORPORATION

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I. Authorizing a Charter School

A. The Authorization Procedure

1. Local school boards have the authority to establish an unlimited number of charter schools in their districts.
 - a. Two or more school boards may enter into a contractual agreement to establish a charter school, with the charter school to be located in one of the authorizing school districts.
 - b. Two or more school districts may also contract together with a cooperative educational service agency (CESA).
2. School boards may authorize a charter school using one of two methods:
 - a. Approval of a written petition from a group. Wis. Stat. § 118.40(1m), (2).
 - i. The petition has to be signed by at least 10% of the teachers employed by the district or by at least 50% of the teachers employed at one school in the district.
 - ii. The Board is obligated to consider the level of employee and parental support and must give preference to charter schools that serve children at risk.
 - b. Authorization by school board initiative. Wis. Stat. § 118.40(2m).
3. The school board approval includes a determination of whether the charter will be an instrumentality of the district. Wis. Stat. § 118.40(7)(a).
 - a. If it will be an instrumentality of the district, the Board must employ all the personnel for the charter school.
 - b. If the charter school is a non-instrumentality of the district, the Board cannot employ any personnel for the charter school.

B. The Role of the School Board

1. When authorizing a charter school, a School Board contracts to establish a nontraditional school for the delivery of public education. This contract mechanism embodies a new form of governance for the School Board, and establishes a legally binding contract between a charter school and “authorizer,” that is, the School Board.
 - a. The Board awards a “person” a performance contract to operate a charter school and provide oversight of the contract.
 - b. In exchange, the “person” with whom the Board contracts is held accountable by the Board for the academic, organizational, and performance requirements included in the contract.
 - c. The term “person” is interpreted broadly to include individuals, groups of individuals, and organizational entities such as non-profit corporate organizations.
2. The School Board’s role as an authorizer.

A School Board has two main responsibilities in regard to charter schools: (1) to carry out its duties as a charter-school authorizer effectively and efficiently; and (2) to assist charter school operators in developing quality schools.

 - a. The School Board should identify and use district resources to develop fair procedures and rigorous criteria for evaluating charter school proposals, awarding charter school contracts, and measuring charter school success.
 - b. The school board must review a charter school contract and should assist the charter school operator in creating a quality charter school.
3. The School Board’s role in reviewing the contract.
 - a. State law identifies sixteen contractual provisions that must be included in a contract creating a charter school, but the School Board may include other provisions agreed upon by the parties. *See Wis. Stat. § 118.40(1m)(b), (3)(b).*

The School Board is responsible for ensuring the inclusion of these sixteen requirements:

- i. The name of the person who is seeking to establish the charter school.
- ii. The name of the person who will be in charge of the charter school and the manner in which administrative services will be provided.
- iii. A description of the educational program of the school.
- iv. The methods the school will use to enable pupils to attain the state's educational goals and expectations under s. 118.01 of the statutes.
- v. The method by which pupil progress in attaining the state's educational goals and expectations will be measured.
- vi. The governance structure of the school, including the method to be followed by the school to ensure parental involvement.
- vii. The qualifications that must be met by the individuals to be employed in the school.
- viii. The procedures that the school will follow to ensure the health and safety of the pupils.
- ix. The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population.
- x. The requirements for admission to the school.
- xi. The manner in which annual audits of the financial and programmatic operations of the school will be performed.
- xii. The procedures for disciplining pupils.
- xiii. The public school alternatives for pupils who reside in the school district and do not wish to attend or are not admitted to the charter school.

- xiv. A description of the school facilities and the types and limits of the liability insurance that the school will carry.
 - xv. The effect of the establishment of the charter school on the liability of the school district.
 - xvi. The contract shall specify the amount to be paid to the charter school during each year of the contract.
- b. The School Board must determine whether or not the charter school will be an instrumentality of the school district.
 - c. Other contractual provisions the Board will want to consider when establishing a charter school include:
 - i. The length of the charter school contract, which may be up to five years;
 - ii. The conditions under which the charter will be renewed or revoked by the board, including the conditions under which the board will intervene in the school's operation if it fails its contractual obligations;
 - iii. The amount of funding that will be paid by the School Board to the charter school; and
 - iv. The provisions of the state school code with which the charter school will be expected to comply, given the school's general exemption from these requirements; and
 - v. The School Board policies the charter school will be required to adopt and implement, if any.
 - d. The contract should describe the School Board's expectations with regard to the charter school's performance. The contract should contain the evaluation criteria that the Board will use to determine the charter school's success or failure.
 - e. A successful school charter will clearly articulate the rights and responsibilities of each party regarding school autonomy, expected outcomes, measures for evaluating success and failure, and performance consequences.

4. The School Board's role in monitoring the contract.
 - a. The Board is responsible for overseeing the contract and monitoring whether the charter school is in compliance with the terms of the contract.
 - b. This may be achieved by incorporating evaluation measures, such as third party budget and program audits and written performance reports, into the charter school contract.
 - c. For example, a local school board will want to review the charter school's admissions process to ensure nondiscriminatory selection of students.

5. Contract Revocation – Wis. Stat. § 118.40(5)

An authorizer can revoke a contract with a charter school if any of the following occur:

- a. The charter school violated its contract with the authorizer;
- b. The charter school's pupils failed to make sufficient progress toward attaining the state's educational goals and expectations;
- c. The charter school failed to comply with generally accepted accounting standards of fiscal management; or
- d. The charter school violated the state charter school law.

II. Non-Stock Corporations

The organizational structure of a charter school is important in ensuring its long-term success. An understandable structure assures the school board of the permanency and long-term commitment of the charter holder and provides the school board with clarity with regard to evaluating the charter school for compliance and for holding it accountable. One type of organizational structure for a charter school that has increased in popularity as a type of governance structure in Wisconsin is the creation of a non-stock corporation.

A. Organizational structure of a non-stock corporation and Charter Schools

1. The articles of incorporation and bylaws of the non-stock corporation provide the mission and organizational structure for the charter school. These documents provide permanent rules and procedures assuring fairness and openness in the operation of the charter school.
2. Non-stock corporations do not have shareholders. Instead, the board of directors and the officers for the corporation control the management of the organization. Rules for selecting officers and board members will assure permanency within the charter school governance structure as initial organizers and their children move through the school system.
3. The board of directors can also create membership interests that grant parent participation rights as determined appropriate by the board of directors.

B. Individual protection of charter school operators.

1. The use of a corporate structure provides liability protection to the individuals forming a charter school.
2. The employees of a charter school that is an instrumentality of the school district are entitled to indemnification from the school district if they are sued for those individual acts that fall within the scope of authority of the employee.
3. A corporate organizational structure minimizes the risk and uncertainty for individuals participating in the formation of a charter school by providing liability protection.

C. Ability of charter school operators to contract.

1. Charter school organizers may need to contract for goods and services as they pursue the charter school initiative.
2. Without a corporate structure, there is uncertainty regarding who may contract on behalf of the charter school or who is individually responsible for the liabilities under those contracts. A corporate structure provides security for those executing the contract as to personal liability, and certainty for the vendors and service providers as to the responsible entity for a third party contract.
3. A corporate structure may permit the charter school organizers to apply for and receive grants and gifts directly rather than through the school district. This provides the greatest level of independence, flexibility and discretion regarding funding sources to the charter school organizers.

D. Process for hiring personnel.

To the extent that the charter school is not an instrumentality of the school district, the organizational structure will determine who hires personnel, who signs the employment contract, and who is responsible for the obligations of the employer and employee under the contract.

E. Tax benefits for gifts or donations.

The non-stock corporate structure will permit the organization to apply to the Internal Revenue Service for designation as a corporation exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code. This designation will permit individuals or businesses making donations to the school to take a tax deduction and should allow the charter school to solicit funds more effectively. Donations could also be used to create an endowment fund to sustain the long-term activities of the charter holder.

F. Issuance of bonds.

If the non-stock corporation is designated as an IRC section 501(c)(3) organization, it may fund ongoing activities through the proceeds of tax-exempt bonds. These bonds carry a lower interest rate similar to debt issued by school districts and other governmental entities and provide a more favorable source of funding for future capital needs.

III. Organizing a Charter School as a Wisconsin Nonprofit, Nonstock Corporation and Obtaining Tax-Exempt Status under Section 501(C)(3) of the Internal Revenue Code.

- A. Wisconsin Statute chapter 181 covers the general provisions for Nonstock Corporations. Under these provisions, forming a Wisconsin nonstock corporation requires filing articles of incorporation, appointing a board of directors and adopting bylaws.
1. Before creating such organizations documents, charter school organizers must determine the governance structure.
 - a. By way of governance structure, a nonprofit corporation must have directors and officers and may have voting members. Corporate powers of a nonprofit corporation are exercised under the authority of the board of directors. Under Wisconsin statute, a board must have at least 3 directors. The number of board members must be specified in the articles of incorporation or bylaws. The number of directors may be increased or decreased by amendment to, or in the manner provided in, the articles of incorporation or bylaws. One of the most significant governance decisions is whether the directors will be elected by voting members, or whether the board will be self-electing. In a corporation without members, the board members will be elected, appointed or designated as provided in the articles of incorporation or bylaws. If no method of designation or appointment is set forth in the articles of incorporation or bylaws, the directors other than the initial directors shall be elected by the board.
 - b. A nonprofit corporation can be formed with or without members. Members may be individuals, government bodies, corporations or other types of entities. Members affect the corporation through their power to elect the directors, but a corporation set up without members will be self-electing. By default, a nonprofit will not have members unless the articles of incorporation provide that the nonprofit has members.
 - c. Unless otherwise provided in the articles of incorporation or bylaws, a corporation shall have a president, a secretary, a treasurer and such other officers as are appointed by the board. A person may hold more than one office.

- d. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the department for filing. The incorporators may function as the board of directors until the initial board is appointed, either in the articles of incorporation or by a resolution of the incorporators.

2. Articles of Incorporation

- a. A nonprofit corporation is created as a new legal entity upon filing the articles of incorporation.
- b. The articles of incorporation must include a statement that the corporation is incorporated under Wisconsin Chapter 181, must include a name for the corporation, a mailing address of the initial principal office of the corporation, the name and address of each incorporator, whether the corporation will have members.
- c. In order to qualify as tax-exempt under IRC section 501(c)(3), the articles must include purposes and dissolution clauses. The IRS form 1023 states that: 501(c)(3) requires that your organizing document state your exempt purpose(s), such as charitable, religious, education, and/or scientific purposes. The form then asks an applicant to check a box to confirm that the organizing document meets this requirement. IRS form 1023 goes on to say that upon dissolution of the organization, remaining assets must be used exclusively for exempt purposes, and that the organizing document also meets this requirement by express provision.

3. Bylaws

The bylaws include the code of rules, other than the articles of incorporation, adopted under Wisconsin Chapter 181 for the regulation or management of the affairs of a corporation. The incorporators, members or board of a corporation adopt the initial bylaws for the corporation. Bylaws adopted by members may be amended or repealed by the directors only if the members conferred such authority on the directors. In the absence of bylaw provisions, Chapter 181 provides default rules that will govern a Wisconsin nonprofit.

4. Organizational Resolutions

The incorporators or directors will adopt the organizational resolutions to complete the corporation's organization. The organizational resolutions may be adopted at a meeting as reflected in minutes, or by a written consent signed by all incorporators or directors.

B. Employer Identification and Account Numbers

1. A nonprofit must apply for a federal employer identification number (EIN). This can be done online on the IRS website.
2. If a nonprofit will pay employee wages and/or if it will sell goods and services requiring a sales tax seller's permit, the nonprofit will have to apply for a Wisconsin business tax registration (BTR) number. This can be done with the Wisconsin Department of Revenue online on the DOR website.
3. A nonprofit that pays employee wages must also obtain a Wisconsin unemployment insurance (UI) account number by completing the online Wisconsin Employer Registration on the Wisconsin Department of Workforce Development website.

C. Section 501(c)(3) Tax Exempt Status

1. In order to be classified as tax-exempt under Section 501(c)(3), a nonprofit must file IRS Form 1023 with the IRS and pay the filing fee. If the IRS approves the application, it will issue a determination letter confirming the applicant's Section 501(c)(3) classification.
2. The IRS has created a Guide Sheet designed to assist in the processing of form 1023 application filed by charter schools that are seeking exemption under IRC 501(c)(3). It can be found at: http://www.irs.gov/pub/irs-tege/charter_school_guide_sheet_12-2006.pdf.

D. Wisconsin Sales and Property Tax Exemptions

1. A Section 501(c)(3) nonprofit may qualify for exemption from Wisconsin sales tax with respect to purchases by the nonprofit. If the Department of Revenue (DOR) approves an application, the DOR will issue a Certificate of Exempt Status (CES), with a CES number.

2. For more information regarding Wisconsin nonprofit sales tax exemptions, see Wisconsin Department of Revenue Publication 206, available at: <http://www.revenue.wi.gov/pubs/pb206.pdf>.
3. Real estate owned and used by a school may qualify for exemption from Wisconsin property taxes.

E. Charitable Solicitation Registration

1. A Section 501(c)(3) nonprofit that solicits charitable contributions in Wisconsin and receives annual contributions in excess of \$5,000 must register with the Wisconsin Department of Regulation and Licensing (DRL).
2. Under Chapter 440 of the Wisconsin Statutes 440.42(5)(a)5., an educational institution is exempt from registration if it only solicits contributions from its students and their families, alumni, faculty, trustees, corporations, and foundations.
3. Additional information is available at <http://drl.wi.gov/prof/char/def.htm>.

IV. Charter School Compliance with the Open Meetings Law

- A. Because the operator of a charter school is frequently a private non-stock, nonprofit corporation, the open meetings law apply differently to meetings conducted by and records maintained by that operator.
- B. Applicability of the open meetings law.
 1. The open meetings law applies to every meeting of a “governmental body.” Wis. Stat. § 19.83.
 2. Both “governmental body” and “authority” include an agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance rule or order, and a governmental or quasi-governmental corporation. Wis. Stat. §§ 19.32(2); 19.82(1).
 3. Generally, a private non-stock, nonprofit corporation is not subject to the open meetings or public records laws. It would be subject to these laws only if it were considered a “quasi-governmental corporation.”

4. “Whether a particular private corporation resembles a governmental corporation closely enough to be a quasi-governmental corporation within the meaning of [the statutes] must be determined on a case-by-case basis, in light of all the relevant circumstances.” 80 Wis. Op. Att’y Gen. 129 (1991).
5. Non-exclusive factors that may be considered include:
 - a. Whether the corporation serves a public purpose;
 - b. The extent to which the corporation receives public funding for its operation;
 - c. Whether positions on the board of directors are reserved for government employees or officials, or whether government employees or officers actually serve on the board;
 - d. Whether government employees serve as officers of the corporation; and
 - e. The extent to which the corporation is housed in government offices, uses government equipment, and is staffed by government employees. *Id.*
6. Whether a particular charter school operator is considered a quasi-governmental corporation will necessarily depend on the specific facts of each case.
 - a. Where the corporation operates independently of the school district, it may not be subject to the open meetings and public records laws. A corporation is not quasi-governmental simply because it serves a public purpose and receives the majority of its funding from public sources. Wisconsin Attorney General, Geyer Correspondence, February 26, 1987.
 - b. However, there is a strong presumption in favor of public access. *See* Wis. Stat. §§ 19.31, 19.81(1). Therefore, it is advisable that operators of a non-stock, nonprofit charter school corporation comply with the open meetings law when conducting business related to the operation of the charter school. If an organization is uncertain whether it is subject to these laws, the organization may request guidance from the Wisconsin Attorney General. Wis. Stat. §§ 19.39, 19.98.

- C. The operator of a charter school must be cognizant of a school board's obligations under the open meetings law requirements when scheduling a meeting which members of the school board or a committee or subunit of the school board will attend.
1. The statutory definition of a "meeting" is met whenever members of a governmental body, including a school board or a committee or subunit of the school board, convene with the purpose of engaging in governmental business and where the number of members present is sufficient to determine the governmental body's course of action.
 2. This means that both the charter school operator and school board should keep in mind before scheduling any meeting the number of school board members needed to approve any action or to engage in any discussion or information-gathering that will determine the school board's future course of action.
- D. A charter school operator should also keep in mind that a "meeting" may occur even where members of the school board are not physically present. A meeting includes any situation in which members of a governmental body are able to communicate effectively with each other and to exercise authority vested in that body. *See Wis. Stat. § 19.82(2).*
1. Written communications. Because circulation of a paper or hard-copy memorandum involves a largely one-way flow of information with little or no interaction between recipients, circulation of a document through the postal service or other means of hard-copy delivery is not generally considered a "meeting" under the open meetings law. Wisconsin Attorney General, Merkel Correspondence, March 11, 1993.
 2. Telephone conference calls. Because a conference call is very similar to an in-person conversation, it qualifies as a "meeting" under the open meetings law. A school board meeting with a charter school operator via conference call must provide the public with an effective means to monitor the conference. 69 Wis. Op. Att'y Gen. 143 (1980).
 3. Electronic communication. If an electronic communication closely resembles an in-person discussion, it may constitute a "meeting" under the open meetings law. Wisconsin Attorney General, Krischan Correspondence, October 3, 2000.

- a. Factors that may be considered include: (1) the number of participants involved in the communications; (2) the number of communications regarding the subject; (3) the time-frame within which the communications occur; and (4) the extent of the conversation-like interactions reflected in the communications. Wisconsin Dep't of Justice, *Wisconsin Open Meetings Law: A Compliance Guide* (2007), available at http://www.doj.state.wi.us/AWP/2007OMCG-PRO/2007_OML_Compliance_Guide.pdf.
 - b. Features like “forward” and “reply all” on an email program or use of a chat room or other means of group, real-time communication are most likely to create violations of the open meetings law. *Id.* A school board and charter school operator should refrain from using these means of communication whenever possible.
- E. Although ultimate responsibility for compliance with the open meetings law falls to the school board or other public charter school authorizer, the charter school operator should keep the authorizer’s obligations in mind so as to avoid creating an unintentional violation.
- F. *State of Wisconsin v. Beaver Dam Area Development Corporation*, 2008 WI 90.
1. Factual Background.

The bylaws of the Beaver Dam Area Development Corporation (BDADC) stated that its inclusive purpose was to engage in economic development and business retention within the corporate limits and lands that could become part of the corporate limits of the City of Beaver Dam. The officers of BDADC were private individuals who were elected to the BDADC Board of Directors. The City of Beaver Dam did not direct the election of Board members. In April, 1997, and January, 2004, BDADC and the City of Beaver Dam entered into corporation agreements whereby the City of Beaver Dam agreed to provide BDADC with office space, clerical support, copy and fax machine use, telephone use and postage. The agreements also provided that the City of Beaver Dam representatives may examine BDADC’s accounting records and finances and that the City of Beaver Dam may make funds available to BDADC for economic development.

In late 2004, the state filed a complaint seeking declaratory judgment that BDADC is a quasi-governmental corporation and therefore subject to the state's Open Meetings Law and Public Records Laws. The complaint also alleged that BDADC convened on various occasions in violation of the Open Meetings Law. The Circuit Court determined that the BDADC is not a quasi-governmental corporation and entered judgment in favor of BDADC, dismissing the state's complaint. The state appealed.

2. The Wisconsin Supreme Court Decision.

The central issue before the Supreme Court of Wisconsin was whether BDADC is a quasi-governmental corporation within the meaning of Wisconsin's Open Meetings and Public Records statutes. The Court considered statutory language, principles of statutory construction, the history of Wisconsin's Open Meetings and Public Records Law and interpretations of the Attorney General.

The Court determined that quasi-governmental corporations are not limited to corporations created by acts of the government. Rather, a quasi-governmental corporation is a corporation that, to a sufficient degree, resembles a governmental corporation.

The Court stated that superficial resemblance to governmental corporations in a single respect is insufficient for an entity to be subject to Open Meetings and Public Records Laws. Rather, a determination that an entity resembles a governmental corporation to the point that it is subject to state Open Meetings and Public Records Laws depends on the totality of the circumstances, and requires a case by case analysis.

The Wisconsin Supreme Court determined that BDADC is a quasi-governmental corporation for the following reasons:

- a. Other than interest income, BDADC's sole source of funds is public tax dollars.
- b. BDADC serves a public function and has no purely private function.
- c. BDADC presents to the public as a part of the City of Beaver Dam.
- d. The City of Beaver Dam maintains a degree of control over BDADC.

- e. The City of Beaver Dam has access to BDADC’s financial information and management plan.

Having determined that BDADC is a quasi-governmental corporation does not mean that all of its meetings are automatically open or that all of its records are immediately disclosed to the public. Exemptions to open session requirements under Wis. Stats. §19.85 can serve as a basis for denying public access to a record. Aside from the express statutory provisions limiting disclosure under the Public Records Law, Wisconsin courts have recognized other limitations to disclosure such as:

- a. Harm to the public from disclosure.
- b. Interference with ongoing proceedings.
- c. Harm that could result from premature record release.
- d. Premature disclosure of records that could undermine an important public policy objective in the context of economic development.

V. Charter Schools and the Public Records Law

- A. The public records law applies to any record maintained by a government “authority.” Wis. Stat. §§ 19.35(1), 19.32(2).
- B. While a charter school operator may or may not be an “authority” for purposes of the public records law, the operator is still required to make available to the school board, for public disclosure, any record produced or collected under its contract with the school board.
 - 1. Under Wis. Stat. § 19.35(3), any authority, including a school board, must make available for inspection or copying any record produced or collected under a contract entered into by the authority with a person or entity other than an authority to the same extent as if the record were maintained by the authority.
 - 2. This means that a charter school operator and a school board must carefully evaluate what records maintained by the charter school operator are “produced or collected under” the contract between the operator and the school board.

- a. One reasonable interpretation is that any record relevant to the operation of the charter school is “produced or collected under” the contract. This could include, for example, pupil records, financial records, or employment records of charter school employees.
- b. Where the charter school is designated an instrumentality of the school district, employment records of charter school employees would clearly be public records subject to disclosure.

VI. Qualifications of Charter School Teachers and Paraprofessionals

- A. Highly qualified teachers. A teacher teaching in a public charter school in a State must meet the certification and licensure requirements, if any, contained in the State's charter school law. 34 C.F.R. § 200.56.
 1. A charter school teacher is not required to be licensed or certified under state law and is also not required to be licensed or certified under NCLB.
 2. However, teachers of core academic subjects in charter schools must still meet the other requirements that apply to public school teachers. This includes holding a four-year college degree and demonstrating competence in the subject area in which they teach.
- B. Paraprofessional requirements. Affects aides working in Title I programs who must have an associate degree, two years of higher education, or meet a “rigorous standard of quality and be able to demonstrate through state or local academic assessment their knowledge and abilities. 34 C.F.R. § 200.56.

VII. Special Education Law and Charter Schools

A. Non-Discrimination in Student Enrollment

1. Although charter schools are exempt from many state education requirements, they must still comply with federal laws, including laws related to individuals with disabilities.
 - a. Although state charter school laws can grant charter schools waivers from special education requirements that provide greater obligations than federal law, state charter school laws cannot grant charter schools waivers from federal requirements.

- b. This requirement can create tension between charter school law, which takes a non-regulatory stance, and special education law, which takes a regulatory approach toward education for students with disabilities.
 - c. This tension may be partly alleviated if charter school authorizers, including school boards, inform potential operators about special education law and why it exists.
 - d. Authorizers should encourage potential charter school operators to consider special education issues in the development of the charter school, including:
 - i. Human resources;
 - ii. Curriculum and assessment;
 - iii. Professional development;
 - iv. Administration of special education programs;
 - v. Special education funding;
 - vi. Facilities; and
 - vii. Transportation.
2. Charter schools must conduct their administrative functions, including student-recruiting activities, in a non-discriminatory manner. Charter schools must provide appropriate auxiliary aids and services when necessary to ensure effective communication with parents with disabilities.
3. Under Section 504 of the Vocational Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, a charter school may not deny admission to students on the basis of disability.
- a. Students with disabilities must have the opportunity to meet minimum eligibility criteria for admission.
 - b. A charter school may not counsel a prospective student against enrollment based on the student's disability.
4. A charter school may not deny persons with disabilities, including parents and students, the benefits of any program or activity it offers because of inaccessible facilities. This means that facility selection may not result in excluding or limiting enrollment of people with disabilities from any school program or activity.

B. Ensuring Compliance with the Individuals with Disabilities Education Improvement Act (IDEA)

There are three models for the delivery of special education and related services to students with disabilities enrolled in charter schools.

1. Charter schools as part of a local educational agency (LEA).
 - a. The local school board authorizing a charter school retains the responsibility for complying with the IDEA and relevant state laws as the LEA under special education laws. These responsibilities include:
 - i. Identification, location, and evaluation of eligible children;
 - ii. Provision of a free appropriate public education (FAPE) through an individualized education program (IEP) that identifies special education and related services in the least restrictive environment;
 - iii. Compliance with procedural safeguards afforded to students with disabilities and their parents under the law; and
 - iv. Development, adoption and implementation of written policies and procedures for implementing the law.
 - b. Under this model, students with disabilities enrolled in charter schools are provided special education and related services through the school district's special education program from district personnel serving all eligible children in the district.
 - c. Because most charter schools in Wisconsin are established as an instrumentality of the school district, this is the most common model for delivery of special education and related services.
 - d. There are two variations to this common model:
 - i. A school district may employ special education or related services personnel and then assign them to the charter school, where they work with children with disabilities enrolled in the charter school; or

- ii. A charter school that is not an instrumentality of the school district may either use the authorizing school district's special education program and personnel for the delivery of special education services to enrolled students with disabilities or hire employees who are qualified to deliver special education and related services to eligible enrolled students with disabilities.
- 2. Charter schools that are designated an LEA.
 - a. Charter schools established by or operated by the city of Milwaukee, UW-Milwaukee, UW-Parkside, or the Milwaukee Area Technical College are designated LEAs, and commonly referred to as "independent" charter schools.
 - b. These independent charter schools are responsible for compliance with federal and state laws affecting students with disabilities.
 - c. These charter schools are also eligible to receive federal and state funding directly for services to students with disabilities.
- 3. Charter schools that contract with another LEA.

The independent charter schools described in Model 2 above may elect to enter into an agreement with the board of a school district whereby the school district agrees to serve as the charter school's LEA for purposes of IDEA compliance.

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