

# Assessing State Education Laws and Their Impact on Charter Schools

## Why Charter School Laws Matter

By Jeanne Allen, Founder and CEO, Center for Education Reform (CER)

Charter laws matter. Having an environment of great charter schools first requires that a law be strong. And so the most important work that can be done by institutional investors to understand the risks and viability of charter schools is to understand the impact of state policy.

The good news is that the Center for Education Reform (CER) has researched this issue for decades, annually producing a ranking of every state's charter law. The in-depth analysis not only demonstrates that strong laws make for strong charter schools, but that weak laws, which constrain the charter sector and rely heavily on traditional education entities to manage it, jeopardize the existence of healthy, thriving charter schools.

Archbishop Fulton Sheen once answered a Catholic skeptic about the difference between Catholicism and other beliefs. Sheen said, "you worship God in your way, and we worship God in His!" I have to admire Sheen — whether you're prone to his philosophy or not — for his commitment to Catholic orthodoxy. I might offer the same response to those who ask what the difference is between CER's ranking and all the other groups that issue policy tomes and charter school analyses. Our response? We evaluate charter laws based on what they are supposed to do, and the rest evaluate charter laws based on what they want them to do.

Sadly, there really is a god complex in the charter sector when it comes to what works to ensure that charters serve their purpose creating diverse, independent and plentiful public school opportunities outside of the traditional sector, which foster a high degree of school-based autonomy, innovation and accountability. The reason for and cause of charter schools is unassailable and well-documented. According to its primary originator and Education Evolving Founder Ted Kolderie:

*"Americans now face a practical question: how can we use the powerful idea of choice to improve our schools while retaining the essential purposes of public education? The answer is simple, yet radical: allowing enterprising people — including teachers and other educators — to start innovative public schools. In order to create new public schools, and ultimately a new system of public education, the states would simply withdraw the local districts'*

*exclusive franchise to own and operate public schools. For choice to work — to help the student and to stimulate the district to change — the state will have to provide both choice and choices: allowing families to choose the schools their children attend and allowing someone other than the local district to provide schools under contract to a public agency.*

*"The chartered sector is essential for the improvement of public education, functioning as the seedbed for new models of school, and new approaches to teaching and learning, that will gradually migrate over to the district sector. Successful systems combine 'improvement' and 'innovation,' working to make the existing model better while opening to the introduction of new and different models."*

And despite great success in following that prescription for almost 15 years, the result of which was the enactment and success of the majority of charter laws, some charter-focused organizations have developed their own methods for assessing charter school laws and make recommendations to policymakers based on their own assessment. The main difference between CER's national analysis and those of other national groups is that our research evaluates the quality of each law, how the law's implementation impacts charter schools and the law's original intent, not how we think it should work with varying ideologies about whether and how government should play a role — the same flawed government that failed in traditional, centralized education over the years.

These differences matter now more than ever. After a period of slow but steady growth in the last decade, the expanding charter school movement came to a near halt in 2016. This decline is occurring despite an increase in educational achievement, data on charters' success, efficiency studies and high demand. In some communities, tens of thousands of students languish on charter school waitlists. As policy prevents these students from accessing schools that best meet their needs, achievement gaps persist and scores on the National Assessment of Educational Progress (NAEP), or the Nation's Report Card as it is commonly known, along with international exam scores have declined.

Many states and communities with relatively strong charter policies continue to enjoy some charter growth, but too many of them struggle to meet demand for better schools because of limitations in law, including charter school caps and inequitable funding. After a law is initially enacted, it is next to impossible to make substantive changes, and all too often advocates accept devil's bargains with state officials thinking that by just getting a law through the sausage-making process they can come back to improve it later. The data shows that rarely happens, and when it does, the changes are minuscule.

Just look at Kentucky. In 2017, Kentucky became the 44th state to enact a law intended to permit charter schools, but it actually sets conditions that ensure no charters will start. The law gives power to districts, the very institutions which fight charters. While the mayors of Louisville and Lexington were also given authority to open charters, their authority is also limited by needless rules imposed by the state board of education. As a result, CER's national ranking gave a generous 'D' to this law.

At the time of the bill's passage, the governor wasn't interested in settling for last place, but since he was convinced by his education secretary and legislative leadership that the bill would get strengthened in the subsequent session. We warned that we'd seen this movie before, but still the bill was passed as-is and never strengthened. The state board even moved to adopt regulations that further restrict the conditions under which charters operate. (There was never any chance of charters opening in the Bluegrass State — the legislature didn't even fund charters, making it one of the three worst laws in the land, or a law in name only.)

This is called "regulatory reload," and policymakers are increasingly unable to tell the difference between policies that advance the cause of effective charter schools and those that strangle them.

Innovations in structure, approach and delivery are essential elements for schools to work and thrive. When laws or policies prevent innovation from occurring, they undermine the very purpose of charter schools. When lawmakers underfund or fail to fund charters, schools have to shift operational funds to facilities, taking out

precious resources from educators and student needs. Underfunding also sends a signal that charters are a lesser alternative to traditional public schools.

That's why investors and banks like BB&T are critical to not only the survival of great charter schools but as validators of the importance of private sector involvement to boost public sector needs. It's important, however, to be able to carefully navigate the increasingly complex charter environment, which CER's annual National Charter School Law Rankings and Scorecard is designed to do. It not only examines how regulations and other aspects of poorly conceived charter school policies impact charter operators, students and families day-to-day, but provides models for all those involved, especially legislators, that can help ensure states don't set charters schools up to fail before they start.

Read the rankings, case studies and model legislation with an eye to understanding how well-intentioned policies can go awry, and how important concepts like accountability can often be distorted into pleasant sounding but pernicious oversight that has nothing to do with strong outcomes and good business practices. Recognizing the features of a strong charter school law is important, but equally important is understanding why it's never acceptable to enact or work to preserve a weak charter school law. The stagnating growth of the charter sector over the past several years is a threat to the future of American education and to the kids that it must serve.



---

## About the Author

Jeanne Allen is the Founder and CEO of the Center for Education Reform (CER), the nation's leading authority on advancing education opportunity and innovation. She hosts a weekly podcast, "Reality Check," and her musings have appeared frequently in newspapers nationwide. Jeanne began her career on Capitol Hill, served at the U.S. Department of Education and has received honors including EdTech Digest's 2018 "Top 100 Influencers of EdTech." Jeanne has a bachelor's degree in political science from Dickinson College and a master's degree in Ed Entrepreneurship from UPenn.



[BBTCAPITALMARKETS.COM/EDUCATION](http://BBTCAPITALMARKETS.COM/EDUCATION)

Information and opinions presented in this report have been obtained or derived from sources we believe to be reliable and accurate, but we do not guarantee its accuracy or completeness. The information, tools and material presented in this report are provided to you for informational purposes only and are not to be used or considered as an offer or the solicitation of an offer to buy or sell any security or to participate in any trading strategy.

This report does not provide individually tailored investment advice. Investors must make their own investment decisions based on their specific investment objectives and financial position, using such independent advisors as they believe necessary. Past performance should not be taken as an indication or guarantee of future performance, and no representation or warranty, express or implied, is made regarding future performance. BB&T Capital Markets is a division of BB&T Securities, LLC, member FINRA/SIPC. BB&T Securities, LLC is a wholly owned nonbank subsidiary of BB&T Corporation. Securities and insurance products or annuities sold, offered or recommended are not a deposit, not FDIC insured, not guaranteed by a bank, not insured by any federal government agency and may go down in value.

© 2019, Branch Banking and Trust Company. All rights reserved.

Connect with us on [LinkedIn](#)