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## DC APPLESEED CENTER REPORT

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# CHARTER SCHOOLS IN THE DISTRICT OF COLUMBIA: IMPROVING SYSTEMS FOR ACCOUNTABILITY, AUTONOMY, AND COMPETITION

April 2001



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## DC APPLESEED CENTER

The DC Appleseed Center is an independent non-profit advocacy organization dedicated to making the District of Columbia and the Washington Metropolitan area a better place to live and work, focusing primarily on strengthening the financial health of the District and enhancing the performance of governmental institutions that affect the District. The solutions DC Appleseed presents to the public, civic leaders, and government representatives are based on nonpartisan analysis and include concrete proposals for change. DC Appleseed is one of a number of local centers across the country fostered by the Appleseed Foundation.

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AUTONOMY, AND COMPETITION**

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## INTRODUCTION AND EXECUTIVE SUMMARY

Since they were first authorized in 1996, charter schools in the District of Columbia have quickly become a substantial part of the D.C. public education system. In the current school year, nearly 10,000 children are enrolled in charter schools in the District, which are budgeted to receive \$105 million – representing over 12% of all public school students and a comparable percentage of the public education budget.<sup>1</sup> In relative terms, the District has experienced one of the fastest shifts in the country from the centralized system that usually governs traditional public schools, to the decentralized approach that is the hallmark of charter school education.

The development over the past five years of a new system for public education governance has been complicated by the virtually simultaneous enactment of two separate statutory schemes for charter schools – one enacted by the D.C. Council and the other by Congress – both of which still exist. In addition, the federally-enacted statutory scheme (which takes precedence in such matters) calls for the creation of two separate charter school authorities. With the increasing importance of charter school education in the District, it is appropriate to examine how this structure functions.

We do not in this report address the fundamental issue of whether charter schools should exist. Given the short period in which charter schools have been operating in the District, we think that revisiting that issue now would be premature. Nor do we address the substance of what must – or may – be taught in charter schools, or applicable academic or curricular standards. Moreover, as several studies have made clear, it is too soon to answer the most important question related to charter schools – have they improved public education for public school children in the District of Columbia?<sup>2</sup> However, after four years of charter school operations, there is now a clear need to review the processes relating to overseeing and financing charter schools in the District of Columbia, and on elements in the operation of charter schools themselves. We have found it useful to focus on three underlying goals of the District’s charter school laws and systems: accountability, autonomy, and competition.

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<sup>1</sup> D.C. Public Schools (“DCPS”) and public charter school enrollment figures are from Thompson, Cobb, Bazillo & Associates, P.C., *Audit of the Official Membership of the District of Columbia Public Schools and Public Charter Schools as of October 5, 2000* (Draft dated January 15, 2001). FY2001 appropriations include all local funds appropriated for DCPS and public charter school operating costs (excluding DCPS capital outlays and the charter school facilities allowance) in District of Columbia Appropriations Act, 2001, effective November 22, 2000 [Publ. Law 106-522, 114 Stat. 2449 *et seq.*]. In FY2001, DCPS appropriations include only a small amount (\$200,000) of Teachers’ Retirement Fund contributions due to an overpayment in FY2000. In FY2001, DCPS will also receive \$12 million in Reserve Funds carried over from FY2000.

<sup>2</sup> See, e.g., Jeffrey R. Henig, Thomas Holyoke, Natalie Lacireno-Paquet, and Michele Moser, *Growing Pains: An Evaluation of Charter Schools in the District of Columbia, 1999-2000*, February 2001 and Jeffrey R. Henig, Michele Moser, Thomas Holyoke, and Natalie Lacireno-Paquet, *Making a Choice, Making a Difference? An Evaluation of Charter Schools in the District of Columbia*, November 1999. Rigorous performance reviews of D.C. charter schools will begin to take place next year, when the chartering authorities conduct the five-year evaluations of the performance of the first set of charter schools authorized.

Accountability. Charter schools are public schools. They receive government funding, are not allowed to charge tuition, must enroll students regardless of their ability to pass tests, and operate with the permission of and under a set of guidelines established by the government.<sup>3</sup> The two charter school laws require the District government to hold charter schools *accountable* for meeting the terms of their charters – including an agreed upon curriculum and goals for student academic achievement – and for complying with other provisions of the law related to, for example, financing and special education. Because charter schools operate with less oversight than traditional public schools and without the support services provided by the school district, the charter school laws also require each charter school to have a board of trustees that will provide governance, oversight, and support to the school.<sup>4</sup>

Autonomy. A primary difference between charter schools and traditional public schools is that charter schools have much more *autonomy*. Indeed, a key impetus for the legislation enabling charter schools to operate in the District was the belief that allowing such schools to establish curricula, set academic and non-academic goals, hire personnel, and manage their operations independent from the school district would foster high quality, innovative public educational programs. Apart from the extent of regulatory requirements, charter school *autonomy* is also greatly affected by charter schools' receipt of public dollars. As independent entities forbidden from charging tuition, charter schools depend on the per pupil funding that the District government provides to all public schools (charter and traditional) depending on the number and characteristics (*e.g.*, special needs, limited English proficiency) of students enrolled. For charter schools to operate autonomously, the government must disburse public funds in a fair and reliable manner.

Competition. Charter schools serve as a source of *competition* for traditional public schools. Under the District's per pupil funding formula, whenever a parent chooses to enroll a child in a charter school instead of a traditional public school, the dollars that the traditional system would have expended for that child follow that child to the charter school. By creating a publicly-funded school alternative, charter school legislation anticipates that traditional public schools will no longer be the only educational choice for children whose parents are unable to afford or unwilling to pay for private or parochial school alternatives. The ability of both traditional public schools and charter schools to thrive under this competitive model will be driven to a significant extent, it is thought, by each school's ability to attract students in the educational

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<sup>3</sup> Charter schools are distinguished from private schools (including those, in some other school districts, that receive government funding – *i.e.* vouchers) in that charter schools are (1) not allowed to charge tuition; (2) must open enrollment to all students; and (3) operate with the express permission of the government.

<sup>4</sup> Of course, the regulatory system for charter schools should not, given the very purpose and definition of such schools, duplicate the bureaucracy that administers public schools. This issue is not further addressed in this report because it does not appear, based on DC Appleseed's research, that the regulatory structure in place is unduly restrictive.

marketplace.<sup>5</sup> An effective system of *competition* requires that (1) neither charter nor traditional public schools be inequitably hindered, a concept which requires that each type of school receive equivalent funding, and (2) parents have access to an adequate amount of information to make reasoned decisions regarding the many public schools (charter and traditional) where they can choose to send their children.

The research for this report was conducted over the past two years, and included (1) individual interviews and group meetings with charter school operators; (2) meetings with individuals from nonprofit, business, and government organizations with experience operating or working with charter schools; (3) extensive review and analysis of the laws governing charter schools; (4) examination of documents provided by the Public Charter School Board (the “PCSB”), the D.C. Board of Education (the “School Board”), and the District’s Office of the Chief Financial Officer (the “CFO”); and (5) statutes and data collected from other jurisdictions.<sup>6</sup>

Chapter I of this report addresses problems caused by the existence of two separate charter school statutes; Chapter II deals with the fact that two separate entities – the Public Charter School Board and the Board of Education – are empowered to authorize and oversee charter schools; Chapter III recommends new procedures for the oversight of charter schools by their own governing bodies – boards of trustees; Chapter IV examines the critical issue of how – given the new public education options available due to the presence of many charter schools – the public can obtain access to adequate, comparable, and accurate information about public schools (both traditional and charter); and Chapter V suggests changes (some already underway) in the procedures for financing charter schools. A brief summary of the report’s conclusions follows.

## **Chapter I: Dual Laws**

Perhaps the most obvious structural flaw in charter school governance is the existence of two separate statutory schemes governing the creation and regulation of charter schools in the District of Columbia, one enacted by Congress (the “federal statute”) and the other by the D.C. Council (the “District statute”). The presence of dual laws – and the difficulty in reconciling them – has caused needless uncertainty (and controversy) regarding charter school governance, particularly in the area of public school financing. The District ought to have a single charter school law to make government implementation clearer and to facilitate understanding by affected citizens.

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<sup>5</sup> Although it would be premature to anticipate possible outcomes of this competition, DC Appleseed notes that the competition among these two types of public schools does not presently appear to be a zero-sum game. Both approaches to public education – the centralized traditional public school model and the charter school model – appear viable in a competitive environment, and able to benefit from competition. Of course, individual schools, as distinct from the two models of public education, may not all survive.

<sup>6</sup> A more detailed summary of the report’s methodology is attached as Appendix A.



A recent Congressional amendment to the federal statute does not adequately cure the uncertainty, leaving in place a legal structure that requires those who are affected by or responsible for implementing the law to analyze two separate, and often conflicting, legal schemes. DC Appleseed proposes that the D.C. Council take action to resolve this issue. Specifically, as the legislature most directly responsible for the welfare of District residents, the D.C. Council should take a leadership role by repealing its charter school statute.

DC Appleseed endorses the principle of Home Rule, a corollary of which is the right of the District to enact its own laws. With respect to charter schools, however, Congress has stepped in and prescribed laws for the District, leaving the Council with, at most, interstitial lawmaking authority. In that context, a repeal of the District statute would not remove control over the substantive law of charter schools from the D.C. Council – Congress has already done so.

## **Chapter II: Dual Authorities and Oversight Standards**

Chartering authorities are the governmental entities with primary responsibility for holding charter schools accountable for educating children and spending public dollars. They authorize the creation of charter schools, monitor charter school performance, and sanction (and, if necessary, revoke the licenses of) schools that violate the terms of their charters. Through the exercise of these responsibilities, chartering authorities have the power to affect the well-being of thousands of children in the District of Columbia.

Under the federal statutory scheme, the District has established two separate, parallel chartering authorities, each with the power to license, monitor, and take disciplinary action against charter schools. Congress created one chartering authority, the PCSB, for the express purpose of approving and overseeing charter schools. Both the federal and the District statutes empowered the other chartering authority, the existing D.C. Board of Education (the “School Board”), to authorize and supervise charter schools because the School Board had a longstanding role in governing public education in the District and its members were at that time directly elected by District residents. Moreover, local school boards commonly serve as chartering authorities elsewhere in the country.

This dual authority structure – similar to that established in one-third of the states that have authorized charter schools – is designed to accommodate competing concerns. The first concern is that involving local school boards in charter school governance is both consistent with democratic principles and likely to facilitate the importation of educational innovations used by charter schools into traditional public schools. The second concern is that giving local school boards sole discretion over the establishment and oversight of charter schools may thwart charter school development, because, it is thought, local school boards will disfavor charter schools.

While this is perhaps not a regulatory structure that DC Appleseed would have recommended at the outset, DC Appleseed believes that it would be unwise to change the District’s charter school governance structure at this time. Specifically, the highly-regarded

performance of the PCSB together with the fact that the School Board has recently been reconstituted lend hope that the current structure can work effectively. By most accounts, however, the prior School Board previously did not do a good job of fulfilling its charter school responsibilities and was not provided adequate resources to do so.

Accordingly, DC Appleseed recommends that the District maintain the current structure for a finite period of time (such as through the end of the 2001-2002 school year), during which both the newly reconstituted School Board and the D.C. Council should assess whether the current structure should be changed. Alterations to charter school governance should be made if suggested by those assessments. In addition, the two authorities should more closely align the standards they use to approve and review charter schools to prevent charter schools founders from selectively applying to one authority based on a lower set of standards.

### **Chapter III: Charter School Boards of Trustees: Composition, Timing, and Conflicts**

Well-functioning boards of trustees at the school level are key to the success of a charter school and to the continued political acceptance of charter school autonomy. The strong visionary and creative forces that the founders of a charter school bring when designing a new school are, alone, often inadequate to see a school through the difficult tasks of establishing, sustaining, and assessing a well-functioning institution of learning. A strong, independent board of trustees can help staff create a workable financial plan, raise funds, secure a practical and safe facility, attract students, and address on-going policy, management, and operational needs. In addition, a multi-member board can act as a check against abuses of public trust. A charter school's board of trustees, as the governing body of a nonprofit corporation, is ultimately legally responsible for actions taken (or not taken) by the school.

A well-functioning board also requires the elimination in fact and of appearance of conflicts of interest on the part of board members, the presence of which can harm both school performance and the credibility of the charter school movement. In the District, many charter schools' boards of trustees include members with an outside, related interest – including representatives of management companies or nonprofit organizations and school employees. DC Appleseed's research indicates that many charter schools have inadequate rules governing trustees' actions when a conflict of interest arises, including both disclosure of possible conflicts and recusal in the event that conflicts are perceived.

To provide leadership for charter schools, boards of trustees must be created early in the process of creating a charter school, must be given time between a school's approval and opening to address critical issues, and must have well-developed conflict of interest rules to govern trustees' conduct. DC Appleseed recommends the following:

- Each chartering authority should require greater specificity in charter school applications regarding the individuals who will serve on the charter school's interim board of trustees. Each charter school application should set forth each interim trustee's qualifications, skills, experience, and organizational affiliations.

- Each chartering authority should establish annual application and approval schedules that ensure that at least 12 months transpire between approval of a charter school application and the opening of a charter school.
- The law governing charter schools in the District should require that charter school boards of trustees adopt comprehensive policies and procedures relating to conflicts of interest, including disclosure and recusal requirements.
- If, at the time a chartering authority approves a charter school application, a charter school's board contains less than a majority of trustees who have an interest in a sponsoring organization or are employees of the school itself, the charter school's board should not be allowed later to appoint such a majority without applying to its chartering authority for a revised charter.

#### **Chapter IV: Information for Parents and the General Public About Schools**

The provision of adequate, timely, and uniform information about consumer options is a necessary element of any effective system of competition. A central goal of establishing charter schools is to provide parents with the opportunity to choose a school that may be “better” for their children than traditional public school counterparts. Accordingly, it is imperative that parents be provided with understandable and comparable data about public school performance, educational programs, and learning environment needed to make informed choices.

Currently, the District fails to provide adequate and comparable information about the public schools (charter and traditional) in which children can be enrolled. Specifically, the information currently available (1) is not detailed enough to permit reasonable judgments, (2) is, generally, not available through means readily accessible to parents with different skills and resources (*i.e.*, during a school fair, in written form, by mail, at a central location, and over the Internet); and (3) is not consistent enough to enable, or provided in a format that facilitates, comparisons between the different types of public schools (PCSB-chartered, School Board-chartered, and traditional public schools).

DC Appleseed recommends that the District's newly created State Education Office (the “SEO”) be vested with legal authority for collecting and disseminating data on public schools and that it take several steps to assure the provision of better and more accessible public information, such as:

- Define specifically the information that will be made publicly available to parents regarding all public schools – both traditional and charter. The information should reflect what educators believe correlates to high-quality education and what parents value personally in the public education context, such as: student achievement and other outcome indicators, enrollment/demographic data, learning

environment data, curriculum information, and information about the neighborhood within which the school is located.

- Define information content and submission procedures in a way that does not create an undue burden on schools. With limited staff, public schools (charter and traditional) cannot easily respond to expansive and multiple information requests.
- Information about all public schools should be made broadly available through a concerted public information campaign designed to ensure that District of Columbia residents know where to obtain the school information that they need.

## **Chapter V: Financing Charter Schools**

Under a decentralized model, charter schools are not only free from central government control but are also unconnected to many central government systems. In light of their substantial autonomy, the financing of charter schools is particularly important. Without an equitable and reliable stream of payments, charter schools will be unable to secure the services they need or plan effectively for the short and long term.

While District law provides equitable funding to charter schools through a per pupil funding formula for all public schools, the flow of funding to charter schools has not always been reliable. Over the last five years, the manner of disbursing and the timing of payments to charter schools has been problematic, creating confusion and fostering uncertainty among charter schools.

Considerable efforts have been made over the past year by the D.C. Council, Congress, and several District government entities involved in charter school financing to alleviate the problems related to charter school financing. While these efforts represent steps in the right direction, DC Appleseed recommends that the following additional changes be made:

- The D.C. Council should enact into permanent law several amendments to the charter school funding laws previously adopted by the D.C. Council as emergency or temporary measures (which are valid for less than a year). Most importantly, the D.C. Council should make permanent amendments that enable earlier and more frequent payments to charter schools (including a quarterly payment on the July 15th before the school year begins based on projected enrollment).
- Enable the chartering authorities to reject enrollment estimates that are clearly inaccurate. Because the first quarterly payment is made before the school year begins, it is based on each school's estimated enrollment. The chartering authorities should be granted express legal authority to reject such estimates if clearly inaccurate.

- The CFO should better describe the enrollment information that the charter schools must report in order to receive disbursements, and should provide to the charter schools more documentation with each disbursement explaining how the amount was derived.
- Improve the audit process by providing a method for the charter schools to respond to the auditor's draft findings. Under the current system, schools are not given an opportunity to provide supplemental information or appeal the auditors' preliminary findings.

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DC Appleseed believes that this report, while not addressing every systemic issue affecting charter schools, can promote improved public education governance.<sup>7</sup> We prepare this report as neither an advocate for nor an opponent of charter schools, but rather as an advocate of a quality public education system. In light of the increasingly significant role that charter schools play in public education in the District, increased attention is appropriate to ensure that these schools provide quality educational opportunities. The changes recommended in this report should further that goal.

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<sup>7</sup> Among the significant issues not addressed in this report are challenges charter schools face in gaining access to adequate school buildings and the conversion of traditional public schools to charter status. Policy issues regarding the challenges of addressing the capital and facilities needs of DCPS and charter schools are of considerable concern to the educational community. DC Appleseed did not focus on those issues both because of the ongoing effort by DCPS to develop a master facilities plan for the public schools and the fact that, during the period in which this report was researched and written, there were ongoing negotiations and substantial changes in the rules and procedures for providing charter schools with access to D.C. government property. The sunset of the Control Board and revisions made by the D.C. Council to the rules governing conversions have minimized the need to revise further the conversion procedures at this time.

## I. DUAL LAWS

Two separate statutes were enacted within weeks of each other in the spring of 1996 to govern the creation and regulation of charter schools in the District of Columbia, one by Congress (the “federal statute”) and the other by the D.C. Council (the “District statute”).<sup>8</sup> Ever since, there has been uncertainty concerning interpretation of the charter school laws in the District, particularly among those responsible for allocating and disbursing federal and local funds to charter schools.

In November 2000, Congress amended the federal law in an attempt to clarify the application of the two laws. The language of this amendment does not adequately cure the uncertainty, leaving in place a legal structure that requires a case-by-case analysis of two separate, and often conflicting, legal schemes. This section of our report proposes that the D.C. Council take additional action to resolve this issue by repealing the District statute, leaving in place only the federal statute.<sup>9</sup>

### A. Background

#### 1. The Two Statutes

Determining which law governs charter schools in the District has always been complicated due to the unusual sequence of legislative events during the enactment of the statutes. On March 5, 1996, the D.C. Council passed Bill 11-318, the Public Charter Schools Act of 1996.<sup>10</sup> On March 26, 1996, the act was submitted to Congress for its 30-legislative-day

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<sup>8</sup> The D.C. School Reform Act of 1995, effective April 26, 1996 [Publ. Law 104-134 § 2001 *et seq.*, 110 Stat. 1321-107, D.C. Code § 31-2851 *et seq.*] (the “federal statute”) and the Public Charter Schools Act of 1996, effective May 29, 1996 [D.C. Law 11-135, 43 DCR 1699, D.C. Code § 31-2801 *et seq.*] (the “District statute”).

<sup>9</sup> As described in Chapter II, the federal statute provides for the existence of two chartering authorities: the PCSB and the School Board. Accordingly, Council repeal of the District statute would not affect the existence of the two authorities, the desirability of which is addressed in Chapter II.

<sup>10</sup> Although not of current legal consequence, it appears that the Mayor never signed Bill 11-318, but returned it to the Council too late to reject it, *i.e.*, after the expiration of the 10-day mayoral review period. Pursuant to Section 404(e) of the District of Columbia Self-Government and Government Reorganization Act (the “Home Rule Act”), D.C. Code § 1-201 *et seq.*, an act passed by the Council must be presented to the Mayor who, within 10 days, may approve or disapprove such act in writing. If the Mayor does not respond within such 10-day period, the act is deemed approved. The D.C. Register notice announcing the enactment of the law states that Bill 11-318 became effective May 29, 1996, after it was deemed approved without the signature of Mayor on March 26, 1996 and transmitted to both Houses of Congress for their review. *See* Law 11-135 Public Charter Schools Act of 1996 [43 DCR 3363]; Letter from Marion Barry, Mayor, District of Columbia, to David Clarke, Chairman, D.C. Council (March 26, 1996) (“I am returning to the Council, unsigned, Bill 11-318.”); and Conf. Rept. 104-537, accompanying H.R. 3019, at 419 (April 25, 1996) (noting the Mayor's failure to sign the bill).

review period, as required under federal law.<sup>11</sup> That same law provides that the act would become law unless Congress adopted a joint resolution disapproving the act within 30 legislative days.<sup>12</sup>

During the congressional review period, Congress passed, within a large appropriations act, its own legislation governing charter schools in the District. The District of Columbia School Reform Act became effective when the President signed it on April 26, 1996.<sup>13</sup> On May 29, 1996, the period for congressional review of the District act expired without Congress having taken any action to disapprove the District act. Thus, the District act became law on May 29, 1996, over a month after the federal law became effective.

Since then, those attempting to reconcile the two laws have drawn conflicting conclusions regarding which law takes precedence, and what effect to give to the other law. In response to the resulting confusion, on November 22, 2000, Congress enacted (in the District of Columbia's 2001 Appropriations Act) the following amendment to the federal statute:

“Notwithstanding any other provision of law, and except as otherwise provided in this title, no provision of any law regarding the establishment, administration, or operation of public charter schools in the District of Columbia shall apply with respect to a public charter school or an eligible chartering authority to the extent that the provision duplicates or is inconsistent with any provision of this title.”<sup>14</sup>

## **2. Effect of the Clarifying Amendment**

As noted above, the clarifying amendment does not repeal the District statute, but rather preserves the applicability of provisions that are “not inconsistent” with the federal statute. Thus, anyone attempting to ascertain the law, including government employees responsible for aspects of charter school administration, must read the relevant portions of the two statutes together in order to determine the law by which any particular charter school issue is governed, as would be required under standard preemption analysis. To determine whether a conflict exists, not only will individual passages of the two laws need to be read, but, in many cases, both laws will need to be read in their entirety to reveal whether the controlling federal law intended to preclude the

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<sup>11</sup> Section 1-233(c)(1) of the District of Columbia Self-Government and Government Reorganization Act, D.C. Code § 1-201 *et seq.*, requires the DC Council to submit each act passed by the Council to both Houses of Congress for review for 30 legislative days.

<sup>12</sup> *Id.*

<sup>13</sup> D.C. School Reform Act of 1995 § 2003, D.C. Code § 31-2851.

<sup>14</sup> District of Columbia Appropriations Act, 2001, effective November 22, 2000 [Publ. Law 106-522 § 120, 114 Stat. 2462] (emphasis added).

application of a provision of the District statute. If the District statute's provisions duplicate or are inconsistent with the federal statute, the federal statute governs. If the District statute's provisions are "not inconsistent" with the federal statute, the District statute's provisions should be applied.

One recent example highlights the potential difficulties in the analysis required by the clarifying amendment. Both the federal and District statutes address the payment of administrative fees by charter schools. The federal statute allows each chartering authority to assess each charter school that it oversees an administrative fee of up to one-half of one percent of the school's annual budget.<sup>15</sup> The District statute, on the other hand, permits the DCPS Superintendent to charge each charter school an administrative fee of up to one-half of one percent of the school's annual budget.<sup>16</sup> Last year, a disagreement arose between the CFO and the charter school operators as to whether the CFO should charge the charter schools one or both of the fees. The CFO examined the laws and decided to charge both fees because he believed that (1) while the federal law controlled, the District statute's provisions should be applied to the extent they did not conflict with the federal law; (2) the federal law did not state that "no more than" a one-half percent fee should be charged in the aggregate; and (3) the Superintendent carried out several functions not carried out by the chartering authorities.

The charter schools objected, arguing that the federal statute meant to limit the total administrative fee charged to charter schools to a total of one-half of one percent. Charter schools might have added that the federal statute evinces a clear intent to separate the administration of charter schools from the administration of the D.C. Public School system, which would be contradicted if the CFO applied the District provision requiring charter schools to pay an administrative fee to the Superintendent. In other words, the analysis regarding which law to apply required a determination of whether the specific provisions of the two laws conflicted as well as whether charging the fee established in the District statute would circumvent the overall intent of the federal statute.<sup>17</sup>

Although this dispute took place before the enactment of the clarifying amendment, the process would have been equally time-consuming and contentious under the clarifying amendment, which mandates the same "conflict" analysis that the CFO employed and adds a confusing new standard as well, "duplication." Attempting to reconcile differing provisions of the charter schools laws in the future will probably lead to similar arguments, causing problems for those involved in the administration of charter schools. In addition, this case-by-case analysis will

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<sup>15</sup> D.C. School Reform Act of 1995 § 2211, D.C. Code § 31-2853.21(b)(2).

<sup>16</sup> Public Charter Schools Act of 1996 § 209, D.C. Code § 31-2819(d).

<sup>17</sup> After several months of contention, the CFO acquiesced to the charter schools' position, but only after significant government and charter school time and resources were spent attempting to interpret the laws and resolve the dispute. The Council has since repealed the provision of the District statute that allows the Superintendent to collect an administrative fee from the charter schools, D.C. Code § 31-2819(d).



need to be carried out by a variety of government entities, including the CFO and U.S. Department of Education, which may draw conflicting conclusions.

## **B. Recommendation**

To reduce legal uncertainty in charter school governance, the D.C. Council should repeal the District statute. The present uncertainty in the law creates a significant potential for conflict, which will neither serve children's interests, nor promote effective and efficient government. The clarifying amendment adopted by Congress will not eliminate confusion in all cases. DC Appleseed recommends that the Council repeal its charter school statute as the best means to end the debate arising from the presence of two separate statutes enacted to govern the same entities.<sup>18</sup>

DC Appleseed endorses the principle of Home Rule, a corollary of which is the right of the District to enact its own laws. With respect to charter schools, however, Congress has stepped in and prescribed laws for the District, leaving the Council with, at most, interstitial lawmaking authority.<sup>19</sup> In that context, a repeal of the District statute would not remove control over the substantive law of charter schools from the D.C. Council; Congress has already done so. And, as the legislature most directly responsible for the welfare of District residents, the Council should take a leadership role by eliminating a law that can only serve to needlessly complicate public education governance. This action would have no adverse impacts on the finances or rights of the charter schools and the chartering authorities, as it would merely reduce legal uncertainty.

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<sup>18</sup> While it would, of course, be possible for the D.C. Council to enact a law identical to the federal statute, doing so would, in DC Appleseed's view, create logistical problems that would outweigh any benefits.

<sup>19</sup> Indeed, there is a reasonable argument that, with the federal law, Congress intended to occupy entirely the field of charter school regulation in the District of Columbia. Specifically, Congress legislated on the entire array of matters affecting charter schools, including petitions, conversions of private and DCPS schools, names of charter schools, enrollment criteria, monitoring, employment, charter revocations and funding. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947) (congressionally enacted complete regulatory regime with respect to a given subject matter effectively occupied the field, preventing states from enacting similar legislation). Under this analysis, the Council's charter school law should never be applied, and, thus, its retention on the books will do nothing more than lead to confusion in the regulation of charter schools.

## II. DUAL AUTHORITIES AND OVERSIGHT STANDARDS

Chartering authorities are critical to ensuring effective charter schools. They authorize the creation of particular charter schools, monitor charter school performance, and sanction (and, if necessary, revoke the licenses of) schools that violate the terms of their charters. Through the exercise of these responsibilities, chartering authorities have the power to affect the well-being of the ten thousand children currently enrolled in charter schools.

When charter schools were first authorized in the District of Columbia, the regulatory structure established was similar to that of other states, but was unusual for a jurisdiction with a single school district, such as the District of Columbia. Specifically, the federal law authorizing D.C. charter schools created two separate, parallel chartering authorities, each with the power to license, monitor, and take disciplinary action against charter schools which it had chartered.<sup>20</sup> Congress created one chartering authority, the Public Charter School Board (the “PCSB”), for the express purpose of approving and overseeing charter schools. Both the federal and the District statutes empowered the other chartering authority, the existing D.C. Board of Education (the “School Board”), to authorize and supervise charter schools because the School Board had a longstanding role in governing public education in the District and its members were at that time directly elected by District residents. Moreover, local school boards commonly serve as chartering authorities elsewhere in the country.

While it is unlikely that the DC Appleseed Center would have recommended creating this regulatory structure in the first instance, the first four years of charter school governance and recent changes in D.C. public school governance suggest that it would be unwise to change the charter school governance structure at this time. Specifically, the highly-regarded performance of the PCSB together with the fact that the School Board has recently been reconstituted lend hope that the current structure can work. However, there are no guarantees, particularly in light of the Board’s past poor performance in exercising its charter school responsibilities.

Accordingly, DC Appleseed recommends that the District maintain the current structure for a finite period of time (such as through the end of the 2001-2002 school year), during which both the newly reconstituted School Board and the D.C. Council consider whether the current structure should be changed. In addition, the standards used by the two authorities to approve and review charter school performance should be more closely aligned with one another, and expenditures for the School Board’s chartering function increased. Both the reasons for and the details of these recommendations follow.

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<sup>20</sup> While the District statute does not create the same dual authority structure, the chartering authority structure created by the federal statute has been adopted by the District government and has not been challenged.

## A. Background

### 1. **The Existence of Multiple Oversight Bodies**

As in the District of Columbia, one-third of the states with charter school laws (12 of 36) allow local school boards and at least one other institution to authorize charter schools.<sup>21</sup> The common justifications for this are that local school boards (1) should be involved in charter school decision-making because they are closely linked to both voters and traditional public schools, but (2) should not alone control the charter approval process due to their possible opposition to charter schools.

Of the entities involved in supervising public education, local school boards are, generally, the ones most directly linked to local communities through the democratic process. Whether directly elected or appointed by an elected official, local school boards are expected to reflect the views of residents of the jurisdiction that they serve. The same cannot be said of other institutions that often serve as chartering authorities – including state education agencies (into whose decisions most cities and counties have only limited input) and universities. In addition, many view school boards as an essential means through which the new ideas and practices utilized by charter schools can be incorporated into the educational process used in traditional public schools. For these reasons, school boards are almost always given a formal role in charter school governance.

On the other hand, local school boards have less control over the policies and decisions made by charter schools than by traditional public schools, including those related to curriculum, hiring, contracting, and student discipline. Accordingly, school boards may be viewed as having inherent conflicts of interest and incentives to disfavor charter schools. Fueling this suspicion is the historical link between many school boards and powerful traditional public school constituencies (*e.g.*, teachers unions, vendors of school supplies) that may lose business or influence if school boards are divested of control over all public schools. This is not to say that every school board disfavors charter schools. Indeed, some school boards and superintendents have fostered the creation of charter schools in their districts because they viewed charter

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<sup>21</sup> States that allow multiple authorities to charter schools independently are Arizona, Delaware, Florida, Louisiana, Michigan, Minnesota, Missouri, New York, North Carolina, Ohio, Oklahoma, and Wisconsin. Wisconsin allows multiple authorities to approve charter schools in Milwaukee only. RPP International, *A Comparison of Charter School Legislation: Thirty-Three States and the District of Columbia, Incorporating Legislative Changes through October 1998*, December 1998 and Center for Educational Reform, *Charter School Laws Across the States*, 2000, April 2000.

development as a positive element of the public education system.<sup>22</sup> Nonetheless, many school boards have exhibited hostility toward the creation of charter schools over the past decade.<sup>23</sup>

Creating multiple chartering authorities is a common way to accommodate the goals and values outlined above – providing for school board involvement, while providing a check and balance against the school boards’ perceived or actual conflicts of interest.<sup>24</sup>

## 2. The Establishment of Two Authorities in the District

Similarly, the District’s charter school governance structure was designed to balance competing goals. At the time the charter school law was enacted, the District’s elected School Board had for decades provided the most direct link between voters and public education. Recognizing this link, and spurred by charter advocates who wanted multiple chartering authorities, Congress gave the School Board the authority to approve and oversee charter schools.<sup>25</sup>

The Congressional charter school legislation was, however, enacted in the face of the School Board’s significant hostility to the idea of charter schools.<sup>26</sup> In addition to concerns that the School Board might not actually approve charter schools, there was general recognition at the time the charter law was enacted that the School Board was not adequately setting policy for or overseeing operations of traditional public schools, leading to concern about its ability to assume the added responsibility for charter schools.<sup>27</sup> For these reasons, Congress decided that the

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<sup>22</sup> E.g. Chula Vista, California, see Anna Bray Duff, “Charter Schools’ Ripple Effect: Competition Pushes Regular Schools To Improve” *Investors Business Daily*, August 31, 1999.

<sup>23</sup> For example, local school boards or state school board associations have been involved in at least a dozen lawsuits against charter schools. See Jeanne Allen, *NSBA Charter School Report Full of Holes*, Center for Education Reform, October 12, 2000, available at: <http://edreform.com/oped/0010nsba.htm>.

<sup>24</sup> A second common way to limit local school board control over charter schools is to allow aggrieved charter school applicants or operators to appeal the decisions of a local school board to, for example, a state board or department of education.

<sup>25</sup> D.C. School Reform Act of 1995 § 2002, D.C. Code § 31-2852(17); see also Conf. Rept. 104-455, accompanying H.R. 2546, *supra* note 4, at 144. The federal statute also allows the D.C. Council to enact legislation creating additional chartering authorities. D.C. School Reform Act of 1995 § 2002, D.C. Code § 31-2852(17)(C). To date, the D.C. Council has not created another chartering authority.

<sup>26</sup> David Vise and DeNeen Brown, “House Passes Charter Schools, Vouchers, Other Changes for D.C.” *The Washington Post*, February 1, 1996, at B6 (noting that the President of the School Board opposed the House of Representatives’ legislation).

<sup>27</sup> See D.C. Committee on Public Education, *Our Children Are Still Waiting: A Report to the Citizens of Washington, D.C.*, January 1995; and D.C. Financial Responsibility and Management Assistance Authority, *Children in Crisis: A Report on the Failure of D.C.’s Public Schools*, November 1996.

School Board should not be given complete control over charter schools.<sup>28</sup> To address these concerns, Congress created a new entity solely for the purpose of approving and overseeing charter schools: the PCSB.

Unlike the School Board, the members of the PCSB are not directly answerable to local citizenry. While the Mayor appoints the PCSB's members, the Mayor must choose from a list of potential candidates submitted to him by the U.S. Department of Education. Although this process has not created tension to date, it remains to be seen how this process will work when future appointments are made, particularly in situations where the President and Mayor have different party affiliations and/or public education policy goals.

In June 2000, the voters of the District of Columbia approved a restructuring of the School Board. Specifically, the School Board was reduced in size from 11 to nine members, and changed from an all elected body to a mixture of elected and appointed officials. The restructured School Board will have better defined roles and responsibilities, and its elected members will represent larger areas of the District. The changes were designed to encourage the School Board to concentrate on its policy-making function while dissuading members from taking actions designed to serve their parochial interests.<sup>29</sup> While it is much too soon to tell how effective they will be, these fundamental changes in the School Board's structure may lead to better fulfillment of its responsibilities, including those related to approval and oversight of charter schools.

### **3. The District's Experience with Two Chartering Authorities**

The District has had quite different experiences with each of its two chartering authorities. By all accounts, the School Board, although showing signs of improvement over the past year, has done a poor job both in the approval and oversight of charter schools. And, while there have been some complaints and concerns raised about its demands, the PCSB is widely regarded as having done a good job.

#### **a. The School Board's Performance**

According to representatives of each of the five charter schools approved by the School Board with whom DC Appleseed spoke, the School Board routinely did a poor job in reviewing

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<sup>28</sup> Congress viewed the creation of charter schools as a way to remedy the decline in student performance, deterioration of teacher quality, schools' lack of accountability and responsibility, intractable school governance structure, and School Board micromanagement of public school affairs. *Making Appropriations for the Government of the District of Columbia and Other Activities*, Conf. Rept. 104-455, accompanying H.R. 2546, at 142 (Jan. 31, 1996).

<sup>29</sup> See School Governance Charter Amendment Act of 2000, effective June 27, 2000 [D.C. Law 13-159, 47 DCR 2212, D.C. Code § 31-101(a)] and School Governance Companion Amendment Act of 2000, effective July 18, 2000 [D.C. Law 13-149, 47 DCR 4639]. See also, generally, DC Appleseed Center, *Reforming the D.C. Board of Education: A Building Block for Better Public Schools*, September 1999.

charter school applications.<sup>30</sup> One representative reported that School Board members appeared not to have even read her school's application before the public hearing on whether the school should be allowed to open. Another representative stated that it was apparent during the hearing for his school's application that School Board members did not know what was permitted or required under the charter school law. The representatives also reported that, in their experience, the School Board has dedicated insufficient staff time to its charter school function.

Charter school representatives gave the School Board even lower marks for oversight of schools once they open. The School Board appointed a consultant to oversee charter schools, who hired *ad hoc* monitoring teams to perform oversight. Charter school representatives claimed that the monitoring team members regularly demonstrated philosophical opposition to charter schools. Overall, the charter school representatives interviewed by DC Appleaseed found the School Board's monitoring process to be unclear, intrusive, and frustrating, and complained that the School Board displayed a profound lack of understanding of charter school operations and an unwillingness to offer necessary assistance to charter schools.

b. The PCSB's Performance

Representatives of charter schools reporting to the PCSB had quite a different view of their authority's performance. Specifically, these charter operators stated that they believe the PCSB to be focused on the best interests of students. They reported that the PCSB reviews applications and monitors schools carefully and focuses on charter schools' academic plans rather than the more bureaucratic aspects of school governance. According to one representative, the PCSB's diligence and support enables applicants to understand better what to expect when starting their schools. Overall, charter operators expressed to DC Appleaseed the belief that the PCSB embraces the philosophy that schools should be given autonomy but also must be held accountable to agreed upon educational and operational plans.

A recent George Washington University Study (the "1999 G.W. study") reflects findings consistent with information DC Appleaseed gathered during interviews with charter school representatives. The 1999 G.W. study noted that charter school administrators reported receiving greater support from the PCSB than from the School Board and attributed this difference to the School Board's more bureaucratic environment and different philosophical stance toward charter schools.<sup>31</sup>

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<sup>30</sup> In February 2000, members of the DC Appleaseed Project Team conducted interviews with representatives of 11 D.C. charter schools. Two group discussions were held, the first with representatives of five schools overseen by the School Board; and the second with representatives of six schools overseen by the PCSB. For more information, see Appendix A: Report Methodology.

<sup>31</sup> See Jeffrey R. Henig, Michele Moser, Thomas Holyoke, and Natalie Lacireno-Paquet, *Making a Choice, Making a Difference? An Evaluation of Charter Schools in the District of Columbia*, November 1999, at 51 ("1999 G.W. study").

#### 4. The Impact of Having Dual Authorities

Regardless of the difference in the performance of the PCSB and School Board, the mere existence of two authorities may, alone, make it more difficult to create a sound system of charter school governance. Figuring out how to hold charter schools accountable in a manner that best serves children's educational needs in a setting that involves many interested parties – charter school operators, traditional public school constituencies, local communities, and the public at large – would be a challenge for any government. Delegating the task to two separate regulatory bodies, particularly when each answers to a different constituency, complicates matters.

However, some charter school advocates noted approvingly that it is precisely the divergence of standards that, as in other states with multiple chartering authorities, has enabled the number of charter schools in the District to grow so quickly. There is merit to the idea that multiple chartering authorities will bring a diversity of viewpoints, reflected in chartering procedures, to bear on the chartering process, thus allowing a wider variety of charter schools to open.<sup>32</sup> Nonetheless, two other factors that flow directly from the presence of two authorities should be considered: divergent standards and increased costs.

Charter operators may apply to a particular authority because it has lower standards than the other authority – either overall or in a particular area. Thus, the presence of dual authorities may lead to an undesirable lowering of standards for charter schools.

A second impact of having dual authorities is increased cost. Simply put, it costs more to maintain two separate regulatory bodies than one. In fiscal year 2000, the total expenses of the two chartering authorities combined was over \$1 million.<sup>33</sup> And, even that amount appears inadequate. The School Board's budget for charter school oversight, both in absolute terms and relative to the funds provided to the PCSB, is too small given its current workload. The School Board's charter schools office has operated with three staff members, whereas the PCSB employs six.<sup>34</sup> Similarly, the two authorities have spent quite different amounts, even allowing for the

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<sup>32</sup> See Jeffrey R. Henig, Thomas Holyoke, Natalie Lacireno-Paquet, and Michele Moser, *Growing Pains: An Evaluation of Charter Schools in the District of Columbia, 1999-2000*, February 2001, at 43 (suggesting an increasing difference in the characteristics of the schools chartered by the two authorities). *But see* the 1999 G.W. study, at 53 (noting that, despite differences between the two chartering authorities, the schools chartered by both authorities are, in the aggregate, similar in most respects).

<sup>33</sup> *District of Columbia Public Charter School Board Proposed Fiscal Year 2000 Budget: October 1, 1999 through September 30, 2000* and Dr. Scottie Griffin, Executive Director, Board of Education Charter Schools Office, *Testimony before the D.C. Council Committee on Education, Libraries, and Recreation*, February 2000.

<sup>34</sup> Both authorities rely heavily on consultants to accomplish their work. The School Board has a single consultant who coordinates application review and program monitoring and aids the School Board in developing charter school policies. The PCSB makes use of a number of consultants, each of whom generally performs specialized tasks, such as reviewing applications, assisting in performance reviews, or examining business plans.

differing number of students in the schools they oversee.<sup>35</sup> In FY2001 (the current fiscal year), the PCSB budgeted approximately \$780,000, while the School Board budgeted only \$300,000, for the expense of overseeing the charter schools under their respective authorities.<sup>36</sup>

**Table: Charter Authority Workload and Budgeted Expenses**<sup>37</sup>

	<b>School Year 1999-2000 Number of Applications Reviewed</b>	<b>School Year 2000-2001 # of Charter Schools Overseen</b>	<b>Fiscal Year 2001 (October 2000 - September 2001) Budgeted Expenses</b>
<b>PCSB</b>	18	19	\$780,000
<b>School Board</b>	8	20	\$300,000
<b>Ratio of PCSB to School Board</b>	2.25:1	.95:1	2.6:1

As shown in the chart above, the disparity in funding is not justified in light of the similar number of schools the two authorities oversee, which is the most significant factor affecting the workload of the two authorities.<sup>38</sup>

It is unclear why the School Board has such a small amount of funding dedicated to its charter schools function. For several years, the School Board’s request has been formulated by

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<sup>35</sup> As an independent agency, the PCSB incurs some costs that, for the School Board, are borne by the D.C. government. For example, the PCSB’s FY2001 budget includes \$58,000 in expenses that the School Board does not pay for out of its operating budget, including contributions to employee retirement plans; insurance; and payroll, legal, and audit services. However, these costs do not alone account for the enormous disparity in appropriated funds between the two authorities.

<sup>36</sup> For the PCSB, this reflects \$480,000 in appropriations, nearly \$170,000 expected from administrative fees, and nearly \$100,000 in unspent funds carried over from earlier fiscal years. See District of Columbia Public Charter School Board, *District of Columbia Public Charter School Board Proposed Fiscal Year 2000 Budget: October 1, 1999 through September 30, 2000* and Dr. Scottie Griffin, Executive Director, Board of Education Charter Schools Office, *Testimony before the D.C. Council Committee on Education, Libraries, and Recreation*, February 2000.

<sup>37</sup> While there were 33 active charter agreements during school year 2000-2001, there were 39 schools operating because Edison-Friendship, the Village Learning Center, and Richard Milburn each operate multiple schools or campuses under a single charter agreement.

<sup>38</sup> The total number of students at schools overseen by the two authorities is quite different – 6,491 for the PCSB and 3,231 for the School Board – which might justify some difference in the authorities’ budgets. Thompson, Cobb, Bazillo & Associates, P.C., *Audit of the Official Membership of the District of Columbia Public Schools and Public Charter Schools as of October 5, 2000* (Draft dated 1/15/01). However, this alone cannot justify such a large disparity, especially in light of the fact that the two oversee a nearly identical number of schools.



the Superintendent, the CFO, the Emergency Transitional Education Board of Trustees, and the Control Board. It is difficult to determine which of these entities is responsible.<sup>39</sup>

Regardless of the causes, the impact of the low level of funding for the School Board's charter school responsibilities is likely negative. The 1999 G.W. study, for example, posited that the differences between the School Board and the PCSB's performance might be attributable to the PCSB's larger staff, which allows the PCSB to devote greater resources to monitoring charter school performance and responding to charter schools' needs.<sup>40</sup>

To address this problem, the Council recently adopted temporary amendments to the Uniform Per Student Funding Formula Act that will place all of the School Board's appropriations intended for charter oversight in the budget line for charter schools.<sup>41</sup> As a result, the Council will consider both the budget for the PCSB and the School Board's charter schools office at the same time that it deliberates on the entire budget for charter schools.

## **B. Recommendations**

***Recommendation 1:*** *At least in the near-term, the District should retain both the School Board and the PCSB as chartering authorities. The two chartering authorities should jointly review their approval criteria and oversight standards in order to establish consistently high standards for charter schools.* DC Appleseed makes this recommendation both because it is worthwhile to provide an opportunity for the School Board to establish a link between the traditional public schools and charter schools, and because recent changes in the School Board's structure provide a new opportunity for the Board to improve its performance. Assuming the continued existence of two chartering authorities, at least for the short-term, DC Appleseed believes that the two authorities must more closely align their respective standards they use to approve and review charter schools so that unqualified charter applicants do not shop for the lower set of standards to ensure approval. The chartering authorities could begin the process by amending rules related to Boards of Trustees consistent with recommendations in Chapter III of this report.

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<sup>39</sup> In addition to local appropriations from the District's general fund, the chartering authorities have two additional revenue streams: an administrative fee collected from the charter schools (0.5% of the per pupil funding disbursed to each school that they charter) and a \$150 application fee collected with each application to create a charter school. See D.C. School Reform Act § 2211, D.C. Code § 31-2853.21(b). However, these fees together constituted only \$76,000 in revenue for the School Board in FY2000, meaning that local appropriations represent the vast majority of the revenue received by the chartering authorities,

<sup>40</sup> Jeffrey R. Henig, Michele Moser, Thomas Holyoke, and Natalie Lacireno-Paquet, *Making a Choice, Making a Difference? An Evaluation of Charter Schools in the District of Columbia*, November 1999, at 52. Of course, higher funding levels will not, alone, yield better performance by the School Board.

<sup>41</sup> See Public School Enrollment Integrity Temporary Amendment Act § 2(b), amending DC Code § 31-2906(b)(3).

***Recommendation 2:*** *The School Board, the D.C. Council, and the Mayor should increase the resources of the School Board’s charter school office to enable it to improve the quality of charter school oversight. The D.C. Council should make permanent several recently enacted temporary amendments to the Uniform Per Student Funding Formula Act that place all of the School Board appropriations that are intended for charter school oversight under the budget line for charter schools and fund both on a uniform basis.* The overall workload of the School Board and the PCSB are not different enough to warrant the large disparities in financial and personnel resources between the School Board and the PCSB, which are largely due to the different amount appropriated to the two authorities. Because the PCSB appears to be doing a good job, DC Appleseed recommends increasing the budget of the School Board’s charter school office (as opposed to decreasing the PCSB’s budget).

***Recommendation 3:*** *The Council should monitor the new School Board’s performance of its charter school responsibilities and, if necessary, change the governance structure.* An independent body, perhaps the recently created State Education Office (the “SEO”), should be assigned by the Council responsibility to closely monitor the newly reconstituted School Board’s performance overseeing charter schools through the end of the 2001-2002 school year. The new School Board itself, after the first complete school year of its existence, should perform a self-assessment and publicly report its results and findings, including whether it believes that it should retain its charter responsibilities. Taking into account the School Board’s assessment, the SEO (or another independent body) should issue a report to the D.C. Council in two years as to how well the School Board has performed its charter school functions, both in absolute terms and as compared to the PCSB.

If the SEO recommends, for whatever reason(s), that the School Board relinquish its chartering authority, the Council should consider restructuring charter school governance.<sup>42</sup> Several issues should be considered if such a restructuring takes place.

First is the manner in which the chartering authorities are appointed. DC Appleseed believes that, if the PCSB were to become the sole chartering authority, the current process for choosing the PCSB may not include enough involvement by locally elected officials. Because the PCSB has been successful in fulfilling its mission to date, and because an entity that is entirely chosen by the voters and their elected Mayor – the School Board – shares responsibility for charter school oversight, DC Appleseed believes it would be unwise to change the rules for selecting the PCSB at this time. However, if the School Board’s chartering authority is

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<sup>42</sup> Of course, Congress would have to approve any such changes. DC Appleseed nonetheless believes that amendments to the federal statute should originate with the Council, using its legislative authority under the Home Rule Act.

removed, it may be advisable to increase the authority of local leaders to select the PCSB members.<sup>43</sup>

Second is the issue of providing a mechanism for charter school applicants to appeal the denial of their applications. Under the current system, the existence of two authorities provides a check against arbitrary chartering decisions. If a charter school applicant is denied the opportunity to open a school by one authority, it can apply to the other in the following year. Thus, removing the School Board's chartering authority would eliminate that check and balance. In such a case, the Council should consider whether schools have an adequate opportunity to appeal a denial of their charter application by the PCSB. While the law could explicitly permit appeals to the courts, some other appeal mechanism should at least be considered. In addition, the Council should define the scope of review on appeal, for example, as a review of the *process* the chartering authority used to evaluate the charter application (as opposed to a *de novo* review of the application on its merits).

Finally, there is the question of whether to create a second chartering authority (in addition to the PCSB), if the School Board's charter school responsibilities are eliminated. Whether to create multiple chartering authorities will depend upon a series of policy judgments that should be made in light of the facts and circumstances at the time the charter school governance structure is altered.

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<sup>43</sup> This could be done through a variety of mechanisms, such as providing locally elected leaders a role in the nomination of PCSB candidates, allowing locally elected officials the authority to select one or more PCSB members even if they are not nominated by the U.S. Department of Education, and transforming the nominations from a mandatory list to an advisory one that the Mayor or other locally elected officials must only consult in making their selections.

### **III. CHARTER SCHOOL BOARDS OF TRUSTEES: COMPOSITION, TIMING, AND CONFLICTS**

Well-functioning boards of trustees are key to charter school success and to the continued political acceptance of their autonomy. The strong visionary and creative forces that founders of charter schools often provide when designing a new school are, alone, usually inadequate to see a school through the difficult tasks of establishing and sustaining a well-functioning institution of learning. Creating a workable financial plan, raising funds, securing a practical and safe facility, attracting students, and addressing on-going policy, management, and operational needs each requires a set of experiences and skills that no one individual can likely provide. While school staff can (and should) provide many of these skills, a strong, independent board of trustees can fill one or more of those needs, providing distinct and complementary perspectives.

To provide such leadership effectively, boards of trustees and school founders need adequate time to develop further and implement their vision between the time a school's application is approved and school opening. If deferred, many issues best dealt with before a school opens can become problematic later on, destabilizing a fledgling enterprise. Most commonly, the failure to secure an adequate school building soon after an application is approved often siphons significant attention from other aspects of a startup school's operations.

Once a school has opened, an effective board of trustees is also important in both the long and short term as a stabilizing force. Among its other responsibilities, the board approves school policies, hires and oversees the leadership of the school, approves and monitors spending, assesses the effectiveness of the school in achieving its academic and non-academic goals, ensures adherence to the charter, and serves both as an advocate before elected officials and as liaison to the world outside of the school – including the community in which a school is located. Having a well-functioning multi-member body perform these functions helps prevent a single individual's poor decisions or departure from threatening a school's success.

Finally, a multi-member board acts as a check against abuses of public trust. Under the federal statute, a charter school's board of trustees has fiduciary responsibility for the school. While the federal statute grants some limited immunity from civil liability, a charter school's board of trustees is ultimately responsible for actions taken (or not taken) by the school, as it is the governing body of the school, a nonprofit corporation.<sup>44</sup>

DC Appleseed's research indicates that charter school boards of trustees need to be (1) established at an early stage in a charter school's development, (2) given a greater amount of time than has been provided in the past to plan for a school's opening once the school's application has been approved, and (3) required to have in place better developed policies and procedures relating to conflicts of interest than many schools currently have. These issues were raised by each of the local charter school experts DC Appleseed interviewed.

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<sup>44</sup> See D.C. Code § 31-2853.15(d).

In addition, DC Appleseed’s examination of the governance provisions of the 39 applications approved by the two chartering authorities provides independent reason for the first of these concerns.<sup>45</sup> Specifically, DC Appleseed’s research suggests a correlation between the schools that failed to provide adequate information in their applications about boards of trustees and those schools that have been sanctioned by the chartering authorities.<sup>46</sup> These data provide additional support for the views of local charter school experts and operators interviewed by DC Appleseed that the governance of charter schools by trustees needs greater attention.

This chapter reviews and recommends reforms related to three issues raised during DC Appleseed’s research: (1) inadequate identification, in many applications, of an interim board of trustees, (2) inadequate planning time between the approval of a charter application and the opening of a school, and (3) insufficiently developed policies and procedures relating to potential conflicts of interest of the trustees of charter schools.

## **A. Interim Boards of Trustees**

### **1. Background**

Shortly after a chartering authority grants final approval to a school, the founders of the school must address numerous logistical and legal issues. Without full-time staff, a school must often rely upon its initial or interim board of trustees to help resolve those issues. The resolution of many of those issues – such as the execution of a long-term lease – may have lasting impacts on the school that are best decided with the involvement of a board of trustees. And an initial or interim board of trustees is necessary to ensure that contracts executed respond to the needs of the school and its students rather than serving the interests of other private parties. Accordingly,

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<sup>45</sup> DC Appleseed reviewed all applications that were approved through the summer of 2000 by both authorities, including those for one school that never opened, three that have since closed, and two expected to open in fall 2001. According to staff at each authority, the large majority of applications reviewed by DC Appleseed were revised applications, submitted after they had received initial comments and questions from the chartering authorities. Thus, the applications that DC Appleseed examined included information provided by the applicants in response to initial comments provided by the authorities.

<sup>46</sup> Using the chartering authorities’ guidelines and policies regarding the contents of applications, DC Appleseed examined whether specific information was provided by applicants in three broad categories: the composition and responsibility of the board of trustees; the presence of a reasonably large board with a diverse set of talents and attributes, including knowledge of the local community in which the school is located; and whether there is a clearly defined separation of powers between the board as a whole and people that might personally benefit from being members of the board. DC Appleseed found that 13 of the 39 applications approved (or one-third) failed to provide the chartering authority with enough detailed information in each of these three categories. DC Appleseed found a substantial correlation between the schools that submitted insufficient information and those that have received some sort of sanction – a notice of concern, probation, or charter revocation (before or after opening) – from one of the two chartering authorities. Specifically, while five of the eight schools that have received sanctions (63%) also failed to provide adequate information in their applications concerning governance, only eight of the 31 schools that have not been sanctioned (26%) failed to provide adequate information concerning each aspect of governance.

while an informal group of founders can conceive the overall mission for a school, and prepare an application, it is particularly important that schools identify and put into place an interim board of trustees as early as possible.

Several charter school operators interviewed by DC Appleaseed indicated that their schools' boards of trustees were created as an afterthought, either because founders did not view the boards as inherently valuable or because other issues seemed more pressing. And in several cases the chartering authorities have had to intervene to help rebuild boards of trustees when schools were not functioning as well as expected.<sup>47</sup>

## **2. Recommendation**

*Each chartering authority should require greater specificity in charter school applications regarding the individuals who will serve on the charter school's interim board of trustees. Each charter school application should set forth each interim trustee's qualifications, skills, experience, and organizational affiliations. This will help ensure that a functioning board of trustees is in place at the time of a charter school's final approval, and to alert the school's trustees and the chartering authority about individual trustees' potential conflicts of interest.*

Neither the School Board nor the PCSB's most recent application guidelines specifically instruct an applicant to provide a list of members of an interim board of trustees. The School Board's recently adopted charter school policies do, however, state that "Each applicant to establish a public charter school shall establish an interim board of trustees prior to receiving approval by the School Board."<sup>48</sup> This requirement should be included in each authority's application guidelines to ensure that applicants are aware of this rule. And the chartering authorities should strongly enforce this rule by not approving any school that has failed to identify an interim board of trustees.

### **B. Planning Period Before School Opening**

#### **1. Background**

After receiving approval to create a charter school, boards of trustees and school founders must refine their vision for a school and implement their plans to begin operations. The School Board's procedures were recently amended to increase to between 15 and 16 months the time

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<sup>47</sup> For example, at the Arts and Technology Academy, the PCSB worked with the D.C. Public Charter School Resource Center to recruit new board members and took steps to reduce Arts and Technology board members' conflicts of interest. See Letter from Nelson Smith, Executive Director, Public Charter School Board, to Ms. Barbara Lewis, PTO President, Arts and Technology Public Charter School, March 19, 2000.

<sup>48</sup> District of Columbia Board of Education, *Public Charter School Policies*, § 910.1, 48 DCR 1694 (February 23, 2001).

between approval of a charter application and the opening of school.<sup>49</sup> The PCSB's current application schedule, on the other hand, will leave only seven months between final approval and the opening of schools in the future.<sup>50</sup>

This is a significant issue. While the founders of charter schools often devote considerable time and effort to preparing their charter application, it is only after the chartering authority approves an application that the founders and board of trustees face the larger task of converting that vision into reality. The challenges each charter school faces before opening include: negotiating a charter with the chartering authority; locating and obtaining a facility; renovating the facility; recruiting and enrolling students; recruiting and hiring school leadership, teachers, and staff; recruiting permanent school trustees; contracting with D.C. Public Schools or private vendors for financial, payroll, food, and/or janitorial services; developing and implementing a technology plan; and purchasing equipment and supplies.<sup>51</sup> Unfortunately, few applicants are prepared to handle all of these tasks when their charters are first approved. Many schools in the District have had tremendous difficulty navigating this start-up period, and some have either delayed their initial opening, or have had very rough first years.<sup>52</sup>

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<sup>49</sup> See District of Columbia Board of Education, *Schedule for Receiving and Approving Applications to Establish Public Charter Schools in the District of Columbia*, 47 DCR 5878, July 21, 2000. Over the previous two application cycles, the School Board increased the time between its decision and school opening from nine and one-half months for schools opening in 1999 to eleven and one-half months for schools opening in 2000. See District of Columbia Board of Education, *Public Charter School Application 1999*, June 1, 1998, at 2; and District of Columbia Board of Education, *Public Charter School Application 2000*, April 26, 1999, at 2.

<sup>50</sup> This past year one school received conditional approval, which indicates that the PCSB believed that the school was generally ready to negotiate its charter but needed to finalize plans for its facility and a few other details. At the same time, three schools were given first-stage clearance, indicating that the PCSB supported the proposals but that the applicants needed to make substantial revisions to their applications and resubmit them for a second review. In the last two application cycles, eight schools received first-stage clearance, but ultimately only five received final approval. The three schools most recently given first-stage clearance were scheduled to learn whether they were approved only seven months before their planned September 2001 opening. The PCSB followed very similar schedules during the last two application cycles. See District of Columbia Public Charter School Board, *2000 Application Guidelines*, March 6, 2000, at 21.

<sup>51</sup> In the District, finding and securing a suitable facility has been a large stumbling block for many schools.

<sup>52</sup> While there are many examples of schools that have opened on time less than a year after receiving approval, enough PCSB-chartered schools have been delayed to suggest the need to lengthen the start-up period. Of the 18 schools approved by the PCSB to date, five did not open the September following approval. While the charters of each of these schools allowed the school to open the subsequent September, it is likely that some other schools that had such an option chose not to exercise it and delay opening even though they were not ready to open in the earlier year. These problems are not limited to schools chartered by the PCSB – the Hyde Leadership Public Charter School, chartered by the School Board, opened a year late. In addition, two schools given preliminary approval by the School Board have failed during the start-up phase: the High Road School was approved in 1996, but was unsuccessful at obtaining a facility and never opened; and the Kwame Nkrumah Public Charter School opened in early September 1999 (albeit without the School Board's final approval) and was shut down within weeks.

## 2. Recommendation

Given the number of charter schools that have had trouble opening on time, DC Appleseed believes that more time is needed between final approval and school opening than the seven months currently provided by the PCSB. While some schools receive approval at an earlier stage (thirteen months before school opening), the majority of schools receive only first-stage clearance at that time, and thus need to make significant changes in their applications before they are granted final approval.

***Recommendation:*** Both chartering authorities should establish annual application and approval schedules that ensure that at least 12 months transpire between approval of a charter school application and the opening of a charter school. The School Board recently changed its approval process to increase significantly the period between approval and opening – to 15 and one-half months from 11 and one-half months. The PCSB should reconfigure its application schedule to allow for at least 12 months between approval and start-up.<sup>53</sup> This recommendation is consistent with the recommendation of commercial banks interested in underwriting loans to charter schools for facilities acquisition and operating funds that charter schools take a full year to plan after their charter is granted.<sup>54</sup>

### C. Conflicts of Interest

A well-functioning board requires the elimination in fact and of the appearance of conflicts of interest on the part of board members, the presence of which can harm both school performance and the credibility of the charter school movement. Nonetheless, people interviewed by DC Appleseed who are familiar with charter school operations cite with concern the absence of well-developed policies and procedures relating to potential conflicts. The most common issues mentioned were (1) the presence on boards of trustees of those with an outside, related interest – including representatives of management companies or nonprofit organizations and school employees – and (2) the inadequacy of trustee conflict of interest rules – as to both disclosure of possible conflicts and recusal in the event that conflicts are perceived.

#### 1. Background

##### a. Examples of the Presence of a Potential Conflict

Broadly stated, conflicts arise whenever a trustee has a financial or other personal interest in a board decision, thus dividing his or her loyalty between the school and some other

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<sup>53</sup> While some experienced charter school operators may not need 12 months of planning time, applying this timeframe to all applicants will not, DC Appleseed believes, unduly burden any applicant. If considered necessary, the PCSB (and the School Board) could establish waiver provisions to allow a shorter timeframe for those applicants that do not need additional time to plan.

<sup>54</sup> DC Appleseed interviews with commercial lenders, February - March 2001.



organization or person. In any such situation, the board member may make (or appear to make) decisions based in whole or in part on considerations other than what is best for the students of the school or the school as a separate freestanding institution. The most commonly cited examples occur when a trustee has a financial or other interest in a company or other entity, including a nonprofit organization, that is seeking (or has already been awarded) a contract to provide goods or services to the school.

It needs to be emphasized that conflicting interests are not limited to financial or other interests involving for-profit corporations. A board member may have a financial or non-financial relationship to a nonprofit provider that would place the member in conflict with respect to decisions relating to the provision of services by the nonprofit entity to the charter school. Family or other personal relationships (for example, between board members, or a board member and school staff, or a board member and a provider of goods or services to the school) may create conflicts. The prospect of political or professional advancement may create divided loyalty, as may gifts or favors to board members. Thus, among the categories of board members that may possess a conflict of interest are (1) persons working for, owners of, directors of, or representatives of a profit-making firm that conducts or seeks business with the school, (2) persons affiliated with nonprofit organizations (such as employees, trustees, or representatives) that have a relationship with the school but have a separate mission (including a mission that may compete for dollars with the charter school), and (3) employees of the charter school, or related to employees by family or other ties.

These are not hypothetical concerns. For example, at least eight local nonprofits have established charter schools or sponsored the development of a school, and seven of the 39 charter school applications that have been approved in the District (including one that never opened and one that will open in 2001) identified as their sponsors for-profit management companies that would provide comprehensive management services for the school. In many cases, these services entail hiring all of the teachers and staff, obtaining and operating a facility, managing finances, and providing educational plans and curriculums. Most schools with a management company pay an administration fee based upon a percentage of their revenues (the per-pupil allowance) – generally 10-15%. In practice, where there are management contracts, the vast majority of a school's expenditures flows through the hands of the management companies – especially if the management company hires all teachers and staff, and if the school leases its facility from the management company. Often, these companies and organizations provide funding and/or staff to the school's founders to aid in the planning for the school. In some instances, the company or organization itself was the applicant and later recruited community members to serve on the charter school's board of trustees. In these and other circumstances, DC Appleseed believes that both the school's autonomy and self-governance and the chartering authority's oversight can be improved by instituting requirements for full and timely disclosure of possible conflicts and, in appropriate circumstances, recusal by the conflicted party.

b. Current Laws and Regulations Governing Conflicts

The only statutory provision applicable to charter schools that directly addresses conflicts is the prohibition in the District's Nonprofit Corporation Act of loans by a corporation organized under that Act to board members.<sup>55</sup> Charter schools in the District must be organized legally as nonprofit corporations under the Nonprofit Corporation Act.<sup>56</sup> Board members of such corporations, as with other corporations, are "fiduciaries," and the defining characteristic of fiduciaries is a duty of undivided loyalty.<sup>57</sup> With a for-profit corporation, this duty runs to stockholders. In the case of charter schools, this duty should be understood as running to the students, parents, and taxpayers.

An indirect and limited safeguard against conflicts is provided by a requirement in the federal statute that a charter school offering any procurement contract with a value of at least \$25,000 (1) publish a request for proposals at least seven days prior to the award of the contract, and (2) submit to its chartering authority, within three days after it awards the contract, all bids received by the school, and the rationale for the award of the contract. The chartering authority then has ten days within which to review the contract, after which the contract becomes effective according to its terms unless rejected by the chartering authority. The publication and contract review requirement does not apply to contracts for the lease or purchase of real property, employment contracts, or any management contract entered into with a management company designated in the school's charter or in a petition for a revised charter.<sup>58</sup> However, even these excluded categories of contracts can also involve board members in potential conflicts.

District law does not itself bar persons affiliated with interested organizations or groups from serving as charter school board members, although it allows a school's charter to provide otherwise.<sup>59</sup> Indeed, a number of schools chartered in the District have board members

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<sup>55</sup> D.C. Code § 29-528. The only sanction for violating this prohibition appears to be joint and several liability of other board members who participated in the making of the loan; that is, any participating board member may be liable not only for a *pro rata* share but for the entire amount of the loan.

<sup>56</sup> See D.C. Code §31-2853.14(c)(16) (federal statute) and §31-2815(p) (District statute).

<sup>57</sup> The fiduciary status of charter school board members reflects corporate law generally, including the law governing nonprofit corporations, and is specifically confirmed by the federal statute. See D.C. Code § 31-2853.15(d).

<sup>58</sup> D.C. Code § 31-2853.14(c)(1), as amended by the District of Columbia Appropriations Act, 2001, effective November 22, 2000 [Publ. Law 106-522 § 120(a), 114 Stat. 2461] (the "Appropriations Act").

<sup>59</sup> Under the federal statute, the only eligibility requirements for board membership are that the member be a teacher or staff member at the school, the parent of a student attending the school, or a person who satisfies criteria set forth in the charter of the school. D.C. Code § 31-2853.15(b). Thus, the charter of a school would have to provide explicitly for membership by persons who are not faculty, staff, or parents, including persons who do not fit any of these three categories and are affiliated with an interested organization. For a board as a whole, a majority must reside in the District, and at least two members must be parents of a student attending the school.

designated by a nonprofit or for-profit organization that has a management contract with the school. While controversial, this policy is based on the idea that such organizations, whether for-profit or nonprofit, can bring productive resources to bear on behalf of charter schools.<sup>60</sup> Some organizations utilize board membership as a way to encourage and facilitate those benefits.

At the same time, both for-profit and nonprofit organizations appropriately have their own agendas. In the District, charter schools must, by law, be nonprofit corporations. Because they must be separate corporate entities, charter schools must be governed by a board of trustees, and proper governance requires that the board be able to discharge its fiduciary duty to the school.

To fulfill this goal, there need to be effective conflict of interest policies and procedures, but not, in DC Appleaseed's judgment, a categorical ban on board membership by interested individuals (although an individual charter school may of course choose to adopt such a ban). Individuals with affiliations that can give rise to conflicts with respect to certain matters may also bring valuable expertise and perspectives to a board of trustees. For example, individuals connected to management companies may bring experience with charter schools elsewhere that can be valuable; those working for local nonprofit social service organizations that sponsor charter schools may provide valuable understanding of children's needs and of important resources in the local community; and school staff can provide insights that help ensure the adoption of rational policies by the board. As long as boards of trustees and chartering authorities are informed of the affiliations of candidates for board membership prior to acceptance of the candidate for membership on the board, both individual boards and the chartering authorities will have the opportunity to seek additional information or commitments, and boards of trustees will be able to exercise judgment in individual cases as to whether to accept a candidate.

However, the presence of a *majority* of interested trustees on a board may appropriately be characterized as a defining characteristic of a charter school's leadership. Accordingly, a separate set of requirements should apply in such situations. The chartering authority must be given an opportunity to approve the presence of a majority of trustees with an interest in any matter that would require board approval (*e.g.*, a management contract), whether a majority of such trustees were appointed at the inception of a charter school or during the course of its 15-year charter.

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D.C. Code § 31-2853.15(a).

<sup>60</sup> For-profit education management organizations are playing an increasing role in managing traditional public schools, and some teachers' unions are supporting that participation. *See* Daniel Golden, "For-Profit School Managers Discover Teachers' Unions Can Be Allies" *Wall Street Journal*, February 20, 2001, at B1. The National Education Association, the largest national teachers' union, last year "replaced an earlier resolution opposing all for-profit management with a milder policy that considers privatization efforts on a case-by-case basis." *Id.* at B4. At the same time, for-profit management of charter schools remains controversial. *See, e.g.*, Ann Grimes, "School Board Seeks to Revoke Edison Charter" *Wall Street Journal*, February 20, 2001, at B1.

In the end, a reasonable goal for public policy, reflected in the following recommendations, is to keep the door open for the flow of resources by allowing interested trustees a role in charter governance, while ensuring independent governance by establishing prophylactic measures to prevent self-dealing by trustees and ensure independent board decisions.

## 2. Recommendations

The system requires better developed policies and procedures relating to conflicts. The chartering authorities, in consultation with charter school operators, should adopt disclosure requirements and mandatory by-law provisions to govern recusal, as well as new rules to deal with situations when a majority of trustees have an outside interest in the operations of the charter school. Chartering authorities should not attempt to develop comprehensive codes relating to conflicts. The better approach is thorough disclosure that will bring relevant facts to light and enable both individual boards and chartering authorities to exercise informed judgments and ensure recusal where appropriate. These recommendations should apply to both newly-chartered schools and existing charter schools.

### a. General Provisions

***Recommendation 1: General Provisions in By-laws and Charter Agreements. School by-laws should be required to address conflicts of interest, including procedures governing disclosure and recusal. Charter agreements should contain language committing the school to adopting practices and policies that will (1) avoid both conflicts of interest and unintended appearances of conflict, (2) require full disclosure, and (3) adhere to the provisions of the school's by-laws relating to conflicts. A violation of a charter commitment could provide a basis for revocation or other sanction by the relevant chartering authority in the event of significant or repeated failures to adhere to sound practices with respect to conflicts.<sup>61</sup>***

### b. Disclosure Required Prior to Acceptance for Board Membership

Disclosure requirements for prospective trustees should be uniform for all charter schools. Accordingly, the chartering authorities, in consultation with charter school operators, should develop the forms to be used for this purpose.

DC Appleseed has identified as a useful starting point for the development of disclosure requirements the form for prospective trustees developed by Central Michigan University, the largest charter school authority in Michigan.<sup>62</sup> The form consists of three sets of questions. The

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<sup>61</sup> Transparent conflict of interest rules may also aid schools in acquiring loans from commercial lenders. According to lenders with whom DC Appleseed spoke, the absence of such rules allows practices such as less than arm's-length contracts for the procurement of goods and services. Adopting and enforcing such rules would decrease the risk of revocation of a school's charter for mismanaging public funds.

<sup>62</sup> The form is attached as Appendix B to this report.

first set relates to the candidate's relationship to the charter school – for example, any contracts with the school or ownership interests in organizations that may have business dealings with the school. The second set of questions relates to an individual's involvement, directly or through business affiliations, in litigation or in professional disciplinary proceedings. The third set inquires about an individual's criminal record.<sup>63</sup>

***Recommendation 2: Scope.*** *Disclosures by prospective trustees should cover an individual's business, professional, and relevant familial associations, as well as any criminal record and involvement in litigation and professional disciplinary proceedings.*<sup>64</sup> The requirements should be designed to elicit matters that may warrant further evaluation by the chartering authority before granting a petition or by an operating charter school before it admits an individual to board membership, and that may warrant later recusal with respect to particular matters. This information may sometimes suggest that recusal would be so frequent that board membership for the individual would not be advisable.

***Recommendation 3: Timing: Role of Chartering Authority.*** *Prospective board members should disclose all of their other affiliations prior to their acceptance as a candidate for membership on a board. In the case of a school that is already authorized, disclosures signed by the candidate should be provided to the school's board of trustees, which in turn should provide the information to the chartering authority.* Disclosures relating to candidates for board membership should occur when applicants identify proposed board members or interim board members in their petition to a chartering authority. For a school that is already in operation, disclosure should occur when an individual is proposed for membership on the board.

***Recommendation 4: Updates.*** *To ensure that boards and individual members become aware of conflicts as they arise, trustees should update their disclosures when a situation arises that could create a conflict although none existed before (e.g. a change in employment), and in any event should provide annual updates.* Each conflicts update should be forwarded to the relevant chartering authority.

c. Disclosure and Recusal Concerning Particular Board Decisions

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<sup>63</sup> In addition, the form inquires whether any “board, group or corporation believe[s] it has a right to control or have input on votes you will cast as a member of the [charter school] board?” The form also inquires generally whether there is any situation, not reflected in the more particular questions, “which may give the appearance of a conflict of interest between you and the [charter school], or which would make it difficult for you to discharge your duties or exercise your judgment independently on behalf of the [charter school].” These types of questions can identify a wide range of potential conflicts, particularly if they are suitably explained in instructions or comments.

<sup>64</sup> Indeed, the PCSB conducts criminal, credit, and NEXIS background checks on trustees identified in the initial applications. The School Board did not respond to DC Appleseed's inquiry on this matter.

Trustees should not participate in board decisions in which they have an interest. The chartering authorities should require that each charter school's by-laws address disclosure, recusal, and voting with respect to matters in which any trustee is an interested party. To develop the mandatory elements of such requirements, the chartering authorities should consult with charter schools and review examples of such provisions from other jurisdictions. Two examples are attached as Appendix C, one developed by an association of independent private schools, and the other by an organization in North Carolina similar to the D.C. Public Charter School Resource Center.

***Recommendation 5: Disclosure.*** *By-laws should require identification of a trustee's interest in a particular board decision both in the notice to trustees and others of the meeting and again prior to taking up the matter at the board meeting.*

***Recommendation 6: Quorum and Voting.*** *By-laws should require the presence of a quorum of disinterested trustees for votes on decisions that involve trustees with conflicts of interest, specifically by providing that an interested trustee will not be counted for the purpose of determining whether there is a quorum for action on the matter. Under the District's Nonprofit Corporation Act, a quorum may consist of as few as one third of the number of board members fixed by the by-laws or articles of incorporation, unless the organization's by-laws require a greater number for a quorum.<sup>65</sup>*

***Recommendation 7: Recusal.*** *By-laws should define recusal by providing that an interested trustee will not vote on, be present during the discussion of, or use any personal influence with respect to, the matter.*

***Recommendation 8: Minutes.*** *The minutes of a board meeting involving a matter as to which there is an interested trustee should reflect the disclosures of the conflict made in the notice of the meeting and again during the meeting; the number and names of the disinterested board members providing a quorum; and the recusal of the interested trustee as prescribed by the by-laws. All minutes should be retained by school boards of trustees and made available for inspection by the chartering authorities and members of the public.*

d. Rules Governing Boards with Majority of Interested Trustees

Some sponsoring or partnering organizations or groups may choose at the founding of a charter school to constitute a majority of the board with their appointees or representatives. While the relevant documents are not always clear, it appears that no charter school in the District

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<sup>65</sup> See D.C. Code § 29-521. DC Appleaseed disagrees with the provision in the by-laws developed by the North Carolina League of Charter Schools (see Appendix C) that, in the event of a recusal, action may be taken on a matter by less than a quorum of disinterested trustees.

has a majority of persons on its board who are affiliated with a for-profit organization.<sup>66</sup> In contrast, most of the charter schools that were sponsored by community-based nonprofit organizations do have a majority of trustees that are affiliated with the nonprofit organization.<sup>67</sup>

Where the application for a charter school makes clear that a majority of the board is affiliated with a for-profit or nonprofit organization, the chartering authority will be aware from the outset that part of the school's identity is its relationship to such an organization or group. There does not appear to be a basis for removing discretion from the chartering authorities in such circumstances by categorically barring interested parties from serving on, or constituting a majority of, a board of trustees.<sup>68</sup>

However, DC Appleseed qualifies this conclusion with two important additional requirements. The first is designed to ensure the presence of a quorum of non-interested trustees that can vote on matters related to trustees' interests (*e.g.*, management contracts), and the second to prevent the nature of a charter school from changing, without approval by a chartering authority, into one with a majority of interested trustees.

***Recommendation 9:*** *Boards of trustees with a majority of interested trustees should be required to have a number of disinterested trustees sufficient to constitute a quorum on every matter requiring board approval, so that contracts with interested parties may be decided upon by only disinterested trustees.* As noted earlier, District nonprofit law requires that a quorum consist of at least one-third of board members. Requiring a disinterested majority vote will be important with respect to contractual and other relationships between the interested organization and the charter school. Specifically, as noted above, DC Appleseed recommends that an interested trustee not be allowed to participate in the decision and vote on whether his or her charter school enters into a contract with the organization in which the trustee has an interest. Accordingly, there must be a quorum of disinterested trustees in order to approve or make other decisions related to any contract with (or make any other decision related to) interested trustees' organizations.<sup>69</sup>

***Recommendation 10:*** *If, at the time of approval, a charter school's board contains less than a majority of trustees who have an interest in a sponsoring organization or are employees of the*

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<sup>66</sup> One charter school, the High Road School, was approved by the Board of Education with a majority of trustees designated by a for-profit management organization. The school never opened, however.

<sup>67</sup> Five charter school applications (four approved by the PCSB and one by the School Board) examined by DC Appleseed identified a majority of trustees that were representatives or designees of community-based nonprofit sponsors.

<sup>68</sup> Chartering authorities may in such circumstances choose to impose special recordkeeping to facilitate oversight, or other special requirements such as "most favored nation" provisions that ensure for the charter school terms no less favorable than those accorded other schools by the contracting organization.

<sup>69</sup> Thus, for example, a board with 15 members can have no more than 10 who have an interest in a particular matter on which the board must vote.

*school itself, the board should not be allowed later to appoint such a majority without applying to its chartering authority for a revised charter.* Approval of a charter amendment is necessary because the introduction of a majority of interested trustees must be considered a change in the basic character of the school, and in its governance, that requires a fresh examination by the chartering authority. In such an event, notification to the chartering authority is alone insufficient, as chartering authorities may in such circumstances choose to impose special recordkeeping to facilitate oversight.

Interested trustees should be defined as trustees that (1) work for or have any other financial interest in a management company or companies that do business with the school, (2) work for, or otherwise represent, a nonprofit organization that has a financial or organizational relationship with the school, or (3) are employed by the school.





#### **IV. INFORMATION FOR PARENTS AND THE GENERAL PUBLIC ABOUT SCHOOLS**

Because a central goal of establishing charter schools is to provide parents with the opportunity to choose a school that performs “better” than its traditional public school counterpart, it is imperative that parents be provided with the school performance, educational program, and learning environment data they will need to make an informed choice. At the outset, we emphasize that an effective way for parents to learn about the schools that they are considering for their children is often through personal discussions with school staff and visits to individual schools. While these discussions can be (and recently have been) facilitated through centralized forums (such as annual school recruitment and enrollment fairs), parental contact with schools generally occurs at the school level, with individual parents calling and visiting individual school buildings. Because the processes for making such contacts vary substantially by school, this report does not make extensive recommendations concerning the processes for parents to learn about schools through such mechanisms.

Instead, this chapter addresses the centralized collection and dissemination of data by the District government that can help parents make decisions about where to send their children to school. Since parents and the public will be comparing the achievements and environment at traditional public schools with those at public charter schools, consistent data about each type of school should be publicly available. Moreover, the data must be provided in a form that is accessible to all parents; not just those who have access to technology. Indeed, the provision of adequate, timely, and comparable information about consumer options is a necessary element of any effective system of competition.

This chapter of our report addresses the types of data that are important; the adequacy of data currently available for school selection purposes; and the best ways to deliver this data to parents and the public.

##### **A. Background**

###### **1. Information That Is Important for Parents**

Parents’ decisions about where to send their children to school are based on what parents value personally. If available public information fails to address parents’ values and concerns, it runs the risk of being marginalized by some and ignored by others. However, if parents are not also provided information that educators believe correlates to high-quality education, parents will be less able to make informed choices. In the charter school context, the negative consequences of inadequate information include not only more frequent mismatches between schools and children, but a misallocation of public dollars based on those mismatches.

For these reasons, it is critical that the particular information available to the public respond both to parents’ inherent concerns and educators’ understanding of what factors most affect education quality. Based on DC Appleseed’s research (including an examination of other

jurisdictions, conversations with education professionals, and a literature review), DC Appleseed believes that such information includes data in several categories:

- *Student achievement and other outcome indicators*, including standardized test score results, college admission test score results, grade advancement and graduation rates, student attendance and mobility rates, and post-graduation results such as college admission and employment rates and types;
- *Enrollment/demographic data*, including enrollment by grade, and characteristics of the student body (race/ethnicity, special education, and number whose home language is other than English);
- *Learning environment data*, such as teacher qualifications, teacher turnover, teacher absenteeism, availability of advanced placement courses and other specialized internship/partner programs available to students, average class size, technology infrastructure, condition and characteristics of the school facilities, and extra-curricular activities;
- *General and curriculum information*, including a brief description of school mission and curriculum, calendar and hours, grade levels taught, special education programs provided, and the enrollment process; and
- *Neighborhood information*, including availability of public transportation and parking, school and neighborhood safety, before and after school care, and parent satisfaction.

If parents are to make informed choices about schools, it is important that reliable information in each of these categories be provided.<sup>70</sup> If it is to enable parents to make informed decisions about public education, the information must be provided consistently for all publicly funded schools (charter and traditional); updated regularly; and made available in easily accessible formats and locations.

However, while everybody thinks that he or she could make better decisions with more information, the gathering and dissemination of information can be costly. Therefore, information that schools must provide regularly should be clearly defined and should strike an appropriate balance between being sufficiently complete to enable parents to make sound decisions and not so extensive as to create an unnecessary burden that will limit the ability of schools to deliver high quality classroom education. Thus, while (as shown in the remainder of this chapter) information

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<sup>70</sup> A recently published book, Schneider, Teske, and Marschall, *Choosing Schools* (Princeton University Press, 2000), concludes that this last category of data – referred to here as “neighborhood information” – is central to decisions regarding where parents send their children to school. The authors recently expanded their examination of these issues to the District of Columbia with the assistance of Mary Filardo, Executive Director of the 21<sup>st</sup> Century School Fund.

about charter schools in the District is generally inadequate, this report’s recommendations should not be read to require a diversion of disproportionate energy and attention from any school’s primary mission – educating students.

## **2. Information Currently Available About Charter and Traditional Public Schools**

There are serious gaps in the information available to parents about public schools in the District of Columbia, a fact highlighted by the substantial difference in the data available about three categories of D.C. public schools – traditional schools, charter schools reporting to PCSB, and charter schools reporting to the School Board. Particularly in this last category of schools, the information available is entirely inadequate. Furthermore, information that is available about all three categories of schools is offered in disparate formats and through different delivery systems, making it nearly impossible for parents to compare data about the schools to which they might send their children.

### **a. Charter School Information**

The federal statute imposes annual reporting requirements on all Public Charter Schools. Schools must send to their chartering authority information on school performance through the end of the preceding year in an annual report, which must include:

- a narrative regarding “the extent to which the school is meeting its mission and goals;”
- data on student performance on district-wide assessments;
- grade advancement information;
- graduation rates, college admission test scores, and college admission rates;
- information on parental involvement;
- the official student enrollment;
- average daily attendance;
- average daily membership;
- audited financials;
- reports on staff qualifications and responsibilities; and
- a list of all donors.<sup>71</sup>

The statute is silent, however, as to how school information should be delivered to parents of students and of prospective students. Accordingly, both chartering authorities have developed their own standards and systems for making such information available to the public. It is in this respect that information availability needs the greatest amount of improvement.

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<sup>71</sup> D.C. School Reform Act of 1995 § 2204, D.C Code § 31-2853.14. There is no difference in these requirements based upon whether a school's charter is issued by the School Board or the PCSB.

While containing important information for policy makers, the annual reports prepared by the two authorities are of limited value to parents. Because they are large documents, the annual reports do not lend themselves to broad distribution. In a practical sense, therefore, these reports can be viewed only at a government office, which, for most school reports, is now only at the chartering authorities' main offices. Even if they were made available at other locations (such as public libraries), the reports would be of limited practical value because they require substantial review to cull out needed information.

The two authorities also produce thick monitoring reports that document charter schools' compliance with their charters and applicable laws. Like the annual reports, these reports contain information that is valuable to a few, but are too dense to help most parents seeking specific information about school options and are located only at a government office.

To address the limitations of previously available official reports, the PCSB recently began producing one-page School Performance Reports as an additional source of information for parents and public officials. Each School Performance Report provides a school profile, testing data on academic performance including normal curve equivalent data, attendance/learning environment information, information and concerns about operations, and a short comment on the school's overall performance.<sup>72</sup> These reports are available on the PCSB website ([www.dcpubliccharter.com](http://www.dcpubliccharter.com)), can also be obtained from the PCSB's office, and are distributed to the media.

Unfortunately, no comparable information about charter schools is available from the School Board, which oversees 20 of the 39 charter schools operating in the District. The School Board does not produce School Performance Reports and makes no information relating to public charter schools available on the Internet. Thus, in order to obtain information on certain charter schools from the government, an individual must (1) make arrangements to go to the School Board's office to read cumbersome annual reports, or (2) submit a written request to the President of the School Board asking for specific information, indicating how that information will be used and providing the Board with either money or paper for copying.<sup>73</sup>

A limited amount of information about charter schools is readily available from non-government sources. For example, in July 1999, the D.C. Public Charter School Resource Center published a portfolio describing each charter school, an overview of its mission, history, and

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<sup>72</sup> Normal curve equivalent is a measure of students' relative gain or loss on standardized tests from year to year, as compared with all other students taking the same test nationwide. Thus, it reflects the relative gains/losses in student standardized test scores as students move from grade to grade in a school.

<sup>73</sup> Response to calls made by DC Appleseed in October of 2000 to the School Board for information in connection with Public Charter Schools demonstrated, at best, an indifference to the need to disseminate information about Public Charter Schools. This problem does not appear to be unique to the District. Washington Post research staff reported incidents in which officials in the Arlington and Alexandria school districts refused to answer questionnaires that asked for public information. See Jay Matthews, "Schools Revealing Disdain Instead of Details," *The Washington Post Online*, February 27, 2001.

goals, and limited statistical data on school demographics and operations. This portfolio was distributed to parents interested in charter schools, and is published on a website ([www.dcchartercenter.org](http://www.dcchartercenter.org)).

The D.C. Public Charter School Coalition sponsors an annual student recruitment fair for parents considering enrolling their children in charter schools. Charter schools sponsored by both chartering authorities send representatives to recruit students and answer parents questions in person.

An additional source of information is a website ([www.dcschoolsearch.com](http://www.dcschoolsearch.com)) maintained by a nonprofit organization, the 21<sup>st</sup> Century School Fund. It provides information on school demographics, standardized testing performance, faculty resources, programs, and facilities for all D.C. public schools, both traditional and charter schools. While it is a good start at a comprehensive computer system to provide parents with useful information about schools' performance, its usefulness is limited by the lack of consistent reporting across traditional and charter schools, an irregular schedule for updating data, and limited documentation on the source and age of the information. Moreover, the website presents information only on a school-by-school basis, hindering the ability of a parent to compare an individual school's performance to that of other schools or the entire system. Finally, the 21<sup>st</sup> Century Fund relies on DCPS and each individual charter school to provide voluntarily most of the data that is available on this website. Since providing information to such an organization is not required by law, it is not surprising that busy school administrators may not have time to update this information regularly.

#### b. Traditional Public School Information

Unlike charter schools, traditional public schools are all governed by a single entity – the School Board – through which traditional D.C. Public School (“DCPS”) information flows. DCPS is subject to numerous local laws and federal regulations that require it to report a wide range of information, on topics such as: fiscal matters, student attendance and enrollment, facilities condition and planning, data on students' race and ethnicity, special education programs, and school performance. In practice, however, DCPS has regularly disclosed to the public only student assessment data, such as Stanford-9 and SAT results aggregated by school.

Recently, DCPS began publishing individual school profiles on the Internet for all traditional public schools. These school profiles are similar to, but more detailed than, the information provided in the PCSB Charter School Performance Reports. Both sets of reports provide data on Stanford-9 and SAT performance, as well as certain information about student demographics, attendance, and staffing. However, as of February 2001, the profiles provide information only through school year 1998-99.<sup>74</sup> Thus, it is possible for a parent to compare very

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<sup>74</sup> Significant differences include: (1) the presence of a greater amount of data analysis and qualitative commentary in the PCSB reports, and (2) the inclusion of the results of a school “Satisfaction Survey” in the DCPS reports.

limited information about PCSB charter schools with data about traditional public schools. Unfortunately, aside from student assessment data, no such information can easily be found about School Board charter schools.

Under the School Governance Companion Amendment Act enacted last spring, the Superintendent is now required to report annually measures of improvement for DCPS schools.<sup>75</sup> In August of each year, DCPS is required to submit a report for the preceding school year to the School Board, the D.C. Council, and the Mayor, which must include:

- standardized test scores by school and grade level for the preceding school year;
- drop out rate in the preceding school year;
- average daily attendance rate for the preceding school year by school for all junior, middle, and senior high schools;
- number of safety incidents by school and type for the preceding school year;
- teacher and principal turnover rate for the preceding 12 months and the top three reasons for departures;
- teacher and principal evaluation ratings for the preceding 12 months;
- scores on tests used for teacher certification, and college grade point average for teachers hired in the preceding 12 months;
- number and proportion of students whose parent or parents or other caregiver attended one or more parent-teacher conferences by school and grade level during the preceding school year; and
- number and percent of graduates who entered college the previous 12 months.<sup>76</sup>

Over the last few years, DCPS has held annual school enrollment fairs where representatives of DCPS schools are available at a single location to provide information to parents and answer questions.<sup>77</sup> A similar event is held annually by a coalition of charter schools. The enrollment fairs are a good alternative for providing information to parents who may prefer to get their information in a more personal way rather than sifting through lengthy reports or spending hours in front of a computer. The ultimate question for parents is whether their children will thrive in a particular school, a decision that can be assisted by good reports and data, but also through personal discussions with other parents, staff, and a visit to the school.

To summarize, there is some relevant information available to parents about two of the three categories of schools: traditional public schools and charter school authorized by the PCSB.

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<sup>75</sup> School Governance Companion Amendment Act of 2000, effective July 18, 2000 [D.C. Law 13-149, 47 DCR 4639] § 4.

<sup>76</sup> As of February 2001, DCPS had not yet produced this report, even though the first report was due on August 1, 2000.

<sup>77</sup> The DCPS events are held shortly before the deadline for out-of-boundary applications, in order to provide parents information about their options within the DCPS school system.

There is virtually no readily available information about charter schools authorized by the School Board. Because different information is available in each category and through different delivery mechanisms, gathering comparative information is unreasonably and unnecessarily difficult. To resolve this problem, the content must be aligned and delivery mechanisms integrated.

Finally, the problem of gaining access to information is most acute for those who do not have access to, or know how to use, the Internet. Neither the PCSB, the School Board, or DCPS provides user-friendly, generally available written material on public charter or traditional public school performance, either school-by-school or system-wide.<sup>78</sup> Thus, for parents who do not have access to, or are not proficient at using, the Internet, there is no source of collected information that would enable a parent to choose between a public school and a public charter school or among public charter schools.

One significant obstacle to improving the availability of information about public education available in the District has been the failure to assign such responsibilities to a single entity that is held accountable for results. Thus, while DCPS has had statutory responsibility for generating statistics on public education under both District and federal law, little has been done on any governmental level to enforce these requirements.

Under a recently enacted law, the District is now setting up a new government entity responsible for several aspects of public education – the State Education Office (the “SEO”). Unlike other D.C. government entities with public education responsibilities, the SEO was specifically created to handle – in a neutral way – functions designed to oversee and serve both traditional and charter public schools. For this reason, it is reasonable to expect the SEO to help improve the availability of comparative public education information.

### **3. Information Available in Other Jurisdictions**

DC Appleseed’s research has revealed that many states with public charter schools have developed comprehensive websites and search engines that allow parents to perform a variety of comparative analyses of all public schools, traditional and charter. Two states in particular, California and Wisconsin, have excellent sites that could be used as models for the District to improve the availability and presentation of school information.<sup>79</sup>

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<sup>78</sup> This is in sharp contrast to other local school systems that provide information directly to parents through the mail. Many jurisdictions provide an annual report on system-wide performance, results of state and county testing on a system-wide and/or individual school basis, and a comparative analysis of student performance relative to system-wide performance. In addition, other local jurisdictions (including Montgomery County) send qualified students information concerning school magnet programs.

<sup>79</sup> The California Department of Education’s school information website can be found at <http://www.cde.ca.gov>, the Wisconsin Department of Public Instruction’s website at <http://www.dpi.state.wi.us>.



Both the California and Wisconsin websites contain a wide variety of information that is compiled annually about charter and traditional public schools statewide. School districts (and certain individual schools) report this information on standardized forms to the state education agencies, which aggregate the data. The agencies have, over the past several years, taken advantage of new database and communications technologies to expand public access to the information via the Internet. Users can query each system and, by school, locate data in numerous categories, such as student demographics, graduation and dropout rates, and student performance on standardized tests. In addition to viewing information on an individual school, these systems allow users to view data from one school side-by-side with (1) information from another school, (2) summary information from the entire school District, or (3) summary information from the entire state. The Wisconsin system also allows users to compare data from the current year with data from prior years. Such tools make it easy for parents and other users to compare the performance or qualities of a school with other schools, and should be explored by the District as models for information content and delivery.

Neither of these states has invested an extraordinary amount of money to create or maintain its website. To host its site, the California Department of Education used mostly existing equipment and software, valued at approximately \$40,000. While in-house computer staff designed and programmed the site, California hired a private contractor to enhance the website and assist with data collection at a cost of \$186,000. The Wisconsin Department of Public Instruction has provided school performance data on the Internet since the mid-1990's, and recently received a \$100,000 grant from the North Central Regional Educational Laboratory to expand its website. The Department relied heavily on contracted private firms to implement the project, but designed the site in collaboration with numerous outside organizations, including educators, parent and community organizations, and educational associations. In 2001, the Department paid \$60,000 to a contractor to maintain and enhance the system. Both states minimize the costs associated with maintaining their systems by encouraging school districts to perform data entry.<sup>80</sup>

## **B. Recommendations**

***Recommendation 1:*** *A standard set of data should be reported by all public and public charter schools and should include information in the five categories listed in section A.1. of this chapter. To the extent possible, student-related data should be collected, recorded, and organized by student (as opposed to being aggregated only by classroom or school) to allow policy makers to understand changes in achievement as well as migration within and across the system. Of course, such data should be reported in a way that does not identify particular students by name or otherwise compromise their privacy rights.*

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<sup>80</sup> Personal communications from California Department of Education and Wisconsin Department of Public Instruction employees.

***Recommendation 2:*** *Information content and submission procedures should not create an undue burden on schools.* With limited staff, public schools (charter and traditional) cannot easily respond to expansive and multiple information requests. Accordingly, information requirements should be tailored to meet the needs of parents and policy-makers without being excessive. Moreover, the process for reporting information should be simple, and should be harmonized so that, as much as possible, schools need to provide this information only once annually.

***Recommendation 3:*** *The newly created D.C. State Education Office should be legally responsible for collecting and disseminating data on public schools.* This entity is the best candidate for the job because it is the only entity in the District responsible for some aspects of all public schools – both charter and traditional. The SEO should establish quality controls to ensure the accuracy of the information reported, and disseminate the information to parents and other designated recipients.

***Recommendation 4:*** *Information about schools should be made broadly available through a concerted public information campaign designed to ensure that District of Columbia residents know where to obtain the school information that they need.* Information should be made available in a variety of media, including in written format and on the Internet. A single official website should contain the current standard set of data about all public and public charter schools. It would be helpful if this website included a search engine enabling parents to seek out certain school characteristics and compare schools based on these characteristics. Written reports containing the standard set of data should be made available in the administrative offices of all public schools, at public libraries, and upon request from a designated government contact. No justification should be required in order to receive such information. The PCSB's practice of providing an explanatory guide for its school performance reports aids in the understanding of the data provided in their school reports and should be incorporated in whatever consolidated reporting is ultimately developed.



## V. FINANCING CHARTER SCHOOLS

Under a decentralized model, charter schools are not only free from central government control but are also unconnected to many central government systems. For example, unlike traditional D.C. public schools, charter schools do not have access to the school district's systems for acquiring and repairing buildings, procuring supplies, and hiring personnel. Instead, charter schools must contract with many outside vendors – such as real estate owners and brokers, suppliers of school supplies, and payroll services – and must independently plan their current operations and for their future development. They do not have the resources of a larger system to fall back on if their plans and projections are incorrect.

In this context, the financing of charter schools is particularly important. Without an *equitable* and *reliable* stream of payments, charter schools will be unable to secure the services they need or plan effectively for the short and long term.

There will likely always be debates about whether the level of funding for charter schools is, in the abstract, adequate. Such an issue is beyond the scope of this report. In the District, however, it is fair to say that funding is allocated among charter and traditional public schools equitably, *i.e.* in a way that funds the education of a similarly situated student identically, regardless of whether the student attends a traditional or charter school. As described in greater detail below, District law provides that the amount of dollars that flow to each charter school is based on the number and characteristics of students enrolled. The same system is used to fund the traditional public school system, and is designed to provide a fairly equal number of dollars to all schools – including amounts for operating and capital costs.<sup>81</sup>

However, while the law provides for relatively *equitable* funding, the flow of funding to charter schools has not always been *reliable*. This chapter of our report recommends reforms to three areas affecting the reliability of charter school financing: the schedule of payments; procedures for transfer of payments; and the audit of enrollment. Over the last five years, the timing of payments to charter schools has been extremely variable, periodically causing charter schools financial hardship because payments arrived late, and planning difficulties because the disbursement of government funds left many charter school operators unsure of how the government would calculate future disbursements to their schools. Finally, disagreements over the conduct of student enrollment audits, used to establish the number of students upon which disbursements are based, have led some charter schools to claim that they have been inappropriately denied funds.

Considerable efforts have been made in the last year by the D.C. Council, Congress, and several District government entities involved in charter school financing to alleviate several of

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<sup>81</sup> Charter schools receive an annual per pupil facility allowance, which is based on a five-year average of DCPS capital improvement outlays per student. A notable exception to financing equity: the D.C. government makes payments for teachers' pensions on behalf of the traditional public school system apart from its per pupil budget, while charter schools must pay for teacher pensions (if they are provided) out of their per pupil funds.

these problems.<sup>82</sup> While these efforts represent steps in the right direction, more needs to be done. First, a number of the amendments adopted by the D.C. Council through the emergency or temporary legislative process (and are therefore valid only for less than a year) need to be enacted in permanent law. In addition, several other reforms are needed that build on the changes already made.

## **A. Timing of Payments**

### **1. Background**

With the federal statute, the federal government established that charter school funding in the District would be based on student enrollment.<sup>83</sup> Specifically, each school receives a certain amount of money based on the number of students enrolled in each grade level, with additional funding for students with special education needs or who speak limited or no English.<sup>84</sup> The original law mandated that charter schools receive their funding in two payments, one in October and a second in May.<sup>85</sup>

The federal statute required each charter school, on September 15 of each year, to count the number of students enrolled by grade, the number of students with special needs, and the number of students that did not live in the District. The CFO used this information as the basis for an October disbursement to each charter school of 75% of the amount each was due for the year. The law provided that the charter schools would get the remaining 25% in May, adjusted to reflect the difference between the fall enrollment count and a second one performed in the spring. The federal statute instructed the Control Board to arrange for an independent contractor to perform an audit of the enrollment count to verify the charter schools' figures.<sup>86</sup>

Over the past few years, the schedule for disbursing funds to charter schools has failed to meet the needs of charter schools. Specifically, charter schools were supposed to receive their first payments in October – over a month after the school year began. Particularly for start-up and small schools that rely almost exclusively on the per pupil funding to cover operational costs,

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<sup>82</sup> DC Appleseed recommended several revisions to the financing system laws that served as the basis for amendments passed by the D.C. Council.

<sup>83</sup> The D.C. School Reform Act of 1995, effective April 26, 1996 [Publ. Law 104-134 § 2001 *et seq.*, 110 Stat. 1321-107, D.C. Code § 39-2851 *et seq.*].

<sup>84</sup> See D.C. School Reform Act § 2401, D.C. Code § 31-2853.41.

<sup>85</sup> See D.C. School Reform Act § 2403, D.C. Code § 31-2853.43.

<sup>86</sup> See D.C. School Reform Act § 2402, D.C. Code § 31-2853.42.

the timing of the first payment was crucial to their viability.<sup>87</sup> In practice, there have been lengthy delays in the first payments, especially in school year 1999-2000. First, Congress' delay in passing the District's Appropriations Act prevented the CFO from disbursing the full amount of some charter schools' fall payment until December. The remainder of the fall payments were held up until January, primarily due to controversy over how the results of the enrollment audit should affect payment amounts.<sup>88</sup>

In interviews with DC Appleseed, charter school operators described how the unpredictable nature of the funding payments forced some schools to delay or forgo paying existing staff, hiring new staff, or purchasing supplies. One charter school operator stated that his school was unable to secure private financing for school construction specifically because the school could not prove that it had a predictable stream of revenue.<sup>89</sup>

To address the problem of unpredictable payments, the D.C. Council enacted in calendar year 2000 amendments to the charter school financing statutes that: (1) require quarterly payments, the first of which are to be made before the school year begins; (2) clarify how the payments are calculated to prevent further disagreements between the charter school operators and the CFO; and (3) limit the impact that delays in congressional appropriations or the student enrollment audit process can have on the timing of disbursements to charter schools. The Council enacted these changes as amendments to the two statutes that govern D.C. charter school financing – the D.C. School Reform Act of 1995 (the “federal statute”) and the Uniform Per

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<sup>87</sup> In addition, charter schools in their first year have been financially constrained due to delayed payments from the New Charter Schools Fund, a source of start-up funding for newly-chartered schools. See Friends of Choice in Urban Schools, *Chronology of D.C. Public Charter Schools Funding Issues*, available at: <http://www.focus-dccharter.org/chronology.htm>.

<sup>88</sup> DC Appleseed interviews with charter school operators and CFO staff; *Testimony of Donald L. Hense, Director, Friendship House Public Charter School Before the District of Columbia Council Committee on Education, Libraries & Recreation*, February 10, 2000; and *Testimony of Josephine Baker, Chair, District of Columbia Public Charter School Board Before the District of Columbia Council Committee on Education, Libraries & Recreation*, February 9, 2000.

<sup>89</sup> Lenders interviewed by DC Appleseed report that they have been concerned that enrollment auditors (1) have had difficulty verifying the residency of students enrolled in particular schools, and (2) have generally resolved doubts about students' residence against a declaration of District residency.

Student Funding Formula for Public Schools and Public Charter Schools Act of 1998 (the “Funding Formula Act”).<sup>90</sup> Because these amendments were enacted as temporary legislative acts, they are valid for less than a year.<sup>91</sup>

The new disbursement system is designed to respond better to charter schools’ operational needs by providing four quarterly payments in July, October, January, and April.<sup>92</sup> Because the first payment is to be made by July 15, charter schools are to receive funding prior to the beginning of the school year, which will improve their ability to purchase supplies and hire staff in advance of the start of school.<sup>93</sup> It should be noted that the July payment is made before a school knows with certainty how many students it will enroll. Because the first payment to schools is based on June student enrollment projections, these payments could be inaccurate, particularly if the projections are not carefully devised.

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<sup>90</sup> Respectively, the D.C. School Reform Act of 1995, effective April 26, 1996 [Publ. Law 104-134 § 2001 *et seq.*, 110 Stat. 1321, D.C. Code § 39-2851 *et seq.*] and the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective April 16, 1999 [D.C. Law 12-207 § 101 *et seq.*, 45 DCR 8095, D.C. Code § 39-2901 *et seq.*].

<sup>91</sup> The Council enacted both temporary and emergency legislation, both in effect for limited amounts of time, due to delays caused by the congressional review period that would have prevented permanent legislation from being effective in time for school year 2000-2001 funding. While this legislation is valid for a limited period of time, no opposition has yet been raised to its planned enactment as permanent legislation. The Council first enacted the most significant of these revisions in emergency legislation, the Public School Enrollment Integrity Emergency Amendment Act of 2000, effective August 9, 2000 [D.C. Act 13-409, 47 DCR 7264]. The Council superseded this legislation, which was in effect for only 90 days, with two other impermanent laws, the Public School Enrollment Integrity Temporary Amendment Act of 2000, effective October 21, 2000 [D.C. Law 13-199, 47 DCR 7444] and the Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2000, effective October 31, 2000 [D.C. Act 13-453, 47 DCR 9406]. These three pieces of legislation are substantively the same, though there are minor changes in the later versions. The Council recently enacted further amendments in emergency legislation, the Uniform Per Student Funding Formula Emergency Amendment Act of 2000, effective December 18, 2000 [D.C. Act 13-485, 48 DCR 20]. This legislation is in effect for only 90 days. The Council also passed a temporary version of this act that would be effective for 225 days, the Uniform Per Student Funding Formula Temporary Amendment Act of 2000 [D.C. Act 13-551], but it is not yet effective due to Control Board and congressional review.

<sup>92</sup> See Public School Enrollment Integrity Temporary Amendment Act § 3(b), amending DC Code § 31-2853.42 and Uniform Per Student Funding Formula Emergency Amendment Act § 2(e)(2), amending DC Code § 31-2906a.

<sup>93</sup> See Uniform Per Student Funding Formula Emergency Amendment Act § 2(e)(2), amending DC Code § 31-2906a. The July payment will be made possible by a recent congressional authorization that allows the District to fund this amount out of the following fiscal year's appropriations even though, in recent years, the annual appropriations act has not passed Congress until October or later. See District of Columbia Appropriations Act, 2001, effective November 22, 2000 [Publ. Law 106-522, 114 Stat. 2451].

The October payment will be based on unaudited October enrollment counts submitted by individual charter schools to their chartering authority.<sup>94</sup> In addition, the amendments provide that, if Congress has not completed its work on the appropriations act before the October payment is due, disbursements to new schools as well as to existing charter schools for increased enrollments can be made out of an escrow fund.<sup>95</sup> This provision is designed to accommodate increased spending needed by new or expanded charter schools even during the period of a Continuing Resolution, when funding for new programs could not otherwise be spent.

The final two quarterly payments are based on audited counts of student enrollment, adjusted to reflect any over or under payments made earlier in the year due to differences between the audited enrollment count and the projected enrollment and unaudited counts used to calculate the July and October payments.<sup>96</sup> Thus, the total amount disbursed to charter schools annually will be based on the audited tallies of student enrollment.

In past years, the CFO delayed disbursements to charter schools when the audit was not completed on schedule or there were disagreements on how the audit's findings would affect payments to charter schools. The recently enacted statutory changes prohibit the CFO from withholding any charter school payments because the audit is not yet complete.<sup>97</sup> This prohibition has already had an impact. Recently, the CFO provided some charter schools with a January 2001 payment based on the unaudited October enrollment counts, made necessary by ongoing negotiations over the results of the enrollment audit.<sup>98</sup>

## **2. Recommendations**

Changes already made by the Council and CFO should dramatically improve the schedule and predictability of the payments to charter schools. These changes will not only enable better charter school financial planning and management, but, according to commercial lenders, should

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<sup>94</sup> See Uniform Per Student Funding Formula Emergency Amendment Act § 2(e)(2), amending DC Code § 31-2906a.

<sup>95</sup> Congressional Continuing Resolutions, which authorize District government spending when Congress has not completed the annual District of Columbia Appropriations Act before the start of the fiscal year (October 1), generally freeze funding authorization at levels in the previous fiscal year. Thus in the past, there was no funding available in this time period for new charter schools and enrollment increases in existing charter schools.

<sup>96</sup> See Uniform Per Student Funding Formula Emergency Amendment Act § 2(e)(2), amending DC Code § 31-2906a.

<sup>97</sup> See Uniform Per Student Funding Formula Emergency Amendment Act § 2(d)(2), amending DC Code § 31-2906.

<sup>98</sup> Telephone conversations with Robert Cane, Executive Director, Friends of Choice in Urban Schools, January 23, 2001 and Kimberly Campbell, Office of Budget & Planning, Office of the Chief Financial Officer, February 5, 2001. These negotiations are expected to be completed in time for the April payment, which will be adjusted to reflect the results of the audit.



improve charter schools' access to capital. But, more needs to be done. Specifically, as detailed below, many legislative changes need to be made permanent, and a new amendment needs to be enacted to avoid problems that could result from basing the July payment on projected enrollment.

***Recommendation 1:*** *The Council should enact as permanent law the amendments to the federal statute and the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998 that have heretofore been enacted only in emergency or temporary legislation (see Appendix D for legislative language).*

***Recommendation 2:*** *The Council should enact amendments to the federal statute to enable the chartering authorities to reject enrollment estimates that are clearly inaccurate. This recommendation is devised to prevent the July payment to charter schools – which is based on projections – from being erroneous. Unless the chartering authorities have the ability to reject projections provided by a charter school, it is possible that, in an extreme case, a school could receive in the first two quarters of a school year an amount of funding that exceeds what it is entitled to for the entire year. In such a circumstance, the government would have to recover excess funding. A more likely scenario is that a school might overestimate or over-count its enrollment early in the funding cycle to such an extent that its cash flow would be precarious later in the school year.*

As the law is now written, the chartering authorities are not expressly provided with the power to reject an estimate or student count even if it appears grossly inaccurate. As a result, the District could, under current law, be required to disburse an unreasonably large sum of funds to a single charter school before the school year begins. DC Appleseed recommends that section 2402 (Calculation of Number of Students) of the D.C. School Reform Act of 1995 be amended to include the following (or similar) language:

“In estimating the number of enrolled students as required in subsection (b) of this section, each eligible chartering authority shall provide such information to the Chief Financial Officer with respect to each individual charter school subject to its jurisdiction. For this purpose, the chartering authority shall use the estimate provided by the individual charter school unless the charter school has failed to provide a timely estimate, or there is clear evidence that the estimate provided by the charter school is unsupported or exceeds the enrollment level approved in the school’s charter. In either case, the chartering authority shall provide a reasonable estimate of its own and promptly inform the charter school of the extent of and reasons for such estimate by the chartering authority. In such a case, the charter school shall be provided an opportunity to comment upon the chartering authority’s estimate.”

## **B. Procedures for Transferring Payments**

### **1. Background**

The system for disbursing funds to charter schools involves three sets of entities: the charter schools themselves, the two chartering authorities, and the District's CFO. The funding system is highly dependent on a two-way flow of information upon which payments to charter schools are based: the information charter schools provide to the CFO (through their chartering authorities) to justify enrollment figures upon which funding requests are based; and the information the CFO provides to charter schools to explain how the CFO determined disbursement levels. Strengthening both sets of information can, and should, make charter school financing more reliable.

Charter school operators have expressed frustration about (1) the excessive amount of information and number of documents the CFO requests, (2) inadequate guidance regarding the precise documentation charter schools must provide before the CFO processes payments, and (3) the complexity of the forms on which the information should be reported.<sup>99</sup> Moreover, charter school operators described as inadequate the explanations that accompany the disbursements they receive from the CFO.<sup>100</sup>

From the CFO's perspective, past problems have arisen because the schools and chartering authorities have failed, in some cases, to provide the CFO with adequate documentation to justify disbursements. The enrollment counts are performed by charter schools, reported to their chartering authorities, and then provided by chartering authorities to the CFO. In past years, the funding statutes provided no guidance regarding who was responsible for reviewing and verifying the enrollment counts prior to disbursements being made. In practice, the chartering authorities have often assembled schools' submissions and passed them on to the CFO unreviewed, compelling staff in the CFO's office to review the data, residency verifications, and special education status documents to eliminate payments for students for whom proper documentation was not provided. It was this unanticipated step that, according to the CFO, made it necessary

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<sup>99</sup> DC Appleseed interviews with charter school operators; and Friends of Choice in Urban Schools, *DC Public Charter School Newsletter*, vol. 5, no. 2, Spring 2000.

<sup>100</sup> For example, the CFO's January 2000 payments to charter schools were not accompanied by an explanation of how they were derived, and payments to some individual charter schools were significantly lower than the schools asked for and expected. Eventually, most school operators secured an accounting from the CFO, but even then they complained that the CFO never informed them why the CFO drew different conclusions than the schools about the total number of resident students enrolled and the number that qualified for the special education add-on. The operator of one large school, Edison-Friendship, testified before the D.C. Council that the school received \$1.3 million less than expected. The auditors and CFO apparently decided not to provide funding for many students due to inadequate residency and special education documentation. Yet, when the school received its funding, neither the auditors nor the CFO provided a list of those students for whom documentation was missing. *Testimony of Donald L. Hense, Director, Friendship House Public Charter School Before the District of Columbia Council Committee on Education, Libraries & Recreation*, February 10, 2000.

for the CFO to request considerable additional documentation from the charter schools prior to processing payments.<sup>101</sup>

A recent amendment to the Funding Formula Act partially addresses the information problem by directing the CFO to “provide each public charter school an accounting indicating what the payment is for and how it was calculated.”<sup>102</sup> To comply, the CFO produced such an accounting for each charter school that accompanied the October 2000 payment, using a report devised internally by CFO staff.

## **2. Recommendation**

While the recent legislative changes and subsequent reports issued by the CFO are important steps in the right direction, problems nonetheless remain. For example, according to charter school operators interviewed by DC Appleseed, the CFO still does not provide essential information to charter schools, namely a list of, and explanation for why, the CFO did not provide funding, at all or in part, for some students for whom funding was requested by a charter school.

***Recommendation:*** *The CFO should better describe the enrollment information that the charter schools must report in order to receive disbursements, and should provide to the charter schools more documentation with each disbursement explaining how the amount was derived.* While the CFO has recently improved the information provided, charter school operators themselves can help further improve the disbursement process. Accordingly, DC Appleseed recommends that the CFO consult with charter school operators as the CFO continues to revise the content and format of (1) the forms used by charter schools to request payments, and (2) the CFO’s reports that accompany per pupil funding disbursements to charter schools. Specifically, the CFO should meet with charter school operators to gather information regarding the operators’ needs, and develop forms with those needs in mind. Once developed, a draft of the proposed payment request and disbursement reporting forms should be distributed to all charter school operators for their feedback. The CFO should then consider comments from the schools in developing its final reporting forms and processes.

## **C. Audit**

### **1. Background**

Under the federal statute, as originally enacted, an independent auditor hired by the Control Board was to review annually the enrollment figures submitted by DCPS and charter schools to verify the adequacy of schools’ documentation proving that enrolled students reside in the District of Columbia. Under the new quarterly payment system, the January and April

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<sup>101</sup> Interview with staff from the CFO’s office, October 2000.

<sup>102</sup> See Public School Enrollment Integrity Temporary Amendment Act § 2(c), amending D.C. Code 31-2906a(e).

payments are based on the auditors' enrollment counts, adjusted for any over or under payments made in July and October. The audit of charter school enrollment, as currently performed, involves both counting all students in attendance at a school on a particular day, and reviewing the paperwork that a school has available about each enrolled student on the date of the audit.

In past years, charter schools found unclear the auditor's requirements for documentation needed to prove a student's residency in the District, resulting in considerable confusion during the audit. While there is now greater agreement on which documents are necessary, there are still instances in which charter schools can lose funding because there is no procedure for allowing charter school operators to provide supplemental information or appeal the findings of the auditors.<sup>103</sup>

Recent legislation transferred the responsibility for hiring the auditor and setting the residency documentation standards to the newly formed State Education Office (the "SEO").<sup>104</sup> The interim SEO has already established a working group that has begun to draft standards for next year.

## 2. Recommendation

Under the current system, schools are not given an opportunity to provide supplemental information or appeal the auditors' preliminary findings. Without an opportunity to comment or appeal the findings, schools may lose funding due solely to correctable technical violations.

***Recommendation:*** Improve the audit process by providing a method for the charter schools to respond to the auditor's preliminary findings. DC Applesseed recommends that, in the future, the auditors provide the draft audit results to charter school operators (not just the chartering authorities, as is currently the practice), and give the school operators an opportunity to respond to the preliminary findings and to provide additional evidence or rebut the auditor's conclusions before the audit becomes final.

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<sup>103</sup> For instance, during the audit performed in October 2000, the auditors initially placed nearly half of Cesar Chavez Public Charter School's students in a "noncompliant" category because a school official failed to sign the cover sheet attached to those students' residency documentation. Letter from Nelson Smith, Public Charter School Board to Francis Smith, DC Financial Responsibility and Management Assistance Authority, dated January 11, 2001, included in Thompson, Cobb, Bazillo & Associates, P.C., *Audit of the Official Membership of the District of Columbia Public Schools and Public Charter Schools as of October 5, 2000* (Draft dated 1/15/01). The draft version of the audit report reflects these findings of "noncompliance," even though staff at the school provided the auditors with corrected documents after the original audit revealed this omission. Staff at the Cesar Chavez Public Charter School, Public Charter School Board, and the Control Board continue to discuss how to resolve this matter to ensure that the school receives funding for all enrolled students with residency documentation.

<sup>104</sup> See State Education Office Establishment Act of 2000, effective October 21, 2000 [D.C. Law 13-176 § 3(2), 47 DCR 6836], and Uniform Per Student Funding Formula Emergency Amendment Act § 2(d)(2), amending DC Code § 31-2906.



## **VI. CONCLUSION**

While it may be too soon to tell whether charter schools are improving educational quality, the systems for financing and governing these schools in the District need improvement, as does the provision of information necessary to facilitate effective competition through parent choice. As this report demonstrates, both charter and traditional public schools will be assisted by the strengthening of these systems. It is in this spirit that DC Appleseed offers the recommendations in this report – to foster improvement of the public education system for all public school children in the District of Columbia.

## **Appendix A: Report Methodology**

### **Introduction**

In 1998 and 1999, the DC Appleseed Center examined the governance structure of the District of Columbia Public Schools. Over the course of that study, it became evident that charter schools were becoming an increasingly large component of the public education system. DC Appleseed chose not to include charter school governance in its prior study because the oversight and financing systems were quite different from the governance of traditional schools.

Instead, DC Appleseed chose to examine charter school governance in a separate study, and in May 1999, assembled a 14-member Project Team to evaluate the law governing charter schools, as well as the procedures used to approve, monitor, and fund charter schools. The members of the Project Team, whose names are listed on the second page of this report, (1) conducted the research outlined in this appendix, (2) developed findings and recommendations during 23 meetings, and (3) prepared this report. This report was unanimously approved by the DC Appleseed Center Board of Directors.

The Project Team conducted research using two methods: (1) interviews with charter founders and operators, government officials, business leaders, and nonprofit organization representatives with knowledge about charter schools, and (2) legal research and document review. Each research method is described below.

#### **A. Interviews**

In February 2000, members of the Project Team held meetings with representatives of 11 D.C. charter schools. Two group discussions were held, one with representatives of five schools overseen by the Board of Education and a second with representatives of six schools overseen by the Public Charter School Board. Representatives of all 27 charter schools operating at the time were invited to attend these meetings, and the meetings were scheduled to accommodate the greatest number of operators based on a survey of their availability. DC Appleseed agreed to keep the identities of the representatives confidential to encourage forthright discussions.

From February 2000 through February 2001, members of the Project Team conducted interviews with individuals from approximately 15 non-profit, business, and government organizations who have had professional experience with charter schools in the District and nationally. Among those interviewed were representatives of the D.C. Board of Education, the Public Charter School Board, the Office of the Chief Financial Officer (the “CFO”), the Public Charter School Resource Center, Friends of Choice in Urban Schools, and several charter schools in the District. In addition, the Project Team conducted interviews with government officials who have responsibilities related to charter schools in several other states, including California, Michigan, and Wisconsin, and with representatives of seven local commercial financial institutions that provide financing to charter schools in the District.

## **B. Legal Research and Document Review**

Members of the Project Team reviewed the laws and regulations that apply to charter school governance and financing in the District, and performed considerable legal analysis regarding the charter school legislation enacted by Congress and the D.C. Council. Other legal research performed by the Project Team included analysis of provisions in charter school legislation in other states, public reporting provisions required by District law, and detailed analysis of the charter school financing mechanisms.

The Project Team collected and reviewed a number of public documents made available by the two chartering authorities and the CFO, including: every application to create a charter school that was approved by either chartering authority; numerous charter agreements, accountability plans, annual reports, monitoring reports, performance reviews, memoranda of understanding, and sanction letters issued or approved by chartering authorities; documents that accompanied payments to the charter schools; and approved budget documents for the two charter school authorities. The team also collected and reviewed reports about charter schools in the press and on the Internet.

In addition, the Project Team reviewed statutes and contacted officials regarding charter schools in other jurisdictions. Specifically, the Project Team collected information regarding: the number and types of entities authorized to oversee charter schools; procedures for approving charter school conversions; the provision of school performance information; and the budgets and staffing resources of chartering authorities.