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School District Facilities and Charter Public Schools

By Russ Simnick

One of the greatest challenges to the health of the charter public school movement is access to adequate facilities in which to operate. Charter school facilities are rarely funded on par with school district facilities. Over the years, more states have come to realize that they have an obligation to ensure that children in all public schools—district and charter—have access to adequate school buildings.

Despite a growing will among state lawmakers across the nation to provide charter schools with adequate facilities, challenges such as a lack of available state funding are common. While equal facilities funding for all public school children is the ideal solution to the facilities challenges facing charter schools, making available underused school district buildings is growing in popularity as a way to provide charter schools with quick access to facilities while putting shuttered taxpayer-funded facilities back in operation for the purpose they were intended—to educate children. In fact, the National Alliance for Public Charter Schools' *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools* recommends that states ensure that charter schools have the right of first refusal to purchase or lease, at or below fair market value, a closed or unused public school facility or property.

Currently, 28 states have enacted policies that try to provide charter schools with better access to district facilities. Some of these policies are stronger than others. The ones that are the strongest (at least on paper) are in Alabama; California; Washington, D.C.; Indiana; Maine; Mississippi; New Mexico; New York; Ohio; South Carolina; and Washington.

There is also a financial incentive for having in place strong facilities policies at the state level. The recently updated federal Charter Schools Program, which awards funds to states to open, replicate, and expand high-quality charter schools, prioritizes states based on the availability of facilities to charter schools. Specifically, the program prioritizes applicants located in a state that provides to charter schools one or more of the following:

- Funding for facilities
- Assistance with facilities acquisition
- Access to public facilities
- Ability to share in bonds or mill levies
- Right of first refusal to purchase public school buildings
- Low- or no-cost leasing privileges

As state lawmakers consider policies giving charter schools better access to district facilities, they must give serious thought to several issues, including

- Creating an entity that will collect and freely share information on available buildings with charter schools;
- Giving charter schools the right of first refusal on available facilities;
- Determining what price, if any, charter schools should pay to lease or acquire available buildings; and
- Determining who will pay for renovation and upkeep of the facilities once charter schools are in them.

We strongly encourage lawmakers to work closely with their state’s charter school stakeholders as they investigate this policy issue.

State	Provisions
Alabama	Alabama law gives a charter public school the right of first refusal to purchase or lease, at or below fair market value, a closed or unused public school facility or property located in a school system from which it draws its students, if the school system decides to sell or lease the public school facility or property. <i>Citation: Ala. Code § 16-6F-11 (1975)</i>
Alaska	Alaska law requires a school district to offer to a charter public school the right of first refusal for a lease of space in an existing school district facility or in a facility within the school district that is not currently being used as a public school, if the chief school administrator determines the facility meets requirements for health and safety applicable to public buildings or other public schools in the district. If the school district requires lease payments by a charter school, the law requires the school district to negotiate a lease agreement with the charter school for an amount that does not exceed the true operational costs calculated on a square-foot basis. <i>Citation: Alaska Stat. § 14.03.255</i>
Arizona	Arizona law requires the state department of education, in conjunction with the state department of administration, to compile and publish an annual list of vacant and unused buildings (or portions of buildings) owned by the state or school districts that may be suitable for the operation of a charter public school. The Arizona statute prohibits school districts from excluding charter schools from negotiating to buy or lease a facility in the same manner as other potential buyers or lessees. <i>Citation: Ariz. Rev. Stat. § 15-189</i>

State	Provisions
Arkansas	Arkansas law gives open-enrollment charter public schools the right of first refusal to purchase or lease at fair market value a closed public school or unused portions of a public school located in a district from which it draws its students. The law also provides that a district may not require lease payments that exceed the fair market value of a property and that a district is not required to lease to an open-enrollment charter school if an offer higher than fair market value is made by an entity other than the charter school through a competitive bid process. <i>Citation: Ark. Code Ann. § 6-23-501</i>
California	California law requires districts to provide charter public schools with facilities that are sufficient to accommodate charter school needs and reasonably equivalent to other district facilities, through an annual application process. It allows a district to charge a charter school only a proportionate share of its facilities costs that are paid from the general fund. <i>Citation: Cal. Educ. Code § 47614 and Cal. Educ. Code § 17457.5</i>
Colorado	Colorado law requires school districts to prepare a list of vacant or underutilized buildings and provide this list upon request to charter public schools authorized by the district, to charter school applicants, and to other interested persons. If a charter school or applicant applies to use the facility, the district must approve or disapprove of this request within 90 days at a public meeting. Further, the district must provide in writing to the applicant reasons for any disapproval. Districts are not required to maintain facilities for potential use by a charter school and may sell or use them for a different purpose. If a charter school or applicant is approved, Colorado law specifies that a charter school may not be charged rent for using space in a school district facility, although other costs for facilities operations and maintenance must be negotiated between the charter school and the school district. The law explicitly allows charter schools to lease or purchase land from the state. <i>Citation: Colorado Rev. Stat. §22-30.5-104</i>
Delaware	Delaware law requires the state department of education and state department of administrative services to publish a list of all vacant and unused buildings and portions of buildings owned by the state or school districts that may be suitable for charter public schools. Delaware law provides that school districts must make unused buildings or space in buildings available for charter schools and must bargain in good faith over the cost of rent, services, and maintenance related to such space. <i>Citation: Del. Code Ann. tit. 14, § 504A</i>

State	Provisions
District of Columbia	Washington, D.C., law requires the mayor and the D.C. government to give charter public schools a right of first offer for the purchase, lease, transfer, or use of surplus public facilities or properties. <i>Citation: D.C. Code § 47-392.25</i>
Georgia	Georgia law requires each local board of education to make available any vacant or otherwise unused facility to locally authorized charter public schools at no lease cost, with any additional terms of use to be negotiated by the parties. <i>Citation: Ga. Code Ann. § 20-2-2068.2</i>
Hawaii	Hawaii law requires the state department of education to make vacant public school facilities available to charter public schools. <i>Citation: Haw. Rev. Stat. § 302D-24</i>
Idaho	Idaho law allows school districts to authorize the transfer or conveyance of any surplus district-owned property to various public entities, including charter public schools. <i>Citation: Idaho Code Ann. § 33-601</i>
Indiana	Indiana law requires school districts to provide a list of buildings that are closed, unused, or unoccupied for a period of two years to the state department of education and make the buildings available for lease or purchase to any charter public school. If a charter school wishes to use a school building on the list, the school district must lease the building for \$1 a year for a term at the charter school's discretion, or sell the building for \$1. The charter school is required to use the building for classroom instruction no later than two years after acquiring the building. If, during the term of the lease, the charter school closes or ceases using the school building for instruction, the building will be placed again on the state department of education's list. <i>Citation: Ind. Code § 20-26-7-1</i>
Louisiana	Louisiana law requires local school boards to make available to chartering groups any vacant school facilities or any facility slated to be vacant, for lease or purchase at fair market value. <i>Citation: La. Rev. Stat. Ann. § 17:3982</i>

State	Provisions
Maine	Maine law provides that charter public schools have right of first refusal to purchase or lease, at or below fair market value, a closed non-charter public school facility or property or unused portions of a non-charter public school facility or property located in a school administrative unit from which it draws its students if the school administrative unit decides to sell or lease the non-charter public school facility or property. The school administrative unit may not require purchase or lease payments that exceed the fair market value of the property. <i>Citation: Me. Rev. Stat. Ann. tit. 20A-2-112, § 2414</i>
Maryland	If, with the approval of the state superintendent of education, a county school board determines that a school site or building no longer is needed for school purposes and after the county commissioners or county council have provided required notice, Maryland law requires county school boards to notify charter public schools about school sites and buildings available for occupation and use on terms determined by the county school board. <i>Citation: Md. Code Ann., [Educ.] § 9-111</i>
Mississippi	Mississippi law provides that charter public schools have right of first refusal to purchase or lease, at or below fair market value, a closed school facility or property or unused portions of a public school facility or property in the school district in which the charter school is located, if the school district decides to sell or lease the public school facility or property. <i>Citation: Miss. Code Ann. § 37-7-455</i>
New Hampshire	New Hampshire law allows charter public schools to lease, through the school district, buildings that receive state school building aid. <i>Citation: N.H. Rev. Stat. Ann. XV 194-B:11</i>
New Mexico	New Mexico law requires the school district in which a charter public school is geographically located to provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. It allows an agreement for the use of school district facilities by a charter school to provide for reasonable lease payments. <i>Citation: N.M. Stat. § 22-8B-4</i>

State	Provisions
New York	New York law requires that the New York City School District provide charter public schools that first commence instruction or that require additional space due to an expansion of grade level approved by their authorizer for the 2014–15 school year or thereafter and request co-location in a public school building one of two options: ■ Offer at no cost to the charter school a co-location site in a public school building. ■ Offer the charter school space in a privately owned or other publicly owned facility at the expense of the school district and at no cost to the charter school. The space must be reasonable, appropriate, and comparable and in the community school district to be served by the charter school and otherwise in reasonable proximity. The law gives the charter school the option of appealing the school district’s offer or failure to offer a co-location site through binding arbitration, via an expedited appeal to the state commissioner of education or a petition to the state courts. Where such an appeal is upheld, on the grounds either that the New York City School District failed to make an offer of space or that such offer was not reasonable, appropriate, and comparable, New York state law specifies that the New York City School District must pay the lesser of 20 percent of the per-pupil operating payments or the rental cost incurred by the school for space for those grades that are eligible for such rental assistance. The law also allows a charter school to contract with a school district or the governing body of a public college or university for the use of a school building and grounds and the operation and maintenance thereof. Any such contract shall provide such services or facilities at cost. Statute provides that the New York City Schools chancellor must identify and publish which public school buildings are subject to location or co-location of charter schools. The law requires the chancellor to develop a building usage plan that defines the allocation of classroom and administrative space between the charter and non-charter schools and the collaborative usage of shared resources and spaces (e.g., cafeterias, libraries, gyms). The law requires such allocations to result in an equitable and comparable use of public school buildings between charter and non-charter schools (including equity in any funding received for facility upgrades). <i>Citation: N.Y. Laws 2-56 § 2853</i>

State	Provisions
North Carolina	At the request of a charter public school, the local school board of the school district in which the charter school is located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Also, a local school board may provide a school facility to a charter school free of charge, but the charter school is responsible for the maintenance of and insurance for the school facility. <i>Citation: N.C. Gen. Stat. § 115C-238.29E</i>
Ohio	Ohio law requires local school boards to offer to sell or lease to charter public schools buildings that have not been used for two years. If there is only one offer from a charter school, the district must sell the property at its appraised fair market value. If there is more than one offer from various charter schools, the district must conduct a public auction and accept a bid that is not any lower than the property's appraised fair market value (a similar process is required for leases, but at a price no higher than the fair market value of equivalent leases). The district is allowed to dispose of the property if no charter school offers to buy or lease the building within 60 days after the district makes the offer. <i>Citation: Ohio Rev. Code Ann. § 3313.14</i>
South Carolina	South Carolina law requires the state department of education to make available, upon request, a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by school districts and that may be suitable for the operation of a charter public school. The law provides that if a school district declares a building surplus and chooses to sell or lease the building, a charter school's board of directors or a charter school committee operating or applying within the school district must be given the right of first refusal to purchase or lease the building under the same or better terms and conditions as it would be offered to the public. <i>Citation: S.C. Code Ann. § 59-40-170</i>

State	Provisions
Tennessee	Tennessee law requires a local educational agency (LEA) having underutilized and vacant properties to make the properties available for use by charter public schools operating in the LEA. By October 1 of each year, the law requires any LEA in which one or more charter schools operates to annually catalog all vacant properties owned or operated by the LEA and all vacant space within any educational facility owned or operated by the LEA. The law requires the LEA to submit a comprehensive listing of all such properties and space to the state department of education, which must make an LEA's list available to any charter school operating in the LEA or to any sponsor seeking to establish a charter school in the LEA. <i>Citation: Tenn. Code Ann. § 49-13-136</i>
Texas	Texas law requires that the board of trustees of an independent school district that intends to sell, lease, or allow use for a purpose other than a district purpose an unused or underused district facility must give each open-enrollment charter public school located wholly or partly within the boundaries of the district the opportunity to make an offer to purchase, lease, or use the facility, as applicable, in response to any terms established by the board of trustees, before offering the facility for sale or lease to any other specific entity. It also states that the board of trustees of a school district is not required to accept an offer made by an open-enrollment charter school. <i>Citation: Tex. Stat. § 11.1542 and 11.1543</i>
Washington	Washington law provides that charter public schools have the right of first refusal to purchase or lease, at or below fair market value, a closed public school facility or property or any unused portions of a facility or property located in a school district from which it draws its students if the district decides to sell or lease such facility or property. <i>Citation: Wash. Rev. Code § 28A.710.230</i>

State	Provisions
Wisconsin	Wisconsin law authorizes the city of Milwaukee to sell or lease city-owned properties used for school purposes that have been deemed unused or underutilized for at least 12 consecutive months. Upon adoption by the Milwaukee Common Council of the resolution to approve the sale or lease of the property, the Milwaukee Public School Board is required to provide the Common Council and city employees and agents copies of all documents related to the property and access to and entry upon and into the property for purposes related to the sale or lease. Wisconsin law also requires the Milwaukee Public School Board to annually prepare an inventory of school buildings that have been designated as “surplus, underutilized, or vacant” by the board or were unused or underutilized for a period of 12 consecutive months. The list is first given to the Opportunity Schools and Partnership Program commissioner and the superintendent of schools to review. Sixty days after it is given to them, the list shall be made public. The Milwaukee Common Council or its designee may solicit letters of interest and sell property to education providers (including charter school operators and groups that contract with them). While considering a proposal, factors such as proposed building design and financial stability may be considered. However, neither the organizational status of the education operator nor the type of school proposed to be located in the building may be considered. <i>Citation: Wis. Stat. § 119.60 and 119.61</i>
Wyoming	Wyoming law entitles charter public schools to use available school district facilities free of rent. <i>Citation: Wyo. Stat. Ann. § 21-3-304</i>