

2014 N.C. Charter School Law Update

1. Introduction

- A. Overview of topic and materials (contact me for e-copies: hos@lex-is.com / 919-308-4562)
- B. The unique nature of charter school (“CS”) law ([see diagram](#)) and sources of law
- C. When are CSs subject to new laws pertaining to “public schools”?
“Except as provided in [The Charter Act] and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.” (115C-238.29E(f))
- D. How an idea becomes a law (see [NCGA resource/chart](#))
- E. Legal terminology: “Bill”, “Ratified Bill”, “Session Law”, “Statute,” “Regulation/Rule”
- F. Sources: [NCGA](#), [115C](#), [NC Charter Act](#), [SBE Rules](#) (search “charter”), [CS AG Opinions](#)

2. [S 744: Budget Bill](#) (Senate-approved conference edition, 8/31/14)

- A. SBE may offer system of **property insurance** to CSs (similar to Traditional Public Schools (“TPSs”)) (s. 8.10, amend. 115C-533)
- B. **Funds for testing** in advance courses: expanded to include CSs along with TPSs
- C. Schools to supply/administer of **epi-pens** (for allergic reactions) (s. 8.23, New 115C-375.2A)
 - DPI to ensure CSs comply with 115C-375.2A (s.8.23b, amend. 115C-238.29F(a))
- D. **DPI response times** to TPS and CS information requests (s.8.28)
 - Within 3 business days (when practicable); full responses within 14 days
- E. “Encourages” CS **Anti-bullying policies** (s.832.(b), amend. 115C-238.29F) (See [Lex-is Policy Template, Student Series 305.4](#))
- F. **CS closure** and fund reserve (s.8.34.(b), creates new 115C-239.29L)
 1. CSs to maintain at least \$50,000 reserve in case of dissolution
 2. Permissible options: escrow account, letter of credit, bond, deed of trust
 3. All net assets purchased with public funds belong to LEA [old rule, new provision]
- G. **Virtual CS** (“VCS”) Pilot Program (s.8.35)
 1. SBE “shall” establish pilot program for 2 VCSs to enroll for 2015-16
 2. VCS may serve any k-12 grade level
 3. 4-year program, ending in 2018-19 [presumably pre-opening = 1 year]
 4. Max. of 1500 students (Y1) + 20% annual increase, up to 2952 students (Y4)
 5. Max teacher-student ratios: 1:50 (grades k-8); 1:150 (grades 9-12)
 6. Process for disenrollment for students who fail to participate per VCS policy
 7. VCS NC office and meeting places in each of 8 Districts from which students drawn
 8. Any 3rd party executive staff (principal, supt., finance officer) must be NC resident
 9. 90% of teachers reside in NC, “appropriate state certification,” virtual instruction training
 10. Student withdrawal rate below 25% (unless planned and documented)
 11. Learning coach assigned to each student to ensure daily contact, coordination
 12. Similar per pupil funding with some limitations (e.g., no low-wealth supplement)

3. **S 793: Charter School Modifications** (Ratified)
 - A. CS teacher may serve as “**nonvoting**” board member*
 - B. SBE final decisions on charter applications by **August 15** (formerly January 15)
 - C. Charter renewals for 10 years; less for financial, academic, or compliance problems
 - D. Allows **CS expansion by grade** if sound financials, academics, governance
 - E. No more enrollment priority for children of initial members of charter school in 1st year
 - F. CS subject to [Public Records Act](#), [Open Meetings](#), and [Record Retention Rules](#)*
 - G. LEAs to provide all necessary student **transferee records** for determining \$ allocation
 - H. Any litigation judgment to be paid in full by LEA within 1 year (formerly 3 years)
 - I. SBE to adopt process for **assumption of charter school** in jeopardy of shut-down due to inadequate performance. Minimum criteria: operation of another NC charter school with three years of “sound audits,” and LEA-“comparable student outcomes”
 - J. SBE to adopt, by December 14, 2014, rules for competitive bid process (of 150 days or less) to develop procedures for **fast-track charter approval** for “high quality charter schools currently operating in the state” (with no planning year required).

4. **H 844: CS Dropout Prevention Pilot / SBE Report on Use of Personnel Contracts (R)**
 - A. SBE to establish a two-year Dropout Prevention and Recovery Pilot Program (Pilot Program), selecting one charter high school to provide educational services and programming
 - B. Purpose: reengage students, increase graduation rates “through an “program that provides flexible scheduling” and “individualized and self-paced learning options”
 - C. CS to adopt an “alternative accountability model”

5. **North Carolina Charter Cases** (detailed outlines [available online](#))
 - A. **Thomas Jefferson Classical Academy v. Cleveland County BoE**, 758 S.E.2d 688 (N.C. Ct. App. 2014) [Appeal sought]. NC Court of Appeals remands case to superior court, ordering trial judge to apply 2010 “clarifying” legislative amendments to funding statute regarding “restricted” funds. An LEA is not a “state agency” (though it may be an “agent” of the state) and therefore not subject to attorney fees award.
 - B. **Northeast Raleigh Charter Academy, Inc.** (d/b/a Torchlight Academy) v. Wake County BoE, 757 S.E.2d 527 (N.C. Ct. App. 2014) [Unpublished Opinion]. Affirming trial court denial of additional share of the fund balance to plaintiff charter school.
 - C. **Charter Day School, Inc. v. New Hanover Co. BoE**, 754 S.E.2d 229 (NCA 2014). Calculation of funds due to charter schools based only on fund amounts actually “appropriated.” LEA may not count pre-kindergarten students in funding formula.
 - D. **NC SBE. v. North Carolina Learns, Inc.**, 751 S.E. 2d 625 (NCA 2013). Statutes requiring SBE to act by deadline were directory rather than mandatory such that failure to act did not result in approval. Operator required to wait 120 days until after deadline to file hearing petition.

6. **Q&A**

7. **Conclusion**
 - A. A word about employee contracting practices ([Lex-is contract template](#))
 - B. Other Lex-is resources: [“10 Strategic Legal Practices”](#) / [CS Board Policy Series](#) / retainer plans
 - C. My contact information: hos@lex-is.com / 919-308-4652 (direct)