

9-8-2010

A Case Study of the Significant Events and Legal Parameters Surrounding Charter School Movement at the State and Federal Level

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A Case Study of the Significant Events and Legal Parameters Surrounding
Charter School Movement at the State and Federal Level

by

Monica L. Ilse

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Education
Department of Educational Leadership and Policy Studies
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Date of Approval:
September 8, 2010

Keywords: Charter school, reform, school board, law, school choice, legislation,
education, school board, vouchers

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DEDICATION

This is for my husband, Chris.

He inspires and supports me with all of my endeavors.

ACKNOWLEDGEMENTS

I would like to acknowledge and thank the following individuals on my committee: Dr. Permuth, Dr. Shapiro, Dr. Johnston, and Dr. Lang. The completion of this process occurred only through their belief, direction and continual support.

In addition, a special thanks to my family and friends for their encouraging words and understanding the time commitment of this process.

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ABSTRACT

All states have different perspectives and various statutes within broader constitutional law. Perception of public dissatisfaction with public schools has led to choice schooling options for parents. One of the fastest growing choice options in schooling is charter schools; schools privately run by organizations through public funds. This study analyzes the governance of charter schools and how charters operate under legal guidelines and Florida statutes, with significant legislative events cited. This study answers the following questions as they relate to evolution and legal parameters surrounding the charter movement using exploratory case study method:

- 1) What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?
 - 2) What are legal parameters regarding the charter school movement nationally? (e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)
- and
- 3) What present legal structures and parameters affect Florida's charter school movement?

The significance of this study lies in the need to understand significant legal parameters surrounding the current charter school movement and how policies and law related to charter schools impact stakeholders. All of the findings together signify the important role legislators and the judicial powers execute in the ongoing realization of the charter school movement. The legal support of the charter school movement fosters an opportunity for the development of charter schools. With charter school implementation, several issues arise in the process of the charter school practice. The study shows the following themes impacting the charter school movement: regulations, accountability, Special Education, facility concerns, innovations, and employee and legislative issues. Charter schools provide a niche for certain parents desiring a different approach from the local public school. Charter schools provide a niche to parents seeking alternatives to traditional public school education. Charter schools will continue to exist and cater to parents desiring school choice options.

CHAPTER ONE

INTRODUCTION AND BACKGROUND

Status of Public Schools in the United States

Over 13 million students attend public schools, counting on teacher and administrator efforts to prepare them for the 22nd century (Breaking Ranks II, 2004). In 1994, the Library of Congress provided information showing 90 to 94 million of the 191 million adults in the United States lacked functional literacy skills (Bryant, 1994). These individuals showed limited understanding of English, inability to do simple math problems, make inferences of text, read maps or locate specific information in text. Greene and Forester's research in 2003 and Barton's in 2005 showed only 70% of students graduate from high school, with only 30% attending college; research of minorities graduating showed less than 50% graduating from high school. Other data confirmed only 1 of every 3 Hispanics graduated from high school, with only 10% of the graduates attending a college program after graduation (Hanna, 2003; Ferguson & Mehta, 2004). Data review from 2003 shows little change for dropout rate and literacy rate in the United States since 1992 (National Center for Education Statistics, 2006).

Dropout students become challenged with financial, housing and healthcare issues (Rothstein, 2006; Barton, 2005). As the public school system struggles with student achievement, focus on reform effort to improve the K-12 public school system has heightened. In 1994 Congress reauthorized the Elementary and Secondary Education Act

requiring schools to adopt some accountability system to deal with the gaps in achievements across race and socio-economic background. In 2001 reviewing the student achievement data, Congress passed the No Child Left Behind Act (NCLB, 2001) to help raise achievement scores for all subgroups (Cawthon, 2003). The goal of NCLB aims for all students to be proficient by 2014.

In *Brown v. Board of Education* (347 U.S. 483, 493) the courts recognized the role of public education as "... perhaps the most important function of state and local governments". The constitution does not address education within its parameters; indeed, the responsibility of education falls to the states. One of the primary elements of public school involves the limited options of schooling and the requirement of all students to attend due to compulsory attendance laws.

The focus on achievement and graduation rates becomes crucial in preparing our youth for the global marketplace (Barton 2005; Friedman, 2006). An undeniable link between education and the skill level of the workforce, and the need to prepare future workers for global competition encouraged a scrutiny of the educational sector (Aldridge & Goldman, 2002). The student achievement data and dropout rates provide the rationale for needed change in the public school arena (Nathan, 1999).

On the other perspective, Bracey concludes statistics given about the misguided education system prove to be untrue (1997; 2004). In fact, Bracey (1997) states "The proportion of 17 year olds who complete high school rose from 10% in 1910 to about 75% in 1965 and has remained similarly high levels since. In 1989 about 83% of all

students received a diploma 12 years after beginning school.” (p.7). Bracey concludes that American schools have never done better, and are competitive with other countries.

Bracey shows that the number of students taking the SAT has increased, with diversity unheard of in 1941 (1997). In addition, the average SAT score has risen. He also shows that in 1987 26% of individuals completed a college education, this was higher than other nations; Canada (25%), Japan (21%), France (14%) and Great Britain (14%) (1997). In 2008, 27.4% of the United States population had a bachelor’s degree or higher (United States Census, 2008).

Because of the perception of failing schools, many reform efforts were undertaken after the publication of *A Nation at Risk* (Berends, Springer & Walberg, 2008). One such reform revolved around the idea of market competition for public schools through choice options. Reform efforts allow legislators and those in authorities to develop policies and laws that impact how students’ learning structures exists, along with funding for programs. This paper examines the legal structure supporting the reform efforts of choice options and focus on the charter school movement.

Choice Options: Homeschooling, Vouchers, and Charter School Movement

The perception of dissatisfaction with public school achievement has led to choice options for parents (Finn, Manno and Vanourek, 2000). The idea of school choice redefines the monopoly status of public schools. School choice creates a market-based approach to public schools. It allows competitors to contend for student funding based on a choice market. It also allows parents to decide the location and type of school for student enrollment. School choice exists in such programs as homeschooling, vouchers,

charter schools, magnet programs and private schools. The big debate born from the school choice reform is the use of public monies to fund private or church based school entities. Ellis and Fouts (1994) cites “Netherlands, Hong Kong, Russia, England, Ukraine, Belgium and France” as examples of countries with governments providing funding to schools regardless of public, private or church affiliated status.

Support for school choice begins with the current society’s need for options. Two United State Supreme Court cases assist the supporters of school choice: *Mueller vs. Allen* (1983) and *Cochran vs. Louisiana State Board of Education* (1930) (Ellis & Fouts, 1994). In *Muller*, the Supreme Court upheld the tax deduction for “tuition, textbooks and transportation” (p. 130). This allowed state funds to support private schools. In *Cochran*, the United States Supreme Court upheld the use of state funds in private, church related schools based on the benefit to the child doctrine.

Berlowitz and Jackson (1994) highlight concerns of equity and effectiveness of school choice in their research. Specifically, students can choose a magnet program in the public school system based on key abilities of those students. The students that enroll in the school via admission to the magnet program are high achieving because they are receiving exceptional instruction through their magnet classes. Conversely, other students enrolled in the same school attend regular classes and do not receive the special services of the magnet program. In addition, the research indicates that while magnet programs do show an increase in cost, no documentation shows they have an increase in achievement for all students (Berlowitz & Jackson, 1994). Currently, the two most hotly debated school choice programs are vouchers and charter schools.

Laws Affecting Schools

Checks and balances provide the foundation of the separation of power in the United States (Segal, Spaeth & Benesh, 2005). The three areas of balance include executive, legislation and judicial power. Law derives from three areas: judicial, administrative, and legislative (Kunz et al., 2004; Shapo et al, 2003). Judicial comprises of the hierarchical court system. Each geographical area in the United States recognizes a state and federal court (Shapo, et al, 2003). Each court system has a trial court and an appellant court. Most areas contain two courts of appeal. After an individual has appealed to state courts or lower courts, attorneys may refer the case to federal courts (Kunz et al, 2004). Courts make decisions based on reviewing for errors of previous courts. Judges provide decisions based on the writings of the law. The courts do not have the ability to make a decision based on personal beliefs or feelings about the case (Shapo et al, 2003; Kunz et al, 2004). Courts use cases from other hearings of higher courts as precedents in deciding a case. In lateral courts, decisions provide persuasive information in making a final decision on a case. Higher court decisions are binding. Legislation regulates enacted laws and statutes. The overarching law of the land is the constitution, followed by court decisions, and statutes. Technical papers providing explanation or policy pieces on legislative items develop into administrative law (Shapo et al., 2003). The administrative law often provides support for decisions on legislative issues (Long 2003; Shapo et al., 2003; Kunz et al., 2004). This study provides details on each area of the law, as well as, at the various levels of the courts. Primary and

secondary searches review the legislative, judicial and administrative aspects of charter school law.

Five types of law generally overlap affecting public schools; constitutional law, statutory law, case law, administrative law and contract law (Alexander & Alexander, 2005; Permuth, 1999). A specific case may fall under more than one area.

Constitutional law includes all of the amendments protecting all United States citizens. The federal constitution is the highest form of law and supersedes all laws. All governmental processes operate under the constitution (Alexander & Alexander, 2005). Each state has a state constitution; public school governance and funding fall under each state constitution.

Statutory law deals with federal and state statutes (Alexander & Alexander, 2005; Permuth, 1999). An example of a federal statute is the Federal Education Rights and Privacy Act (FERPA). This statute affects all states. A state statute such as Florida's Retirement System statute provides legal rules which apply to the state of Florida regarding its retirement system. Each state has specific statutes that apply to its boundaries.

Administrative law "embraces all the law that controls, or is intended to control, the Administrative Operations of the government or its agencies". (Permuth, 1999). The Florida Department of Education's technical assistance papers on procedures provide an example of administrative law.

The fourth type of law is court, common law or case law. Based on elements of history and culture, common law is established (Alexander & Alexander, 2005; Permuth,

1999). Common law does not need to be written, it is understood based on general customs or natural reason. Courts decide what defines common law. Case law and court law reflect cases that have been decided upon by judges with established decisions. Case law only applies to the area of the decision; however, case law is often used to reference decisions within regions.

The fifth type of law is contract law (Permuth, 1999). Five elements configure a contract. Specific agreements and terms need to be listed within the contract. The two or more parties of the contract must be in agreement of each detail. All parties need to be legally competent. The subject matter of the contract must be legal; if anything illegal, then contract is void. The agreement needs to be signed. Verbal contracts exist, however, there would need to be several items mutually agreed upon with a neutral witness.

Vouchers

The contemporary concept of vouchers appears to come originally from Milton Friedman, a Nobel Prize-winning economist, over twenty-five years ago (DeShano, 1999; Berube & Berube, 2007). His theory was to have an “open market economy” in education by providing parents and students with a choice of which school they would like to attend. His voucher plan allowed parents to use public education funds at any school of their choice, either public or private, based on the student’s needs and desires. Wisconsin, and since 1999, the state of Florida all support public voucher programs. There are fourteen privately funded voucher programs, and over thirty-three public

voucher programs in varying developmental stages across the country. An evaluation of the Cleveland voucher program for 1983 through 2003 found no difference between voucher students and public education students in terms of achievement (Berube & Berube, 2007).

At its inception in 1990, the Milwaukee voucher program began to help the African American students that were bused into city schools and not performing at the needed achievement levels (Peterson, 2003). Families in Milwaukee received vouchers based on their eligibility for food stamps. Up to 1% of the school population could use vouchers, which provided \$2500 dollars for students to attend a secular, private school. In 1995, the voucher amounts increased to \$5000, and the program opened its doors to religious schools. By 2000, roughly 10,000 students and over 100 schools participated in the voucher program.

Metcalf and Tait outline several arguments in favor of voucher programs (1999). According to Metcalf and Tait, vouchers provide parents with a greater choice and a voice in their children's education. In addition, vouchers eliminate the inequalities of education, allowing poor families to have the same options as affluent families. Vouchers are proposed to promote competition among all schools, theoretically forcing public schools to rise to a higher level, and forcing all schools to be cost efficient in providing services. Since not obtaining measurably high standards would result in the loss of school resources, vouchers essentially eliminate the current monopoly status of the public education system, while they force all schools to operate efficiently and productively.

Other proponents of vouchers support these claims and readdress the need for a transformation in our current schools (Coulson, 1998; Lieberman, 2007). Generally, minorities and low-income families receive the vouchers, thereby providing options to students with dire need. In response to Florida's Governor Jeb Bush's A-plus Reform Plan, which provides vouchers to schools deemed as failing, John Kirtley attacks opponents of the voucher plan (1999). He points out that if school systems are failing students, then the system needs to change. Furthermore, according to Kirtley, failing students' parents have a right to make choices that may bring success to their children.

Despite the praise, opponents of voucher plans are easy to find. Congressman Jim Davis responded to vouchers by saying that they are an injustice to the public education system (Kirtley, 1999, p. 2). His fear is that public funds will not be available to assist our current education system. In addition to Davis's comments, the National Education Association has produced a profusion of literature on the misperceptions of vouchers, (NEA, 1999). The organization points out that in existing voucher programs, school districts are losing millions of dollars that would have purchased student textbooks, computers, and supplies. Other opponents observe that private schools do not rate higher than public schools in achievement, factoring out socio-economic class, and often private schools have a selection process for admission that demeans the voucher programs. Often private schools do not accommodate special needs students, nor do they have breakfast or lunch funds to help those who qualify for such assistance programs. The choice option of vouchers is also questionable because the school system will not provide

transportation for the students to the choice school. Ultimately, this leads to only the affluent student benefiting from the voucher programs.

Elam (1999) in discussion of Florida's voucher program indicates that no accountability exists in showing the academic progress of voucher students. Florida's voucher plan includes grading all non-voucher schools on the A to F scale. Primarily, achievement test scores determine a school's grade. If a school scores an F grade two years in a row, then all students attending the school have the option of receiving a voucher to attend any public school with a C or higher grade, or to attend a private school. Elam and others question the use of achievement test scores to determine the success of a school. Socio-economic status and intelligence, both factors that schools have no control over, substantially influence test results. In Elam's examination, he questions the logic of Governor Bush's A-Plus Plan. The status of vouchers became a hot issue in Florida when used in Governor's Bush's A+ Plan as Opportunity Scholarships for public school students when attending a failing school to attend private or religious schools (Richard, 2006). The issue ultimately arrived at the state supreme court where the plan was found unconstitutional in a decision of 5 to 2. In 2008, another attempt to support vouchers through an Amendment 9 vote made the election ballot. The amendment containing language that would remove the barriers to vouchers for private school was removed by the Florida Supreme Court (Ballotpedia, 2009).

In 1990, Milwaukee, Wisconsin initiated the first state program for vouchers, a relatively new trend in school reform (Peterson, 1999). Since that time, vouchers have sparked a huge legal debate based upon the Federal Constitution's First Amendment.

The First Amendment of the United States Constitution contains the Establishment Clause, which includes the statement: “Congress shall make no law respecting an establishment of religion.” There have always been constitutional issues with funds going to sectarian schools based on the Establishment Clause, but some past cases heard by the United States Supreme Court have allowed sectarian schools to receive funds (Elam, 1999). In *Muller v. Allen* (1983), tax deductions for certain educational expenses, whether at a parochial or sectarian school, were found to be constitutional. In *Agostini v. Felton* (1997), the Supreme Court found that providing Title I funds to sectarian schools was constitutional. This case determined that the funds benefited the child and not the school and therefore, they were not a violation of the Establishment Clause. The most significant decision on vouchers came with the case of *Zelman v. Simmons-Harris* (2002) in which the United States Supreme Court upheld the right of students to attend religious schools with vouchers. The Court found that the Cleveland voucher plan did not violate the Establishment Clause of the First Amendment.

National organizations that oppose voucher programs include the American Civil Liberties Union, teacher’s unions, NAACP and the People for the American Way (Your School and the Law, 1999). The Ohio State Supreme Court recently ruled against the current voucher program due to its funding method. To circumvent this ruling, Ohio’s legislature passed measures to reallocate the money to a separate fund in order to meet the court’s guidelines. In July of 1998, the Wisconsin Supreme Court ruled that the Milwaukee voucher program was constitutional and found that it did not violate the state or federal constitution. The Court ruled that Milwaukee’s voucher program, which is one

of the most limited in options, can continue to operate until a United States Supreme Court makes a decision that challenges the constitutionality of the current State Supreme Court decision (DeShano, 1999). In Vermont and Maine, both state Supreme Courts have ruled voucher programs to be unconstitutional based on the fact that voucher programs support religious education. In Vermont, the state constitution declared voucher programs unconstitutional. However, the court also found the federal interpretation to be unclear, and this unclear verdict of the constitutionality of vouchers is still in debate. Florida also ruled vouchers unconstitutional in the Florida Supreme Court case *Bush v. Holmes* (Bush v. Holmes, 2006). As the voucher dispute continues, each time a unique voucher program is developed, implemented, and legislatively approved, a lawsuit is brought against the program and its developers.

While voucher programs are developing rapidly, the percentage of students who actually use the voucher option is minimal. Available research is showing that students of low economic status are currently the biggest recipients of the voucher program.

Charter Schools

Disagreement among community members on educational goals and the governance of public schools led to the appearance of charter schools (Nappi, 1999; Berube & Berube, 2007).

There are over 3600 charter schools across the nation, with over 1 million students served through these choice option schools (Berends, Springer & Walberg, 2008; Berube & Berube, 2007; Lieberman, 2007). According to Nathan (1996), the development of

charter schools is a reaction to the perceived need for change within the public school system. To a large degree, many communities and much legislation have embraced the concept of charter schools. To date, research is inconclusive as to the degree of success of charter schools due to not enough data and conflicting information (Manno, Finn, Bierlein & Vanourek, 1997; Marshall & Johnson, 2004; Nelson, Rosenberg, & Van Meter, 2004; Berends, Springer & Walsberg, 2008). Bracey (1997) finds test scores mixed from his charter school research. He also finds that evaluation of charter schools lack the definition needed for sound research. In 1991 Minnesota passed the first law supporting charter schools with the concepts of “opportunity, choice and responsibility for results” as the founding principles guiding the movement (Nathan, 1999; Berube & Berube, 2007). Both Gore and Bush supported the charter school movement with goals of increasing charter schools with substantial funding (Finn, Manno, & Vanourek, 2000).

As viewed by both the public and politicians, change in education is a primary goal in order to keep the American economy in line with the global economy. A catalyst for this change starts with the school choice reform and the charter school concept presently in place. Hill, Lake and Celio (2002) identify four focus areas of the charter school movement: 1) Charter schools are laboratories serving to create successful strategies for teaching, 2) Charter schools pursue higher achievement, 3) Charter schools act as an alternative to public schools and 4) Parent choice is an important part of the schooling process.

Charter school reform provides an opportunity to utilize public school funding at a school organized and developed by an individual, a group of parents, an organization or

a private company (Nathan, 2005; Palmer et. al, 2006). The ideology of this reform effort provides an avenue for alternatives in schooling compared to the traditional public schools. One of the main stipulations for charter schools focuses on student performance and achievement (Nathan, 2005; Palmer et. al, 2006). Charter schools may require parental involvement at a higher level than public schools, with options of required activities for parents based on their students' enrolment with the charter school. The charter school process begins with an individual or group that creates a contract with the authorizers of charter schools to provide an education environment meeting the authorizer's requirements. Any individual or group may initiate a charter. Within the charter school development, the entities that develop charter school programs typically include 1) an individual or group of individuals 2) a not for profit organization or 3) an education management organization (Palmer et. al, 2006; Saltman, 2005). Each charter school differs based on the individual developing the charter program, or in cases of education management organization the charter school programs create opportunity of duplication throughout different areas, much like franchise restaurants (Saltman, 2005). Individuals may operate the charter as a profit or not for profit entity.

Edison Schools exemplify a well-known education management developer of charter schools. Edison opened in 1995 with goals of providing quality education services, to operate at a lower cost than public schools and provide more services than public schools (Saltman, 2005). In the case of Edison, the management company reviewed schools as a business and began to standardize testing and services provided within the charter school. Saltman (2005) outlines the rise and fall of the Edison schools

in his book, *“The Edison Schools”*. Saltman points to faculty complaints of overtime worked with no pay, longer school days for students with lower performance on exams, and a loss of revenue within the schools. Overall the performance of Edison schools demonstrates a private sector business unable to meet the demands of individual student needs. This study reviews legislation impacting charter schools, regardless of the type of charter.

Problem Statement

The legislation on any school reform impacts the public school system and its function. Understanding legal parameters at the federal and state level is an important dimension of school leadership. Alexander and Alexander (2005) describe laws affecting schools as “often difficult to accurately assess and summarize” (p.XXXVII). All states have different perspectives and various statutes within the broader constitutional law.

Choice options with public funding create concern due to monies leaving the public arena and going into a private enterprise or private organization. Charter schools called a public school based on legislature statutes, allow a private organization to act as a public school while exempted from certain statutory guidelines. This movement places governance of charter school to school districts, without authority. In addition, as legislation changes, the rules change in how to operate and report charter school information.

Purpose of the Study

This research reviews the significant legal parameters surrounding the charter school movement to understand the background in its development and current existence.

This study allows stakeholders to understand better the key issues related to the charter school movement and how the legal parameters impact both the charter schools, as well as, the public schools. Understanding charter school's legislative issues at the federal and state level allows a framework for other reform efforts to be understood in relation to legal guidelines. There are five types of law generally overlapping affecting public schools; constitutional law, statutory law, case law, administrative law and contract law (Alexander & Alexander, 2005; Permuth, 1999).

This study explores the ideas, perceptions, legal standings, and events leading to the implementation of charter schools in the United States and Florida to understand the impact of different levels of law within a reform or policy. This study compares the federal rulings, as well as, state rulings in all five areas of law in regard to charter school reform. The analysis of charter school law provides a framework to understand the different levels of law impacting a school reform effort.

Research Questions

The researcher uses the evolution and legal parameters of the charter school movement in answering these questions.

The major research questions that guide this study are:

- 1) What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?

- 2) What are legal parameters regarding the charter school movement nationally?
(e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)
- and
- 3) What present legal structures and parameters affect Florida's charter school movement?

Delimitations and Limitations

This study is specific to the state of Florida, with a comparison to the federal law. At the same time case law or statutes may be used from other states in the study; case law does not apply outside of the area where the case was determined. This study allows an understanding of legal parameters at the federal and local level. Personal bias is controlled through the use of multiple data sources.

Assumptions

The researcher assumes all participants or documents provide honest information about the charter school movement process and perception in order to properly document the current status and development within the historic and legal parameters. Validity of the sources has been confirmed throughout the research.

Method

Data is obtained through three main sources as part of a qualitative exploratory case study. The first data collection involves reviewing legal standings, as well as,

artifacts related the charter school movement in Florida, as well as, the national level; these items include primary sources. The second data collection uses secondary sources regarding the primary sources. The third data collection includes focused interviews with key stakeholders regarding legislative action and charter schools. Patterns and themes are induced through the analysis of each source of information. The researcher provides a comparison of the federal and state legal guidelines overseeing the charter school movement. This research provides a framework of federal and state laws affecting reform efforts.

Significance of Study

This study allows an understanding of the evolution of charter schools and legal parameters involved in the charter school movement. It provides an evolution of the development of charter law related to the United States and the state of Florida. It brings attention to the current impact of charter schools. The impact of legal standings is evident through the analysis of state and federal laws pertaining to charter schools. This research may be used to understand laws affecting other reform efforts.

Definitions

The terms listed provide definitions of common vocabulary used in this research study:

Accountability – For charter schools accountability is based on market perception; states vary on performance outcomes required, and specific charter designed on school indicate how performance will be measured (Bukley & Fisler, 2002)

Amendment – A change made to a legislative action (Garner, 2006)

Appeal – Request to have case considered by a higher court (Alexander & Alexander, 2008)

Autonomy – References charter schools flexibility over district regulated items reported or required by the state (Bukley & Fisler, 2002)

Case Law – cases where decisions have been made by the court system in a case, researchers cite case that have gone to appellate court, for decision to be based on two or more litigations, case law applies to the area the court resides in, however, case law is often used to aid in policy decisions (Permeth & Mawdsley, 2006)

Charter School – School designed by stakeholders to meet the needs of the community, charter document between charter and authorizer on expectations of school; school funded with public funds to promote market competition (Palmer, et. al, 2006)

Choice – Choice options in schooling reference education options outside of traditional public schooling, examples include home schooling, private schooling, magnet programs, voucher programs, virtual schools, charter schools and alternative schools (Nathan, 1996)

Docket – The list of cases scheduled in a court; has a file number (Garner, 2006)

General Welfare Clause – This clause is in the United States Constitution and allows Congress to tax and take action on any area that is a general welfare for the country (Garner, 2006)

Governance – the overseeing body that regulates an organization

Innovations – One of the components idealized with the charter school concept; innovated teaching references newer and quality teaching methods to reach students; out of box thinking to capture student attention and for better learning (Palmer et. al, 2006)

Judgment – The official decision made in a court about a case (Garner, 2006)

Legislate – To propose or pass laws (Garner, 2006)

Statutes – Statutes may be federal or state; these are the laws passed through legislation; federal laws apply to all states within the United States; each state may have different laws which fall under the guide of the state constitution (Permuth & Mawdsley, 2006)

Supreme Court – The highest court in the United States (Garner, 2006)

Voucher – One of the options of choice this allows funds from a public school to be transferred to private schools or programs in exchange for tuition (Nathan, 2005)

Summary

The charter school movement is one of the fastest growing educational reforms in the United States. The present relationship between districts and school boards appears to be tense according to media reports (Solochek, 2005). A varying amount of reform efforts have federal and local laws implicating structuring and expectation of implementation. Often educators find law information complex and confusing (Lewis, 2006). This study reviews the governance of charter schools and how charters operate under legal guidelines and the statutes in the United States and the state of Florida. This study examines the following questions as they relate to the charter school system using an exploratory case study method:

- 1) What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?

- 2) What legal parameters regarding the charter school movement nationally? (e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)
- and
- 3) What present legal structures and parameters affect Florida's charter school movement?

Organization of the Study

The layout of this research is divided into five chapters focusing on the legal framework and evolution of the charter school movement. This study allows a better understanding of federal and state laws overseeing charter school reform. Chapter Two reviews the philosophy and components of the charter school movement, with a review of the five types of law. Chapter Three provides a detailed outline of the research design and method used. Chapter Four discusses the findings and results obtained from the research study. Chapter Five reiterates the key findings of the design study and conclusions, along with implications of the findings with recommendations for future research.

CHAPTER TWO

REVIEW OF THE LITERATURE

This chapter provides a background on the philosophy of charter school, and the desired practices within charter schools. It covers points of differences and similarities of charter schools with traditional public schools. A focus area covers the state of Florida reviewing the statutes governing the charter schools in these states. Current research on charter schools allows a picture of practices and performances at charter schools.

Charter School Philosophy and Components

Nathan (1996) outlines nine primary strategies for a charter school. The first strategy establishes that parents, community members, and teachers with the specific goal of meeting the needs of a diverse student population need to design charter schools. This strategy proves unique and prevalent in allowing development of a unique school to meet the needs of the students and other stakeholders. Second, charter schools must show improved student achievement to maintain charter status. Third, the state needs to exempt charter schools from the rules and regulations of the public school system. Fourth, a private or public organization can operate a charter school. Fifth, in order for the school to exist, it must have a recognizable sponsor. Sixth, the charter school movement should provide the people of the community with a choice for the type of school they would like to see in their community. Seventh, the state must view charter schools as legal entities. Eighth, charter schools have to receive funding for the students enrolled; this funding comes from monies that would have gone to the public schools if

the charter school were not in existence. Nathan's final strategy establishes that a charter school must allow teachers to use alternative assessment methods with the students.

Hassel (1999) adds to Nathan's list by asserting that the charter school is public and cannot violate the state and church establishment clause of a public school. In addition, the charter will lose funding if achievement is not obtained.

Five components of a charter school designed by the originating theorists, Budde (1988) and Shanker (1988) recommend: 1) charter school autonomy and flexibility, 2) more accountability 3) competition with public schools, 4) more innovation and 5) higher success as defined by all stakeholders; involves the community specifically (Bulkley and Fisler, 2002). Proponents claim that charter schools provide an option for the community to break away from the traditional public school with the aim for increased performance. The controversy of charter schools includes autonomy, accountability, and funding.

The very nature of charter schools gives them an autonomous level of responsibility on a variety of issues. Charter schools are "freed from the traditional bureaucracy and regulations that divert a school's energy and resources toward compliance rather than excellence" (Office of Educational Research and Improvement [OWRI], 1998; Lieberman, 2007). Where red tape binds public schools to certain practices, charter schools can focus their efforts on highest student achievement (OWRI, 1999). As true as this is, accountability issues present difficulties when focusing on the issues of curriculum and instruction. The latitude charter schools have in relation to mandated "state and local laws, regulations, and provisions" is a prime area of concern because this autonomy has a direct effect on curriculum and instruction (OWRI, 1999).

Charter schools are exempt from meeting some of the laws prescribed by public school legislation. The National Education Association states that those charter laws that enable uninformed companies and individuals to create and open a charter school can damage the "integrity of public education"(OWRI, 1998). Hassel (1999) suggests that five characteristics of charter school laws determine the success of the charter school system. First, the school board should be the only entity permitted to authorize charter schools. Second, the laws developed should allow a variety of individuals "to propose charter schools". Third, the laws must give the charter school autonomy when dealing with legislation and fiscal responsibility. Fourth, the charter school should abide by the current public school law on health, safety and welfare. Finally, the legislation should permit the opening of a comprehensive number of charter schools each year.

Based upon the contract agreement between the authorizer and the charter school, charter schools must renew every three to five years. To continue their contract, they must meet requirements of renewability through testing and audits (Education Commission of the States and National Conference of State Legislatures [ECSNCSL], 1998; Berends, Springer & Walberg, 2008). At the renewal period, authorizers review the charter school data and, based on the original agreement, they measure the school's success through the achievement of the students. However, the measurement of a charter school's success varies greatly from that of the public educational system due to the charter school's ability to operate outside the parameters of the public school guidelines. Still, a charter school can lose its funding and status for failure to meet outcome goals

(OWRI, 1998). Accountability has become a growing debate in comparing charter schools to public schools.

Sarason points out that the unique function of the charter school encourages it to focus on the end product rather than state requirements and regulations (1998). This ability allows charter schools to design curriculum that does not conform to state mandates. Curriculum may focus on specialized areas and stray from typical public classroom objectives. Generally, the curriculum of charter schools focuses on the school's philosophy and goals (Manno, Finn, Bierlei & Vanourek, 1997; Berube & Berube, 2007). Although the general statements provide a basis for the curriculum, usually the result is a lack of benchmarks and specific objectives. The curriculum, therefore, does not develop a scope and sequence of activities and leaves teachers at a loss as to the curriculum guidelines. Sarason (1998) points out that it takes time to develop a concise curriculum outline, and charter schools do not mandate curriculum, nor do they have the time and resources to develop a curriculum from the ground level. In general, a variety of professions and community input develop the school's curriculum. This process is one of the unique qualities of charter schools. Nevertheless, it can result in a loss of educational state standards, which is a negative trait when comparing charter schools to public schools (Sarason, 1998).

In order to remedy the issues with the curriculum in charter schools, experts suggest that resources be given and used in developing the curriculum. Research shows that charter schools have a well-developed curriculum when they use an established school curriculum or model in the developmental stage (Manno, et al., 1997). This

prevents starting from ground level and provides a means to eliminate some of the time constraints in developing the school's curriculum.

The philosophy of charter schools and how they differ from magnet schools revolves around the development of the school based on community need, where as magnet schools have been developed by district personnel (Nathan, 1996; Hess & Finn, 2007). The element of the component that becomes critical with Education Management Organizations (EMO) is the opening of charter schools based on a "canned" approach and with a focus on profit (Bracey, 2004). Noted by Bracey (2004), 463 charter schools have opened under EMOs in twenty-eight states and the District of Columbia.

Charter School Status in Florida

Florida passed legislation approving charter schools in 1996 (Florida Senate website, 2005). The charter school legislation is part of the K-20 education code of the Florida Statutes. The Florida Code states (www.flsenate.gov/statues):

"1002.33 Charter schools.--

(1) AUTHORIZATION.--Charter schools shall be part of the state's program of public education. All charter schools in Florida are public schools. A charter school may be formed by creating a new school or converting an existing public school to charter status. A public school may not use the term charter in its name unless it has been approved under this section.

(2) GUIDING PRINCIPLES; PURPOSE.--

(a) Charter schools in Florida shall be guided by the following principles:

1. Meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system.
2. Promote enhanced academic success and financial efficiency by aligning responsibility with accountability.
3. Provide parents with sufficient information on whether their child is reading at grade level and whether the child gains at least a year's worth of learning for every year spent in the charter school.

(b) Charter schools shall fulfill the following purposes:

1. Improve student learning and academic achievement.
2. Increase learning opportunities for all students, with special emphasis on low-performing students and reading.
3. Encourage the use of innovative learning methods.
4. Require the measurement of learning outcomes.

(c) Charter schools may fulfill the following purposes:

1. Create innovative measurement tools.
2. Provide rigorous competition within the public school district to stimulate continual improvement in all public schools.
3. Expand the capacity of the public school system.
4. Mitigate the educational impact created by the development of new residential dwelling units.
5. Create new professional opportunities for teachers, including ownership of the learning program at the school site.” (March 28, 2009)

Former Governor Bush stated in 2006, “We are committed to school choice because equal opportunity starts with equal options for education and the competition of choice drive positive change in our public schools.” (p.246, Hess & Finn, 2007)

Nathan’s (1999) examination of charter school law shows it as a catalyst of systemic change in the way education occurs in school organizations. However, recent research contradicts Nathan’s view. Research by the Legislative Office of Education Oversight found charter schools performed no better than public school when comparisons were made based on demographics (2003). In addition, in reviewing charter school innovations, charter schools appear very similar to public schools (Bracey, 2004).

Presently in Florida, public state universities and local school boards may sponsor charter schools. The four universities approved for charter laboratory schools include Florida State University, Florida Atlantic University, Florida A & M and University of

Florida however, only three charter laboratory schools exist (Florida Atlantic University, 2009). Overall, the local school boards in Florida carry the additional burden of overseeing charter schools.

Local school boards act as the authorizers and governors of existing charter schools. However, any organization requesting charter status not approved by an authorizer may appeal to the state board of education. A frustration exists in the ability of the state to overrule decisions made by local boards for the good of the community in deciding whether to allow a charter school to operate.

Florida has the third largest population of charter schools, with 345 charter schools in existence and 83,000 students enrolled (Solochek, 2005). The state is unique in its management of charter schools with legislation that deems the local school boards as authorizers and the controlling entity overseeing the proper functioning of charter schools. Florida did not appropriate any additional funding, however, for the school systems to take-on this new function.

The state of Florida has scheduled an overview of its charter schools for 2005. In discussions with a high ranking local district official and a highly publicized charter advocate, an area of concern for both parties in the development of charter schools in Florida is the multiple roles the school board has with charter schools. In a recent newspaper article by Solochek (2005), he discusses the frustration school boards express with the appeal procedure of denied charter applicants. Specifically, Solochek reports that a county school board denied a contract to the Life Skills Center Charter due to its \$500,000 debt. Life Skills appealed the local board's decision, and the state overturned

the denial and approved the center for opening. As school boards review the practices of charter schools, the tension between the boards and charter schools grows.

Florida's Constitution states the following:

“The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure and high quality system of free public schools that allows students to obtain high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.” (Alexander & Alexander, 2005, p. 1028)

In Florida, legislation authorized charter school in 1996. Florida provides a special interest in the charter school movement due to its support of choice options for parents. Presently 356 charter schools exist in Florida serving over 98,000 students (Department of Education, 2008).

In addition to charter schools, vouchers initiated from the A+ Plan with support from former Governor Bush (Richard, 2008). The Florida Supreme Court found the voucher plan unconstitutional. In 2008, an attempt was made to initiate an Amendment for voters to allow vouchers for private schools; the Florida Supreme Court ruled against the amendment and prevented the addition of the amendment to the ballot. Recently, legislation passed requiring every district to provide a virtual school option for parents for grades 6th through 12th. Florida school charter agreements provide liberal contract

time for agreements of 5, 10 or 15 years compared to other states with a limit of 3 years (US Charter Schools, 2009). Florida also allows a large number of charter schools to operate within a district (US Charter Schools, 2009). Florida provides an interesting background to examine the legal parameters shaping the charter school reform due to its growing numbers of charter schools, the enrollment of students in charter schools and the legislative support since 1996.

Research on Charter Schools

Bulkley and Fisler (2002) examined 52 studies to provide an overview of the status of charter schools. The data used themes to analyze the research. The broad areas reviewed were autonomy, innovations, accountability, equity and success. Barriers to reviewing the information included different state policies for charter schools and advocacy groups conducting research for a specific, intended outcome, thus skewing the point of view of the data. The authors discuss balancing the data; however, they do not detail the actions of this task. The data suggest that the typical viewpoints of starting a charter school revolved around the ideology of creating a new type of school intended to serve a special population or to gain autonomy.

In the domain of autonomy, the research review found that a charter school's approach typically differs from district procedures in determining policies and dealing with problems (Bulkley & Fisler, 2002). Several charter schools request and receive waivers in school operational requirements, such as curriculum, certification and collective bargaining. A large piece of autonomy for charter schools deals with the

parental choice to have their student attend the school; however, concerns exist about the access of parents to information about the charter school.

In the topic of innovations, Bulkley and Fisler's (2002) review found three core focus areas: governance and management, school organization, and teaching and learning. The focus on innovation does not mean using unknown methods of instruction, but rather providing creative instruction and organization for student learning. In reviewing the research, the schools show a pronounced proclivity toward learning communities, multi-age grouping and variation of certification.

In issues of accountability, charter schools renew contracts typically every three to five years (Bulkley & Fisler, 2002). Authorizers use various components of the school to make a decision whether or not to continue the contract. In practice, few charter schools close due to concerns originating from an authorizer's review. Often authorizers provide assistance and probation periods for improvement. Charter school achievement, while measured, does not typically become the single factor for a school closing. Market-based accountability or satisfaction ratings from parents appear to be high in the charter school setting. In addition, parent involvement occurs at a higher level in charter schools than public schools. Generally, charter schools' closures are not a result of issues of accountability, but, rather, are due to authorizers' reviews or self-closure, often the consequence of fiscal or management problems.

Equity issues revolve around racial desegregation, percentage of special education students, and admissions and finance (Bulkley & Fisler, 2002). Overall, research shows racial distribution in charter schools is equivalent to that in public schools. Although

some charter schools do show more or fewer minorities than the area public school, in computation of averages, minority rates appear the same. Obviously, individual schools may battle this issue.

Typically, the enrollment of special education students tends to be less in charter schools than in public schools due to a lack of services based on financial constraints (Bulkley & Fisler, 2002; 2003). Larger districts have more funding and resources for special needs students. The question of open admission becomes an issue with both racial diversity and special education. To eliminate the appearance of discrimination, charter schools will select students for admission through a lottery system; however, some studies show that charter schools steer certain students away due to the special needs of the student or the school's desire to guarantee the admission of certain types of students.

The other piece of this issue deals with the lack of finances to support special education at charter schools. Charter schools lack the resources of districts and therefore, place themselves liable for insufficient programs for special educational services. In a site visit to a charter school, the selected parent participant expressed concern with how public schools marketed charter schools to parents. There were concerns that the public feeder schools were providing information to parents with students that have discipline problems or need special attention physically or academically, thus resulting in the charter school becoming a dumping ground for students that are not successful in the public school setting (Visit to local charter school, 2005).

Financially, charter schools have to seek out additional funding to maintain operation. This task goes against one of the original theories of charter schools, which cited that financial cost would be less than the current public school funding requirement. An imbalance occurs between charters placed in high socio-economic communities because they have better success at producing funding with connections to the community and involvement from parents than schools in lower socio-economic areas.

Student achievement reports comparing charter school scores to public school scores provide inconclusive results as to which provides better student achievement. An obvious factor in comparing the apples to oranges is the purported individual mission of each charter school. Each school provides different innovations, so overall data of charters naturally will vary. Minimally, research establishes that charter schools are capable of producing scores similar to district average scores (Bulkley & Fisler, 2002). A natural outcome of comparisons results in tension between public and charter schools.

Another outcome of reviews of schools shows that current practices in public districts do not significantly differ in comparison to practices prior to the charter school reform. Innovators of charter schools proclaimed massive reform leading to greater successes in public schools due to the competition of charter schools. Then again, consumer preference and district regulations differ in terms of defining success. A review of the definition of success for charter schools shows that, much like public schools, success is more than test scores.

Research by Ahmed and Borsa (1999) on the governance in the charter school setting provided four recommendations: 1) statutes should identify best practices in

teaching, learning and management, 2) charter and public schools should establish a collaborative mission, 3) schools should mutually address legal concerns, and 4) educators should become advocate boards for charter schools. The findings from the research did not show significant support from authorizers in the area of legal guidance, school management or overall assistance. It did show, however, that charter schools continued to follow the discipline procedures of current public schools, and that charter schools employed too few certified teachers. The information obtained came from questionnaires. The conclusions from Ahmed and Borsa put an enormous responsibility on public school boards for charter schools. Already, the actual establishment of charter schools places a burden of advocacy and governance on the authorizers. Placing this burden for charter schools on the public school boards leads to a demise of the original movement theory for charter schools and its intended focus on innovation and autonomy.

Anderson and Finnigan (2001; 2003) examined the theory and actual practices of authorizers. A purposeful sampling was done across the United States of authorizers using a structured telephone survey. Overall, the data found that authorizers focus on curriculum, finances, assessment and accountability in the application phase. These broad themes were often areas that had to be revised in the application phase by the charter initiator. Once a charter is established, the focus for authorizers moves to monitoring student achievement data, financial information and compliance with state and federal regulations. While charter schools develop measurable goals, there is little evidence that student data effect school closures and charter revocations.

Anderson and Finnigan (2003) identified problems of their research as due to the young age of the charter initiative and the difficulty in distinguishing charter issues from state and district issues. The research only discussed the broad themes, and no statistical information was included, except for percentages of responses from various subjects. Based on the research, the top four concerns of authorizers' administration of charters showed the areas of school management, leadership or governance, financial viability or management, and achievement scores. The focus of keeping viable open charters tends to be managed and reviewed based on the public school's principles of financial and management information.

Ascher, Echazarreta, Jacobowitz, McBride, Troy and Wamba (2003) conducted a three year qualitative study of charter schools with the following focus questions: "What oversight strategies have the three authorizing agencies employed over the past three and a half years in response to the accountability demands of charter school law and the realities of developing charter schools?" and "How has charter school performance-based accountability been put into practice in New York, and particularly New York City?" (p.8). The authors conducted theme-based, semi-structured interviews with charter school authorizer officers and charter school leaders. They also completed site-based reviews and reviews of charter documents and attendance at conferences. The research found that authorizers provide regulation oversight in the areas of performance-based accountability, contractual accountability and regulatory accountability. Charter school applications provide contracts with authorizers outlining required programs, practices and expenditures. Regulatory accountability oversees the rules protecting student rights and

safety, organizational structure and financial management. Performance-based accountability, one of the primary premises of charter schools, requires review of defined and measurable goals of achievement by the student body. Authorizers oversee the accountability standards through review of required reporting by charter schools and site-based visits. Different entities of authorizers form different constraints of reporting and visits. The power of charter schools revolves around moving from rule-based regulation to performance-based regulation. While authorizers may use several means to review qualities of a school, the bottom line of renewal rests with meeting the goals of student achievement. While some charter sites appreciate the overview, the purpose of finding areas of concern bother most and produce a burdensome preparation for visits. While the closing of schools has not regularly occurred due to student performance, in fact few charter schools close due to authorizers' review, the authors suggest this is due to the newness of charters, and the lack of contract reviews at the five-year mark.

At the same time, a piece of the puzzle for authorizers becomes the expression of political concern and public outcry at such closures. Due to the recent development of charter reform, authorizers refine and continually develop current practices and standards in the area of application, oversight, and review. In analysis of the application process through the period of development, applications have become more complicated and difficult to complete. The authorizers in New York express that applicants need professional assistance in completing and submitting their applications.

Typical annual reports required of charter schools cover current status and planning in the major areas of “students, teaching and learning, families and community,

staff, operations and facilities, finance and governance” (Ascher, et al., p. 24).

Oversights by authorizers often compromise the philosophy of autonomy with charter schools. Regardless of the philosophical ease of closures based on performance standards, evidence of authorizers providing numerous documents on needed improvement, probationary periods and technical assistance shows that the ideology of performance-based standards does not have obvious parameters and is not an easy task.

In 2003, Thomas B. Fordham Institute published a research article on authorizers for charter schools (Palmer & Gau). This research used three entities for survey data: charter authorizers, charter operators and knowledgeable observers of charter schools. A total of 23 states and the District of Columbia were surveyed, with an online questionnaire for each of the three entities. The two major areas reviewed by Palmer and Gau were 1) State Charter Policy Environment and 2) Charter Authorizer Behavior. The sub areas reviewed for State Charter Policy Environment were support for charter schools and support and external accountability for authorizers. The sub areas for Charter Authorizer Behavior were application processes, approval processes, performance contracts, oversight, renewal and revocation processes, and transparency and internal accountability. See Appendix A for a review of the criteria in each area (Palmer & Gau, 2003, p. 10-13). The research resulted in six major findings: 1) Most major authorizers are doing an adequate job but red tape and ‘compliance creep’ are concerns, 2) Many state policy environments are not supportive of charter schools and authorizers, 3) Local school boards generally do not make good authorizers, 4) States with fewer authorizers serving more schools each, appear to be doing a better job, 5) Quality authorizing costs

money; authorizing fees can be available funding source, and 6) States with higher scores also have more 'proactive' authorizers when it comes to providing technical assistance and charter advocacy.

Palmer and Gau's (2003) research provided some general themes about authorizers with charter schools. The use of three different types of surveys allowed for triangulation for more reliable data; however, the authors excluded a complete discussion of the data and design of the survey, preventing a true review. The mixture of the sub areas used does not always appear to align with the authorizers' evaluations or policy environment. The research did not provide any type of statistical information other than the mean averages of the survey results. The actual surveys were not included in the publication. Even with these shortcomings, since few studies on authorizers exist, this study does provide a starting point for further research. The means provided in the research on each of the states do not provide in-depth data about the different bodies authorizing.

A more meaningful study would provide rich detail of a specific state so that reform efforts or improvements could be put into place. According to the Florida Department of Education (2008), forty-two districts or systems are implementing charter schools. In reviewing information on authorizers, the required manpower to oversee charters becomes an issue of cost even when compared to central offices for public schools. Authorizers work within a new reform structure attempting to advocate and govern charter schools. The debate of authorizers excessively regulating charters coexists with the belief that authorizers should take responsibility for the faults of charter

schools. In addition, the heavy burden of governing charter schools falls on a system already inundated with the responsibility of the public school system (Catalanello, 2005; Berube & Berube, 2007). Typically, counties assign one person to oversee charter schools, and he or she often has more responsibility than regulating these schools. In Florida, the debate on pros and cons of local school boards acting as authorizers has led to the proposition of a state led charter school board (Miller, 2005; Catalanello, 2005). Presently nine states use a state led board to oversee charter schools. It should be noted that while local school boards may authorize charters in New York, state board entities have taken the primary role in this task, with obvious funding from the New York Department of Education.

In 2009, Stanford published the first “national” review of charter schools through its research using student achievement data from 15 states and the District of Columbia (Center for Research on Education Outcomes; Maxwell, 2009). The researchers matched similar students from public and charter schools from the previous testing year to compare achievement data in reading and math. The indications showed no difference in 46% of the schools data on learning gains, 17% showed charter schools with significantly higher learning gains and 37% showed charter schools with significantly lower learning gains (Maxwell, 2009). For all purposes the research showed a bell curve in comparing the school. The research did not show consistency in the performance of charter schools. It did show English Learners of other Languages and children of poverty to be significantly more successful in charter schools than in traditional schools (Center for

Research on Education Outcomes, 2009). The researchers acknowledge that many factors determine student success outside of achievement performance.

The research shows most state codes regarding charter schools propose an innovative approach to education and a focus on results (Nathan, 2005; Hassel, 1999; Gill et al., 2007). This focus and declaration as a charter school exempts schools from much of the bureaucracy of a traditional public school. Many charter schools specify a vision or focus different than the surrounding public schools (Berends, Springer & Walberg, 2007). Research shows parents choosing charter schools based on smaller numbers per class, location of the school and having a vision shared by the parent (Finn et al., 2000). Charter schools provide smaller environments for learning within the community (Berends, Springer & Walberg, 2007). In research, examining programs and curriculum of charter school few difference exist between charters and public schools (Gill et al., 2007; Berube & Berube, 2007). In visiting charter school, charter schools and public schools are more similar than different. The idea of charter schools providing a public option to private schools for the middle class allows the charter school movement support from parents and community members (Nathan, 2005; Finn et al., 2000). In reviewing charter school implementation throughout the United States several barriers emerge from the research for individuals operating such entities. These barriers include funding and purchasing a facility for the school (Palmer et al., 2006). Public schools receive capital funds for building new school; presently few dollars exist for facility structures of charter schools. In addition, the day-to-day operation of schools, such as payroll, certification verification, budgeting prove to be daunting tasks (Berube & Berube, 2007). Many

charter schools prove to be a support system for the families attending, while others make headlines due to fiscal irresponsibility. In many studies, charter performance does not differ significantly from public school performance (Berube & Berube, 2007; Gill et al., 2007). Regardless of how charter schools look, they have support of some parents and the parents choose charter schools over public schools for their children.

Summary

The five primary components of a charter philosophy revolve around the ideas of charter school flexibility, accountability, competition with public schools, innovative schooling and designed by the community and parents (Bulkey & Fisler, 2002). Each state varies on statute and the authorizers of charter schools. Florida passed charter legislation in 1996. There are many concerns with the charter school concept from education management organization, to accountability issues and fiscal responsibility. Governance of charter school differs state by state and provides unique problems based on set up. The charter school movement provides a current reform effort in its prime. The research varies on success, presently more data and information is needed.

CHAPTER THREE

METHODS

Problem Statement

The legislation on any school reform impacts the public school system and its function. Understanding legal parameters at the federal and state level is an important dimension of school leadership. Alexander and Alexander (2005) describe laws affecting schools as “often difficult to accurately assess and summarize” (p.XXXVII). All states have different perspectives and various statutes within the broader constitutional law.

Choice options, with public funding, create concern due to monies leaving the public arena and going into a private enterprise or private organization. These private organizations are called a public school based on legislature statutes and have exemptions from some guideline followed by public schools. The choice movement places governance of charter school to school districts, and yet does not provide authority to oversee the entities. In addition, as legislation changes, the rules change in how to operate and report charter school information. Individuals working within the school system struggle with the impact of legislative changes and yet do not understand the system that develops laws and statutes impacting the organization.

Purpose of the Study

This research reviews the significant legal parameters surrounding the charter school movement to understand the background in its development and current existence. This study allows stakeholders to understand better the key issues related to the charter

school movement and how the legal parameters impact both the charter schools, as well as, the public schools. Understanding charter school's legislative issues at the federal and state level allows a framework for other reform efforts to be understood in relation to legal guidelines. There are five types of law generally overlapping affecting public schools; constitutional law, statutory law, case law, administrative law and contract law (Alexander & Alexander, 2005; Permuth, 1999).

This study explores the ideas, perceptions, legal standings, and events leading to the implementation of charter schools in the United States and Florida to understand the impact of different levels of law within a reform or policy. This study compares the federal rulings, as well as, state rulings in all five areas of law in regard to charter school reform. The analysis of charter school law provides a framework to understand the different levels of law impacting a school reform effort.

Research Questions

The researcher uses the evolution and legal parameters of the charter school movement in answering these questions.

The major research questions that guide this study are:

- 1) What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?
- 2) What are legal parameters regarding the charter school movement nationally? (e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)

and

- 3) What present legal structures and parameters affect Florida's charter school movement?

Exploration of the Research Questions

The first question of interest seeks to identify significant events that have occurred in the charter school movement nationally, as well as in the state of Florida. This question allows an understanding of the key factors impacting charter schools. The information is verified through primary sources, secondary sources and through focused interviews with key informants. Key informants were selected based on their expertise with law and charter schools.

The second question driving the study inquires about the legal parameters regarding the charter school movement nationally. This question allows an understanding of federal legislation pertaining to the charter school movement. The five areas of law to be reviewed with some areas overlapping include constitutional law, statutory law, administrative law, common or court/case law, and contract law. This question is verified through primary sources, secondary sources and through focused interviews with key informants. Key informants have been selected based on their expertise with law and charter schools.

The third question pertaining to the study reveals the present legal structures and parameters affecting Florida's charter school movement. Question two and question three allow a comparison of local and federal law pertaining to a reform effort. The two

together allow an understanding of differences in the local and federal laws and how one affects the other. This question allows a comparison of federal and state support to the charter school movement. It also allows an understanding of legislation; so that legislation may be understood in terms of other types of reforms. A review of the information gathered identifies common themes and patterns. This question is verified through primary sources, secondary sources and through focused interviews with key informants. Key informants are selected based on their expertise with law and charter schools.

These questions allow a comprehensive review of legislative involvement in the charter movement and its meaning at the state and federal level. These questions also provide the structure for an understanding of the legislative process and its tie to reform efforts.

Research Methods

Russo (2006) defines the following three elements as essentials in traditional legal research: 1) primary sources, 2) secondary sources and 3) finding tools. Primary sources for legal review include constitutions, statutes, regulations and case law. Secondary sources are articles about the law. The finding tools include websites such as Westlaw or Lexis, as well as, many others. Russo (2006) recommends all items as crucial in understanding a specific legislative piece, to understand a legislative piece allows a greater understanding of the whole.

Yin (2003) defines a case study as (p.13),

“1. A case study is an empirical inquiry that

- Investigates a contemporary phenomenon within its real-life context, especially when
- The boundaries between phenomenon and context are not clearly evident.”

Yin suggests exploratory case studies as the design method in cases of “what” questions that may not be answered quantitatively. Merriam (1998) states “a qualitative case study is an intensive, holistic description and analysis of a single instance, phenomenon or social unit” (p.27).

Yin (2003) states that case study data may come from six different sources: 1) documentation, 2) archival records, 3) interviews, 4) direct observation, 5) participant-observation and 6) physical artifacts. All case studies involve a search for patterns within a single case or multiple cases (Schimmel, 1996). A variety of data is needed for case studies; this is referred to as “triangulation”, (Merriam 1998, Yin 2003).

Qualitative research reveals how each part fits together to form the whole (Merriam, 1998). Qualitative research seeks to understand a phenomenon within its naturalistic settings. Merriam (1998) defines five components of qualitative research (p.6-8). The research is understood from the individual’s perspective. The researcher is the instrument for data collection, and also provides the analysis. There is usually fieldwork involved in its natural setting. It is inductive in its findings. Lastly, the final product is rich in description. The goal of the investigation is understanding through discovery and description.

Rationale for Using Case Study

According to Yin (2003) case studies have five types of application. The first is to explain real life interventions that are too complex for experimental designs. Secondly, is to describe the intervention and the context in which it occurred. The third is to illustrate certain topics within a descriptive manner. Fourth, it may be used to explore an intervention. Lastly, it may be used to study an evaluation, a meta-evaluation.

Yin (2003) uses three conditions to decide the practicality of the case study design, “1) the type of research question, 2) the control an investigator has over actual behavioral events, and 3) the focus on contemporary as opposed to historical phenomena” (p.1). He explains that what questions may be used with any of the types of study if it is used in an exploratory question. If the investigator has no control over the events and it is a contemporary event then a case study is a valid research method for the study. All of the questions guiding this research fall into these categories as defined by Yin (2003).

In addition, Merriam (1998) deems case studies as one of the following, particularistic, heuristic and descriptive (p.29). Particularistic focuses on one particular situation or event. She describes heuristic as, “Heuristic means that case studies illuminate the reader’s understanding of the phenomenon under study. They can bring about the discovery of new meaning, extend the reader’s experience, or confirm what is known” (p.30). Descriptive means that the end product is thick in description of the phenomenon being studied. Merriam (1998) explains the descriptive aspects of a case study as (p.30):

- “Illustrate the complexities of a situation-the fact that not one but many factors contribute to it.
- Have the advantage of hindsight yet can be relevant to the present.
- Show the influence of personalities on the issue.
- Show the influence of the passage of time on the issue- deadlines, change of legislators, and cessation of funding, and so on.
- Include vivid material-quotations, interviews, newspaper articles, and so on.
- Obtain information from a wide variety of sources.
- Cover many years and describe how the preceding decades led to a situation.
- Spell out differences of opinion on the issue and suggest how these differences have influenced the result.
- Present information in a wide variety of ways....and from the viewpoints of different groups.”

The implication for this study indicates a descriptive outcome useful for analysis. The purpose for using an exploratory case study is to provide a comprehensive review of the legal standings impacting a reform effort at both the state and federal level. In addition, based on the legal perspective, traditional research on legal issues involve using primary and secondary sources, with the use of a finding tool for the data. These issues help define an exploratory case study as the best method for the research questions.

Major Constructs

The major constructs within this study revolve around the study of the legal system. The major construct for question one deals with the significant events of the charter school movement in the United States and in Florida include activities and actions related to development and implementation of charters, as well as, key changes within the system since the proposal of the charter system.

For question two and three covering the legal parameters regarding the charter school movement nationally and in Florida the five types of law are used as constructs. This includes constitutional law, statutory law, administrative law, common or court/case law, and contract law (Permuth & Mawdsley, 2006).

Lang (2005) provides guidelines in search strategies regarding educational research. This includes the use of educational dictionaries or encyclopedias to clarify key terms to be used. Key words to be used through the process include: choice, charter schools, educational reform or restructuring, law, public education or other like terms. The Dictionary of Education (1973) defines “charter” as:

“a written instrument, granting certain powers and specifying duties, responsibilities, and liabilities, given to an individual or a group of incorporators by the sovereign authority of a nation, political subdivision, or specially empowered official thereof; usually granted in the United States by officials acting under laws of general authorization or through special enactment of the Federal Congress or state legislatures. (A

privately controlled school usually has a charter granted by authority of the state legislature.)” (p.93)

A portion of the definition of “charter school” as defined by The Cyclopedic Education Dictionary (1998) is:

“Independent outcome based public schools that are designed to promote innovative teaching and education practices / strategies.

Minnesota was the first state to pass charter legislation in 1991, followed by California in 1992. Several states now have charter schools that call for original ‘charters’, or agreements specifying learning outcomes the students will accomplish and that are signed by the school’s founders and a sponsor. There are several commonalities in the various charter school but specific practices vary widely.” (p.43)

Ellis and Fouts (1996) expand on the “charter school” definition with:

“Charter schools are designed to establish new forms of accountability as well. The intent is for the school to be truly decentralized and free from all normal district and state regulations, relying on site-based management teams. Funding is received directly from the state, usually for the average amount spent in the state per student.” (p.40) They also reference choice in their definition.

Ellis and Fouts (1996) reference “choice” as allowing parents to decide where to place their students for schooling. One of the controversial areas that revolve around choice includes the actual funding source for the education, vouchers, or tax credits.

In referencing the Historical Dictionary of American Education (1999) the term “choice” references vouchers. It elaborates on vouchers as providing a free market on education which in term reduces the cost of school. In addition it expands on the positive outcome of vouchers which would be public and private schools competing to provide the best education possible.

The Handbook of Educational Terms and Applications (1996) defines “restructuring” as:

“Restructuring is a term that is currently in vogue which is a catchall for a variety of reform efforts in schools. The term reflects the belief that American schools need drastic reformation in the most basic ways business is conducted. Current restructuring efforts in American schools generally involve some form of teacher empowerment, site-based management, curriculum alignment / reform, choice, outcome-based education and / or community and parental involvement.” (p.172)

The search engine dictionary.com (2009) defines law as:

“1. the principles and regulations established in a community by some authority and applicable to its people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision.”

The ERIC descriptor for public education is “education supported in part or entirely by taxation.” (<http://www.eric.ed.gov>, search term public education). In reviewing the thesaurus of ERIC descriptors at <http://eric.ed.gov>, as suggested by Lang

(2005) for search strategies, a variety of key terms were associated with the key terms. In reviewing charter schools, related terms included accountability, institutional autonomy and non-traditional education. In reviewing choice, related terms included school choice, educational choice, non-traditional education, school restructuring, family choice and private school aid. The broader term identified for choice was selection. In reviewing public education, education was found as the broader term. Like terms included State Board of Education, compulsory education, public schools, school districts, and State Department of Education. In reviewing educational reform, the following like terms were identified, educational change, barriers, comprehensive school reform, school restructuring, excellence in education, change strategies, educational innovations, and educational trends. The broader term identified by the Eric thesaurus descriptor for educational reform was change. In searching the term law, the following related terms were found, civil rights legislation, codification, compliance (legal), court litigation, courts, educational legislation, educational malpractice, equal protection, federal legislation, hearings, justice, juvenile justice, labor legislation, law enforcement, law libraries, law related education, lawyers, legal education, legal responsibility, legislation, libel and slander, negligence, ownership, privacy, sanctions, school attendance legislation, state legislation, and torts. The broader terms identified with law included constitutional law, criminal law, international law and school law. All terms used for searching have been reviewed and searched as defined by Lang (2005).

The Supreme Court cases revolve on a Term calendar that begins with the first Monday in October and ends on the preceding day of the following year (Supreme Court

of the United States, 2009). The current Term cycle falls under the 2008 Term, October 6, 2008 through October 2, 2009. To validate a current study of the charter school evolution and evaluation through the highest court, the United States Supreme Court, this study identifies legislative actions impacting charter school reform through October 2, 2009. This aligns the study with the United States Supreme Court Term calendar.

Limitations of Case Studies

Results of the study are limited to the area of charter schools; however, the framework of the study applies to other school reform topics covered through legislation. “Case study has proven particularly useful for studying educational innovations, for evaluating programs and for informing policy” (p.41, Merriam, 1998).

Merriam (1998) discusses the limitation of lengthy and wordy case studies which go unread due to lengthy descriptions. Case studies are also limited by the “sensitivity and integrity of the investigator” (p.42). An investigator needs to carefully review the data and use procedures to protect validity and reliability.

Data Sources

Qualitative research allows the research to observe the object of inquiry in a naturalistic setting (Merriam, 1998). This study uses qualitative method in order to examine the legal standing of the charter school reform nationally and locally within its true parameters. Qualitative research requires triangulation (Merriam, 1998; Yin, 2003). This study provides triangulation through three sources, primary resources, secondary

resources and interviews. Traditional legal research relies heavily on primary resources, secondary resources and finding tools, such as online databases (Russo, 2006).

Primary Resources

The primary resources used and recognized as legal constructs include constitutions, statutes, regulations (contract and administrative law) and case law (Permuth & Mawdsley, 2006; Russo, 2006; Permuth, 1999). All were reviewed at both the national and local level. Significant case law from across the United States was identified and used as a resource. Case law applies only to the area which the court ruling oversees, however, it becomes a point of clarification and may be cited by other areas (Permuth, 1999). Case Law provides the application of the constitutional, statute, administrative, contract and regulations laws (Russo, 2006). Long (2003) provides a list of the authorities with prioritization of areas to review in legal research. The areas to be reviewed in the order of priority, taken from Long (2003) include the following:

“Federal Cases

1. The United States Constitution
2. Opinions of the United States Supreme Court
3. Federal statutes and administrative regulations
4. Court of Appeals decisions of the federal courts having jurisdiction over your case
5. Court of Appeals decisions of federal courts outside the jurisdiction in number 4

6. Opinions of the Federal District Court in your case's jurisdiction
7. Opinions of the Federal Court outside your case's jurisdiction

State Cases

1. The United States Constitution
2. Opinions of the United States Supreme Court
3. Statutes (codes) and administrative regulations of the state having jurisdiction
4. Opinions of the State Supreme Court having jurisdiction
5. Opinions of the State Appellate Court having jurisdiction
6. Opinions of other State Appellate Courts within the state" (p.13)

In addition, cases reviewed are shepardized, with cases cited examined through the legal research process (Long, 2003). Shepardizing refers to a process where a case is placed through Shepard (book or online form), all previous citations of the case or cases pertinent to the case are found through the process (Long, 2003; Elias & Levinkind, 2004). The following sources have be used to aid in the primary search (Long, 2003; Elias & Levinkind, 2004):

www.findlaw.com, www.cornell.edu, www.gpoaccess.gov, <http://lcweb2.loc.gov> (Library of Congress website), www.archives.gov (National Archives), <http://thomas.loc.gov> (United States Code Service), Lexis Nexis, and Westlaw.

Primary research has been done at both the federal and state level. Key words used through the process include: choice, charter schools, educational reform or

restructuring, law, public education or other like terms. This search strategy is supported by Lang (2005) through its identification of electronic search engine to be used for the study.

A review has been done on federal statutes, state statutes, constitutions, court cases, regulations and local law.

Secondary Resources

Secondary resources include journals, books, newspapers, and writings about the law and its implications (Russo, 2006). The secondary resources help with understanding the changes or to provide comprehension and clarification of the significance on the legal pieces. Long's (2003) provides the structure to prioritize and search for the meaningful information on legal issues of charter school reform. The following sources were used to aid in the secondary search (Long, 2003; Elias & Levinkind, 2004):

www.findlaw.com, www.cornell.edu, www.lawreview.org,

www.lawweb.usc.edu, Legal Trac, Lexis Nexis, Westlaw,

www.nolo.com, Committee Reports, www.naag.org or www.state.fl.us

(Attorney General reports)

Secondary research was done at both the federal and state level. Key words used throughout the process include: choice, charter schools, educational reform or restructuring, law, public education or other like terms. Articles informing or interpreting legislative decisions have been reviewed related to the charter school reform. This search

strategy is supported by Lang (2005) through its identification of electronic search engine to be used for the study.

Selection of Interviewees

The interviewees selected, as experts in the area of law are reviewed based on their involvement with legal action regarding charter schools. Expert interviewees include legislators involved with charter school reform, individuals involved in a court action involving charter schools, charter school authorizers and attorneys with legal background in the area of charter schools. Priority was given to parties that are or have been involved in a court action regarding charter reform. A total of four interviews have been conducted. The individuals selected were chosen after the completion of the primary and secondary research. Individuals have been chosen based on involvement with a legislative issue of charter schools. The criteria used for selection include: 1) named in a current case or supporter of a legislative act for charter schools, 2) position overseeing or supporting charter schools. After meeting one of these criteria individuals were chosen randomly from the list compiled from the primary and secondary resource searches. A variety of methods have been used for the interviews including use of phone, in person or Skype services.

Interviews

The interviews conducted were focused interviews (Yin, 2003). Demographic information has been taken from each participant. The researcher kept the discussion

within a conversation manner while following a scripted line of questioning. This helps collaborate facts and check on perspective (Yin, 2003). Sample questions identified for use included the following:

- Please tell me about yourself and how you became involved in legal issues regarding charter schools?
- Why is your issue important?
- What is your lawsuit concerning and based on what statute or constitutional issue is the suit based on?
- What were the events leading up to the lawsuit?
- Tell me about the legal steps through the process? What court decisions have been made so far?
- What have been the difficulties through the situation?
- What organization/document or individual has supported you the most through the process?
- Are there similar cases that support your suit?
- What are the issues of the other side?
- What do you think will be the ultimate outcome of your suit?

or

- Please tell me about yourself and how you became involved in the charter school movement.
- Why do you think this issue is so important?

- Tell me about what statutes or constitutional rights you've been involved with in your position through supporting the charter school movement.
- What events led you to support the charter school movement?
- Tell me about the legal issues you've been involved with regarding charter schools.
- How does this process work?
- What have been the difficulties through your support of charter schools?
- What organization/document or individual has supported you the most through the process?
- Are there cases that support you?
- What are the issues of the other side?
- What do you think will be the ultimate outcome of your involvement?

The questions were modified based on the individual's expertise and the case or legislative issue(s) of interest. Additional questions were added based on the information provided by the participant. A transcript of the dialogue was provided to the participant to review or change responses from the questions.

Participant Researcher

The researcher is currently a principal of a public high school. Her academic background includes a bachelor's degree in Psychology, a master's degree in Counseling and Education, and a master's degree in Education Leadership. She presently has twelve years in with the public school system. Prior to becoming an administrator she was a

guidance counselor. Her background in the public school sector allows an understanding of current issues within schools.

Bias has been minimized through triangulation and through verifying interview responses and interpretations within the interviewees prior to reporting information.

Data Collection Procedure

Primary and secondary resources were collected through legitimate finding tools, such as, West Law, Lexis and through the University of South Florida's databases (Russo, 2006). Participant interviewees were recorded interviews, with transcripts given to the participants to verify their thoughts on various topics. All resources used allow an in depth understanding of the research questions. Each source of data was managed through the NVivo8 data analysis system to help with identifying patterns and themes (Schimmel, 1996).

Validity and Reliability

Internal validity and reliability is supported through the use of three resources, or triangulation (Yin, 2003; Merriam, 1998). Johnson and Christensen (2008) reference the need for saturation to verify the validity of findings in research. Theoretical saturation occurs when no new information emerges from data studied (Johnson & Christensen, 2008). This mirrors Merriam (1998) review of *redundancy* in sample size as "sampling is terminated when no new information is forthcoming from new sample units." Triangulation provides a means of saturation through its use of using multiple

means to establish a finding. The use of multiple sources, triangulation, provide a convergence of evidence or a holistic review of the phenomenon being studied (Johnson & Christensen, 2008; Yin, 2003). Rowe, Busharis and Teitig (1998) reference saturation in legal research and provide the following guidelines to determine when to stop researching, 1) consider all types of primary authorities that may be relevant, 2) update all primary authorities, 3) stop researching when all sources lead back to the same primary source and 4) focus on jurisdiction where issue initiated; review other jurisdictions of similar findings (pp. 88-89).

Primary sources, secondary sources, and structured interviews have been used to explore each research question. In addition, interview transcripts were reviewed by interviewee for accuracy of statements; this is a form of collaborative mode of research (Merriam 1998). The Dissertation Committee also provide guidance and support throughout the research. Also, the researcher controls for personal bias with the triangulation, collaborative mode of research and support of experts. The researcher should possess the skills of listening, adaptiveness, and flexibility, along with, analytic skills to analysis the data (Yin, 2003).

Data Analysis Procedure

The data collected reviewed the five types of laws regarding charter schools. Interpretations and implications were coded based on the type of the law, as well as, its origin, national or local. This coding allows a comprehensive connection of the material collected. The information collected was verified through triangulation. The type of law

represents the unit of analysis for the study (Yin, 2003). Patterns and themes were analysis using NVivo 8 software (<http://education.pugh.co.uk>). This software allows analysis of qualitative data. NVivo 8 provides a program for organizing information and provides the ability to work with data based on defining topics and themes. It also provides mapping capability. It is designed from the makers of Nudist. In working with the NVivo 8 software the five types of laws provide the framework patterns: constitutional law, statutory law, case law, administrative law and contract law.

The researcher uses the NVivo 8 software to analysis findings, with support from the Dissertation Committee membership.

Summary

This research reviews evolution and legal parameters surrounding the charter school movement to understand the background in its development and current existence. Understanding charter school's legislative issues at the federal and state level allows a framework for other reform efforts to be understood in relation to legal guidelines. There are five types of law generally overlapping affecting public schools; constitutional law, statutory law, case law, administrative law and contract law (Alexander & Alexander, 2005; Permuth, 1999).

This study explores the ideas, perceptions, legal standings, and events leading to the implementation of charter schools in the United States and Florida to understand the impact of different levels of law within a reform or policy. This encompasses comparing the federal rulings, as well as, state rulings in all five areas of law in regard to charter school reform. In addition, the specific actions and development of charter school within

the state of Florida are defined. The analysis of charter school law provides a framework to understand the different levels of law impacting a school reform effort.

CHAPTER FOUR

FINDINGS

Problem Statement

With the constitutional power of the 10th Amendment and the General Welfare Clause, the state legislative impact on school reform is understood and directed; when legislation movement impacts or influences charter school reform efforts, there are many things in common or different state to state. Understanding legal parameters at both the federal and state level is an important dimension of school leadership. Alexander and Alexander (2005) describe laws affecting schools as “often difficult to accurately assess and summarize” (p.XXXVII). All states have different perspectives and various statutes within the broader constitutional law.

Indeed, within the broader constitutional law, each state has its own perspective and statutes. Choice options with public funding creates concern due to monies leaving the public arena and going into a private enterprise or private organization, called a public school based on legislature statutes, while exempted from some guideline followed by public schools. This movement places the governance of charter schools with public school districts, without authority. In addition, as legislation changes, the rules change on how to operate and report charter school information.

Purpose of the Study

This research reviews the significant legal parameters surrounding the charter school movement to understand the background in its development and current existence. This study allows stakeholders to understand better the key issues related to the charter

school movement and how the legal parameters impact both the charter schools, as well as, the public schools. Understanding charter school's legislative issues at the federal and state level allows a framework for other reform efforts to be understood in relation to legal guidelines. There are five types of law generally overlapping affecting public schools: constitutional law, statutory law, case law, administrative law and contract law (Alexander & Alexander, 2005; Permuth, 1999).

This study explores the ideas, perceptions, legal standings, and events leading to the implementation of charter schools in the United States and Florida to understand the impact of different levels of law within a reform or policy. In addition, it compares the federal, as well as, state rulings in all five areas of law in regard to charter school reform. The analysis of charter school law provides a framework to understand the different levels of law impacting a school reform effort.

Research Questions

The researcher uses the evolution and legal parameters of the charter school movement in answering these questions.

The major research questions that guide this study are:

- 1) What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?
- 2) What are legal parameters regarding the charter school movement nationally? (e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)

and

- 3) What present legal structures and parameters affect Florida's charter school movement?

Results

Long (2003) recommends the following in reviewing legal authorities in legal research:

“Federal Cases

1. The United States Constitution
2. Opinions of the United States Supreme Court
3. Federal statutes and administrative regulations
4. Court of Appeals decisions of the federal courts having jurisdiction over your case
5. Court of Appeals decisions of federal courts outside the jurisdiction in number 4
6. Opinions of the Federal District Court in your case's jurisdiction
7. Opinions of the Federal Court outside your case's jurisdiction

State Cases

1. The United States Constitution
2. Opinions of the United States Supreme Court
3. Statutes (codes) and administrative regulations of the state having jurisdiction
4. Opinions of the State Supreme Court having jurisdiction
5. Opinions of the State Appellate Court having jurisdiction

6. Opinions of other State Appellate Courts within the state” (p.13)

In using online databases of www.findlaw.com, www.law.cornell.edu, www.goaccess.gov, Lexis Nexis and Westlaw, along with Long’s list of authorities, the following primary resources shown in Table 1 provide substantial implications of law impacting charter school reform efforts at the federal level. Table 2 provides laws impacting charter school reform efforts at the state level. Shephardizing through Lexis Nexus provides assurances of the significance of the cases. The determination of significant cases includes eight or more citings through Shephardizing.

Table 1: Primary Search Results at the Federal Level Regarding Charter Schools

<i>Source</i>	<i>Description</i>
United States Constitution	Amendment 1 Amendment 10 Article I Section 8, General Welfare Clause Amendment 14
United States Supreme Court	Everson v. Board of Education (1947) Illinois ex rel. McCollum v. Bd. of Education (1948) School Dist. v. Schempp (1963) Wisconsin v. Yoder (1972) Allen v. Wright (1984) Wallace v. Jaffree (1985) Zelman v. Simmons-Harris (2002)
Federal Statutes and Administrative Regulations	United States Code <ul style="list-style-type: none"> • See list of 66 USCS in Appendix B from Title 20 Education Federal Rules of Civil Procedures <ul style="list-style-type: none"> • USCS Fed. R. Civ. P. 19 • USCS Fed. R. Civ. P. 50 • USCS Fed. R. Civ. P. 8 • USCS Fed. R. Civ. P. 52 Federal Rules of Evidence <ul style="list-style-type: none"> • USCS Fed. R. Evid. R. 408 Code of Federal Regulations <ul style="list-style-type: none"> • 3 CFR Proclamation 8372 • 34 CFR 76, 106, 200, 225, 226, 230, 300
Federal Circuit Court of Appeals Cases Impacting Charter Schools	<ul style="list-style-type: none"> • Ohio Ass'n of Indep. Sch. V. Goff, United States Court of Appeals for the Sixth Circuit (1996) • Villanueva v. Carere, United States Court of Appeals for the Tenth Circuit (1996) • Stark v. Independent Sch. Dist., United States Court of Appeals for the Eighth Circuit (1998) • Hunter v. Regents of the Univ. of Cal., United States Court of Appeals for the Ninth Circuit (2000) • Jenkins ex rel. Jenkins v. Mo., United States Court of Appeals for the Eighth Circuit (2002) • Charter Sch. Of Pine Grove, Inc. v. St. Helena Parish Sch. Bd., United States Court of Appeals for the Fifth Circuit (2005) • Colo. Visionary Acad. V. Medtronic, Inc., United States Court of Appeals for the Tenth Circuit (2005) • Racine Charter One, Inc. v. Racine Unified Sch. Dist. US court of Appeals for the Seventh Circuit (2005) • Ariz. State Bd. for Charter Sch. V. U.S. Dep't of Educ., United States Court of Appeals for the Ninth Circuit (2006) • Rizzo v. Edison, Inc., United States Court of Appeals for the Second Circuit (2006) • D' Angelo v. School Board of Polk County, US Court of Appeals for Eleventh Circuit (2007) • Dillon v. Twin Peaks Charter Acad., United States Court of Appeals for the Tenth Circuit (2007) • United States v. Pierce, United States Court of Appeals for the Eighth Circuit (2007) • Wideman v. Colorado, United States Court of Appeal for the Tenth Circuit (2007) • Brammer-Hoelter v. Twin Peaks Charter Acad., United States Court of Appeals for the Tenth Circuit (2008) and District Court for the District of Colorado (2008) • White v. School Board of Hillsborough County, US Court of Appeals for Eleventh Circuit (2009) • Winn v. Ariz. Christian Sch. Tuition Org., United States Court of Appeals for the Ninth Circuit (2009)

Table 2: Primary Search Results at the Florida State Level Regarding Charter Schools

Source	Description
Florida Constitution	Article IX
Florida Statutes and Administrative Law	11 Legislative Organization, Procedures, and Staffings 39 Proceedings Related to Children 121 Florida Retirement System 159 Bond Financing 163 Intergovernmental Programs 196 Exemption 218 Financial Matters Pertaining to Political Subdivision 238 Teachers' Retirement System 943 Department of Law Enforcement 1001 Governance 1002 Student and Parental Rights and Educational Choices 1003 Public K-12 Education 1006 Support for Learning 1008 Assessment and Accountability 1011 Planning and Budgeting 1012 Personnel 1013 Educational Facilities
Cases Impacting Charter Schools at the State Level	<ul style="list-style-type: none"> • School Board of Osceola County v. UCP of Central Florida, Court of Appeal of Florida, Fifth District (2005) • Bush v. Holmes, Supreme Court of Florida (2006) • P.J. v. Gordon, United States District Court for the Southern District of Florida (2006) • D'Angelo v. School Board of Polk County, United States Court of Appeals for 11th Circuit (2007) • Imhotep-Nguzo Saba Charter School v. Department of Education and Palm Beach County School Board, Court of Appeal of Florida, Fourth District (2007) • School Board of Volusia County v. Academies of Excellence, Court of Appeal of Florida, Fifth District (2008) • Duval County School Board v. State Board of Education, Court of Appeal of Florida, First District (2008) • School Board of Palm Beach County v. Survivors Charter Schools, Supreme Court of Florida (2009) • Wilbesan Charter School and Mary White v. School Board of Hillsborough County, United States District Court for the Middle District of Florida, Tampa Division (2009) • White v. School Board of Hillsborough County, United States Court of Appeals for 11th Circuit (2009)

Federal Constitution and Charter Schools

Our forefathers established the United States Constitution to govern legislation in the states. Before the development of the Constitution, the founders of America

recognized the importance of education in providing the knowledge and background for citizenship (Fazzaro, 2006). The Constitutional Amendments identified as areas of focus for charter school reform include the First Amendment, Tenth Amendment and the Fourteenth Amendment (Lexis, 2009).

The most significant amendment providing the foundation for education is provided in the Tenth Amendment. The power of the states to regulate education falls within the parameters of the Tenth Amendment and the General Welfare Clause of the United States Constitution. The Tenth Amendment states, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people” (United States Constitution, 2009). According to Alexander and Alexander (2006) the 10th Amendment protects each state’s power to handle such issues as education. The Constitution does not specifically mention the role of education or its parameters, therefore leaving the oversight of education to each state. The signing of the Constitution occurred with protection of states’ rights to oversee the required elements of areas dealing with general welfare. In addition, the General Welfare Clause or Article I, Section 8, states,

“The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States; To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers

vested by this Constitution in the government of the United States, or in any department or office thereof.” (United States Constitution, 2009).

The Tenth Amendment and the General Welfare Clause allow states to maintain public education institutions for the general welfare of society. Reed and Hipp (2009) reference the general welfare clause as public interest, public happiness, or common good and stress the importance in the common good for all in decision-making. The guiding power of the Constitution provides strength in its direct approach of allowing the ability to tax for the general welfare efforts of the state or to provide funding for education. In reviewing resources for the common good or in the interest of the general welfare, legislative bodies need to consider the benefit for all (Reed & Hipp, 2009). Reed and Hipp (2009), identify education as well as housing, safety, healthcare, and income as resources for the general welfare of the public.

Cases within court systems dealing with education often revolve around the First Amendment. The First Amendment deals with “freedom of speech, freedom of religion, freedom of association, separation of church and state” (Elias & Levinkind, 2007, p.91; Lugg & Lugg, 2000). The First Amendment states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances” (United States Constitution, 2009). The portion of the First Amendment stating “Congress shall make no law respecting an establishment of religion” references the Establishment Clause, while “or prohibiting the free exercise thereof” references the Free Exercise Clause. The

First Amendment separates the government and the church while providing religious acceptance regardless of the religion. Epley (2007) recognizes the changing decisions of court decisions based on the First Amendment. The First Amendment continuously arises as a potential issue for education administrators in regards to religion due to a conflict between the individual's personal rights for religion and the institution's responsibility of separation from religion. In addition, the individual's right of free speech arises with both employees and students in the public education system (O'Neil, 2005). Rogow (2009) found that most first amendment cases meet the description of retaliation cases: suits against the government based on freedom of speech issues that led to termination. Specifically, the Eleventh Circuit Federal Court, in reviewing cases dealing with the First Amendment found fifty-two of the one hundred and sixteen cases dealt with employment issues (Rogow, 2009).

The Fourteenth Amendment provides protection of due process through its Equal Protection Clause to all states. Alexander and Alexander (2005) define the protection of the Equal Protection Clause of the Fourteenth Amendment as "prohibits actions by state government that 'draws lines' favoring or disfavoring a particular class of persons based on impermissible criteria" (p. 796). The court rulings on Constitutional interpretations often change given the current society at the time of the ruling; this is demonstrated with the Equal Protection Clause where separate but equal in educating blacks and whites in public schools was originally the defining decision of the Supreme Court in *Plessy v. Ferguson* (1896). This premise became unconstitutional in *Brown v. Board of Education* (1954), which found separate but equal facilities inherently unequal (Alexander &

Alexander, 2005; Bresler, 2007; Turner, 2009). With Equal Protection comes the right of due process. Blake (2009) outlines the relevance of the Fourteenth Amendment to students in regards to due process:

“The Fourteenth Amendment prohibits any State from depriving ‘any person of life, liberty or property without due process of law.’ To prove that there has been a violation of due process under the Fourteenth Amendment two things must be established. First the individual must be shown to have a protected liberty or property interest, such that due process protections were applicable. Second, it must be proven that the individual was not provided the correct and appropriate level of due process (p. 687).”

Blake (2009) identifies education as a protected liberty of students, thus a protected right under the Constitution. The Fourteenth Amendment becomes an issue in deciding how charter schools select students and provide support services to students (Blake, 2009; Love, 2009). In addition to the Constitution, the Federal Rules dictate the procedures of civil action and admissible evidence in federal courts (Garner, 2006). These rules, in addition to amendments and articles of the Constitution, may be used to pursue legal action.

Florida State Constitution and Charter School Reform

In its power and duty to oversee public education as part of the Tenth Amendment and the General Welfare Clause of the United States Constitution, the Florida State Constitution addresses education in Article IX stating,

“The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require (Florida Constitution, 2009).”

The importance of these words was protected in the case *Bush v. Holmes* (2006) (Gey, 2008). This case reviewed the essential meaning of these words with an emphasis on the need for a uniform system of funding for public education (Guilfoyle, 2006). Since 1998 several initiated changes have occurred in relation to the Amendments of the State Constitution and the organization of public education in Florida. In 1998, an amendment passed by the voters placed the governor in charge of appointing the State Board of Education and the Commissioner of Education (Morris & Morris, 2009). The governor’s rights and authority in overseeing education strengthened with the change of these elected positions to appointed positions with the state of Florida. Following this change, in 2000, Governor Bush appointed an Education Governance Reorganization Transition Task Force to reorganize education (Moore, 2001; Schmidt, 2002). The rationale for changes revolved around the low performance of students and the loss of 40% of students in graduating within four years (Moore, 2001). One of the recommendations given called for a K-20 unified seamless system of education with a service model focused on student

performance and learning; this was initiated in 2001. Another change of the Florida Constitution occurred in 2002 with an amendment passing that stipulated class size requirements for kindergarten through high school classrooms (Morris & Morris, 2009). At the same time the establishment of local boards of trustees assigned to each secondary institution passed as well as the approval of a high quality pre-kindergarten program. In 2006, an amendment requiring 60% of voters to approve a proposed amendment or change to the state constitution passed over the prior requirement of a majority vote (Morris & Morris, 2009; Christian Century, 2008). In 2008, the Florida Supreme Court removed three amendments. Two of these amendments dealt with changes to the state constitution that would have allowed funding to religious and private organizations with voucher programs. These amendments, if passed, would have dissolved the ban of not allowing state funds to be given or used at religious institutions (Morris & Morris, 2009; Christian Century, 2008). The Constitution guides all public schools, and this includes charter schools.

Supreme Court of the United States and Charter School Reform

The Supreme Court ensures the Constitution protects all citizens as intended (Van Geel, 1997). Since the Supreme Court is the highest court in the states, the decisions made by the Justices of the Supreme Court provide the framework and regulations for all courts in all states, thereby affording clarification on federal issues (Segal, Spaeth & Benesh, 2005; Van Geel, 1997). The following Supreme Court cases, *Everson v. Board of Education* (1947), *Illinois ex rel. McCollum v. Bd. of Education* (1948), *School Dist. v. Schempp* (1963), *Wisconsin v. Yoder* (1972), *Allen v. Wright* (1984), *Wallace v. Jaffree*

(1985), and *Zelman v. Simmons-Harris* (2002) have had an impact on charter school reform (Lexis Nexus, 2009). While the majority of these cases occurred prior to the first state law promoting charter schools, the implications of the decisions made on these cases ultimately support or hinder the charter school reform movement.

All cases revolve around funds aiding or the legally supporting religious endeavors within the public education environment. Amendment 1, with its Establishment Clause, frames the cases identified from the research. The connection of parochial schools with charter schools rests with the overlying theme of school choice options. Both parochial and charter schools allow parents options of schooling in which the personal interests of the school developer can influence the curriculum, thereby eliminating the “democratic vision of public education” (Ravitch, 2010, p.147). Parochial and charter schools may contain religious elements or focus.

To begin, in *Everson v. Board of Education* (1947) a taxpayer brought a suit against the board of education due to its policy to reimburse parents with students in public and Catholic schools for transportation fees. The taxpayer questioned funds going towards Catholic school transportation fees based on the First Amendment that establishes the separation of between church and state, and the Fourth Amendment that provides the states the benefit of the First Amendment (*Everson v. Board of Education*, 1947; Alexander & Alexander, 2005). The Supreme Court affirmed the decision of the lower Appeal Court, which ruled in favor of the Board of Education. The Supreme Court, while recognizing the importance of the separation of church and state, believed the funds provided for the general welfare of the children of New Jersey and did not

breach the First Amendment, thereby protecting the separation while recognizing flexibility (Davis, 2003; Redlich, 2000; *Everson v. Board*, 1947). *Everson v. Board of Education* (1947) impacts the charter school reform effort through its acceptance of federal funds used toward religious school transportation cost with an emphasis on the general welfare of all children and neutrality towards religion (Redlich, 2000).

In the case of *Illinois ex rel. McCollum v. Bd. of Education* (1948), a parent challenged the teaching of religious courses in the school system based on the First and Fourteenth Amendments. In this case, parents signed release forms for students to attend religious courses taught by outside personnel during school time. The Justices reversed and remanded the decisions of the lower courts, determining release time for religious instruction unconstitutional. McCollum fought for the right of religious freedom in her pursuit of not requiring students to attend religious classes (Dart, 2006). *Everson v. Board of Education* was cited in this case for its interpretation of the First Amendment of affording a necessary “wall of separation between church and state” (*Everson v. Board of Education*, 1947; Dart, 2006). The Justices’ decision in the Illinois case sustains the premise of refusing the use of public funds for religious endeavors, a continuous battle in the school choice movement.

Additionally a third case impacting charter school reform, *Abington Township School District v. Schempp* (1963) questioned the constitutionality of a Pennsylvania statute requiring bible reading at the start of the school day. Again, the statute dispute dealt with the First Amendment, specifically the Establishment Clause, and the Fourteenth Amendment. The Supreme Court reversed and remanded the case to the

lower Appeal Court. In this case the Supreme Court disagreed with the Appeal Court and agreed with the trial court citing the Pennsylvania statute as a violation of the Constitution (*Abington Township School v. Schempp*, 1963). This case began with a young boy who later became a scientist and supported the decision of the courts (Niose, 2008). Many reference this case as significant in “taking god out of the public schools” (Niose, 2008; Furst, 1989).

Another pertinent case, *Wisconsin v. Yoder* (1972), established that the state could not require Amish children to attend public high school. An Amish individual challenged the state law requiring compulsory attendance at a public school after he was convicted of violating the law. The premise of the suit involved violation of the Free Exercise Clause. As part of the Amish religion, schooling is not relevant after the eighth grade. The Supreme Court recognized the lifestyle of the Amish and their teaching of vocational skills within their religion after eighth grade, while also recognizing the compulsory attendance law of Wisconsin. The issue of labor laws with minors did not enter into the examination of the case (Biedrzycki, 2006). In its ruling on this case, the Court both affirmed the decision of the Wisconsin Supreme Court while upholding the rights of the parent to educate in a chosen environment (*Wisconsin v. Yoder*, 1972; Biedrzycki, 2006; Snauwaret, 2001). The decision of the Supreme Court rests in its review of the Amish religion as tied to nature (Biedrzycki, 2006). Two realms addressed in this case include parent liberty versus the individual self-development of a child (Snauwaret, 2001). The majority of jobs held by Amish presently do not revolve around farming (Biedrzycki, 2006). It is likely that, if the case occurred today, the tie of the Amish community to

nature in its religion could be questioned. *Wisconsin v. Yoder* (1972) demonstrates the first school choice case of the Supreme Court using the application of the Free Exercise Clause of the First Amendment.

An equally significant case impacting charter schools is *Allen v. Wright* (1984). In *Allen v. Wright* (1984) parents of black public school students made a claim that the government had failed to eliminate discrimination in private school admittance. Although the Internal Revenue Service allowed tax-exempt status for private schools with a policy of anti-discrimination, the suit alleged that requiring an anti-discrimination policy did not ensure implementation of the policy. According to the suit, this lack of action caused stigmatizing harm. The Supreme Court found that the respondents did not have standing for the suit without an actual injury, thus the Supreme Court did not recognize stigmatizing harm as a reason for a suit. Stigmatizing harm is recognized and accepted by social scientists as harm caused to individuals or groups (Healy, 2007). The Supreme Court decision was a reversal of the lower appeals court. Perhaps ironically, this suit revolves around a time period relating to white flight from public schools due to desegregation. Several scholars indicate the decision of *Allen v. Wright* as restricting access to the courts and allowing private discrimination (Healy, 2007; Neuborne, 1984).

Moreover, *Wallace v. Jaffree* (1985) influenced the charter school reform movement in its challenge of the Establishment Clause of the First Amendment in having a moment of silence in public schools. The Supreme Court agreed with the lower Court of Appeal's decision, indicating that the Alabama statute allowing prayer in the morning was unconstitutional. The intent of the legislators in the statute became a focal point for

the Supreme Court in reviewing the case (Chapman, 1986). At the same time the court provided insight allowing that if the statute had a secular purpose with a voluntary prayer during the moment of silence, constitutionality would not be challenged (*Wallce v. Jaffree*, 1985; Chapman, 1986).

Furthermore, *Zelman v. Simmons-Harris* (2002) also implicated the Establishment Clause of the First Amendment in challenging the constitutionality of the Cleveland's Pilot Project Scholarship that provided tuition aid to families choosing a school outside of the public school. The program provided financial assistance regardless of the secular or non-secular nature of the school of attendance. The court documents showed that religious private schools accounted for 96% of the scholarship funding (Garfield, 2003; Heilbron, 2004). The Supreme Court reversed the lower court's opinion and found the program constitutional based on its secular nature and true choice option for all parents, allowing meaningful alternatives with benefits to the child (Sayler, 2004). The courts declared substantive due process rights of parents to control services provided to children, particularly with schools failing based on the review by the state (Bloom, 2003; Garfield, 2003, Heilbron, 2004). However, the Justices were split on the decision with the constitutionality supported through the majority. One of the deferring comments indicated the decision differed from the prior court case of *Everson v. Board of Education* (1947). Proponents of vouchers claim voucher programs arose due to government's failure to support public education (Garfield, 2003). Others declare the publication *A Nation At Risk* (1983) began the school choice movement with its declaration of a need for radical reformation of public schools (Bloom, 2003). Known as the voucher case,

Zelman v. Simmons-Harris (2002) helped proponents of school choice defend its constitutionality and defined one of the most crucial rulings on schools and religion by the Supreme Court in the past forty years (Swan, 2003).

These cases outline the important decisions of the Supreme Court, which ultimately establish a foundation for supporting charter schools as a choice option within public education. Through examining these cases some important areas of consideration by the courts include parent choice in education, balancing the separation of church and state while recognizing the right of free exercise, and allowing programs that benefit students with a balanced policy. The cases from the Supreme Court indicate a swinging pendulum in supporting state decisions as they apply to the child benefit theory (Alexander & Alexander, 2006). A balanced policy does not prohibit or support any religion and provides a benefit to all. The most significant case impacting charter school reform rests in the decision of *Zelman v. Simmons* (2002) in its support of the Cleveland's Pilot Project Scholarship allowing funding of choice schools regardless of the secular nature of the schools (Swan, 2003; Heilbron, 2004; Saylor, 2004). This decision rests on the review of the neutrality of the voucher program regarding funding religious institutions.

Federal Code Impacting Charter Schools

The United States Code publishes 50 titles, with Title 20 containing 78 chapters involving education (Lexus Nexis, 2009). The United States Code contains the “rules for federal courts” or federal statutes enacted by Congress (Long, 2003, p. 64; Elias & Levinkind, 2007). Within the United States Code, the Federal Rules of Evidence and

Appellate and Civil Procedures are included in Title 28. The database of Lexis Nexus identifies 66 sections referring to the term “charter school” in Title 20 of the United States Code. All sections were reviewed with pertinent sections of interest included in the results section for review (United States Code, Title 20, 2009). The major areas of Title 20 revolving around charter schools include the Connie Lee Privatization Act, the Individual with Disability Education Act, Career and Technical Education, Strengthening and Improvement of Elementary and Secondary Schools, and Education Research.

In Section 1155, the Connie Lee Privatization Act, an allocation of five million dollars provides assistance to charter schools in the form of grants for facility maintenance or real estate for the schools in the District of Columbia (United States Code, Title 20, 2009). Charter organizations typically struggle with the ability to secure funds to acquire and maintain adequate buildings for learning, and Section 1155 helps to provide the needed capital funds (Vergari, 2007; Bulkey & Fisler, 2003).

Moreover, Sections 1400, 1401, 1411, 1412, 1413, 1414, 1415 and 1461 or sections of the Individual with Disability Education Act (Public Law 108-446, 2009), formerly known as Education for All Handicapped Children Act (Public Law 94-142, 2009) reference charter schools in several key cases within their text (United States Code, Title 20, 2009). The Individual with Disability Education Act recognizes the significance of the All Handicapped Children Act of 1975. It stresses the importance of the All Handicapped Children Act in providing recognition of children with disabilities and ensuring a free and appropriate education. It criticizes the system for providing low expectations for children with disabilities and for not providing research-based teaching

methods. The Individual with Disabilities Education Act focuses on having disabled students meet educational goals, participate in independent living, and pursue future education and employment. Within the history of Public Law on Individual with Disabilities Act, the text “charter school” was added in 1999 (United States Code, Title 20, 1999). Throughout the text of the United States Code dealing with the Individual with Disability Act, specific cases provide reference to the reader of court case findings.

In *B.R. v. District of Columbia* (2007) a claim was brought against the charter school and the District of Columbia for not providing appropriate accommodations (United States Code, Title 20, 2009). In this case the plaintiff failed to show that the accommodations provided by the school were not sufficient based on the disability. However, in another noted case, *Friendship Edison Public Charter School Collegiate Campus v. Nesbitt* (2008) the court found in favor of the plaintiff in determining that the charter school was responsible for school psycho-educational testing even though the student had not attended the school for several years (United States Code, Title 20, 2009). Also, in *Integrated Design and Electronics Academy Public Charter School v. McKinley* (2008) the court determined that the charter school did not provide the necessary plan and accommodations for students after receiving notification of their disabilities (United States Code, Title 20, 2009). In *Arizona State Board for Charter School v. United States Department of Education* (2006) the courts clarified that “for profit” charter entities may not obtain federal funding for exceptional education students; these funds specify “not for profit” public schools as recipients (United States Code, Title 20, 2009).

Another cited case, *Asbury Park Board of Education v. Hope Academy Charter School* (2003) was filed when the New Jersey Charter School Act was determined to be in violation of the Individual with Disability Education Act (United States Code, Title 20, 2009). In this case a charter school transferred two students to a private institution and requested reimbursement from the district. The district argued that the charter school did not have the authority to move the students when the district had other options in place. In deciding if the school district had a private right in the action, the following clarification points were used:

“ (1) whether the plaintiff is a member of the class "for whose especial

benefit the statute was enacted";

(2) whether there is evidence of legislative intent to create or preclude the

relief sought;

(3) whether the relief sought is consistent with the legislative scheme;

(4) whether the relief sought is the type that is ‘traditionally relegated to

states’ such that federal relief would interfere with the state scheme.”

(*Asbury Park Board of Education v. Hope Academy Charter School*, 2003).

The court found in favor of the charter school, thus determining the school district did not have the private right in a decision over a particular student. This case provides support for charter schools to act within the parameters allowed by the school district in deciding student placement.

Section 1413 of Title 20 states,

“5) Treatment of charter schools and their students. In carrying out this part [20 USCS

§§ 1411 et seq.] with respect to charter schools that are public schools of the local educational agency, the local educational agency--

(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

(B) provides funds under this part [20 USCS §§ 1411 et seq.] to those charter schools--

(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.” (United States Code, Title 20, 2009).

This reference to charter schools through section 1413 of the Individual with Disability Education Act holds charter schools to the same expectations as traditional public schools in providing services to special education students. Charter schools

struggle with the costly needs of special education students, and research shows evidence of counseling high special needs students out of attending charter schools (Rhim, Ahearn & Lange, 2007; Estes, 2004, 2008). Another case, *S.S. v Howard Road Academy* (2008) found that the school did not provide the extended summer program required when the Individual Education Plan indicated regression of the student (United States Code, Title 20, 2009). In *Parker v Friendship Edison Public Charter School* (2008), the charter school was found to be within compliance of providing evaluation within a 120-day time period; the court found that an earlier evaluation would not reveal any other substantial information (United States Code, Title 20, 2009). Moreover, in *Shelton v. Maya Angelou Public Charter School* (2008) the charter school director determined the amount of tutoring a student should receive thus violating the requirements for the Individual Education Team to meet and decide on services (United States Code, Title 20, 2009). The charter school failed to comply with the hearing officer's recommendations, and the school sought alternative placement for the student, which exceeded the 45-day allotment. The court found that while the school had neither complied with the hearing officer's recommendations nor met the requirements for the Individual Education team to decide upon services, Free and Appropriate Public Education was not violated.

Furthermore, in the *Friendship Edison Public Charter School Chamberlain Campus v. Smith* (2008) case, a hearing officer withheld information from a resolution meeting claiming it was confidential (United States Code, Title 20, 2009). The school board questioned the confidentiality of the information, and the courts agreed with the school board.

In *Brown v. Barbara Jordan Public Charter School* (2008) a charter school questioned the \$12,000 amount to be paid for attorney and court costs based on the \$4,000 limit for public schools. The courts declared the cost reasonable and found the charter school not entitled to the \$4,000 cap since the charter school was not a District of Columbia public school (United States Code, Title 20, 2009). In *E.M. v. Marriott Hospitality Public Charter High School* (2008) the court found the plaintiff's request for an evaluation fee unsubstantiated since the plaintiff accepted the in-house evaluation and did not get the second, independent evaluation (United States Code, Title 20, 2009). In another case, *Claudia C-B v. Board of Trustees of Pioneer Valley Performing Arts Charter School* (2008) the court found the hearing officer's findings questionable. However the court only awarded a small fraction of the cost of attorney and court fees because the plaintiff did not show that the student had not received a free and appropriate education (United States Code, Title 20, 2009).

Another area of the United States Code dealing with charter schools includes sections 2302, 2342, 2344, 2351 and 2353, which contain the guidelines for the Carl D. Perkins Career and Technical Education Improvement Act (United States Code, Title 20, 2009). These sections, which address the need for teaching technical skills leading to employment in high demand occupations, specifically target charter schools as an entity providing such services. Section 2342 specifically focuses on providing funds to support charter schools that provide career and technical education training for students. This act provides the emphasis for teaching the technical skills needed in the work place to fill

high demand jobs, and it places both secondary and post secondary institutions in charge of filling this need (Bragg, 2007; Crowson, Wong & Aypay, 2000).

Indeed, Chapter 70 of Title 20 includes the most expansive section dealing with charter schools in the United States. The sections incorporating Chapter 70 addressing charter schools include 6301, 6311, 6316, 6555, 6602, 6612, 6631, 6661, 6672, 6674, 6677, 7213, 7215, 7221, 7223, 7225, 7801, 7912, 8062, 8065, and 8071. These sections, also known as the Strengthening and Improvement of Elementary and Secondary Schools or No Child Left Behind Act (previously the Secondary and Elementary Act of 1965), Improving American's Schools Act of 1994, and the Charter School Expansion Act of 1998, all of which deal with advancing education by increasing academic achievement, defining the school improvement processes, providing resources to schools, supporting teaching and learning, and focusing on gains, especially of the lowest percentile (United States Code, Title 20, 2009; Balfanz, Legters, West & Weber, 2007). The implementation of the Charter School Expansion Act by Congress shows support for the development of the charter school reform effort (Evans, 2008).

Section 7221 defines a charter school as the following:

“7221i. Definitions

In this subpart [20 USCS §§ 7221 et seq.]:

(1) Charter school. The term "charter school" means a public school that--

(A) in accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible

operation and management of public schools, but not from any rules relating to the other requirements of this paragraph;

(B) is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(C) operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the authorized public chartering agency;

(D) provides a program of elementary or secondary education, or both;

(E) is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(F) does not charge tuition;

(G) complies with the Age Discrimination Act of 1975 [42 USCS §§ 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973 [29 USCS § 794], and part B of the Individuals with Disabilities Education Act [20 USCS §§ 1411 et seq.];

(H) is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated;

(I) agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such requirements are specifically waived for the purpose of this program;

(J) meets all applicable Federal, State, and local health and safety requirements;

(K) operates in accordance with State law; and

(L) has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school.

(2) Developer. The term "developer" means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

(3) Eligible applicant. The term "eligible applicant" means a developer that has--

(A) applied to an authorized public chartering authority to operate a charter school; and

(B) provided adequate and timely notice to that authority under section 5203(d)(3) [20 USCS § 7221b(d)(3)].

(4) Authorized public chartering agency. The term "authorized public chartering agency" means a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school." (USCS 20, Chapter 70, 2009).

In reviewing the definition based on federal code, the charter school concept provides empowerment for overseeing the operation and management of the school (United States Code, Title 20, 2009). The charter school functions within the same

federal guidelines of a traditional public school and as such, may not charge tuition or be secular in nature, and must comply with federal mandates regarding non-discrimination and special needs of students. The charter or contract initiating the opening of the school includes accountability goals in its functioning. Additionally a review of 6316 regarding school improvement states,

“(E) Public school choice.

- (i) In general. In the case of a school identified for school improvement under this paragraph, the local educational agency shall, not later than the first day of the school year following such identification, provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, which may include a public charter school, that has not been identified for school improvement under this paragraph, unless such an option is prohibited by State law.” (United States Code, Title 20, 2009).

This section federally dictates that any school under the school improvement plan not performing at a satisfactory level shall allow all students the option to enroll in another public school, including a public charter school. In addition, the same section makes reference to one of the allowed restructuring options to address school improvement, which is to reopen the school as a public charter school (United States Code, Title 20, 2009). This option provides any failing public school the opportunity to close its door and reopen as a charter school following the state requirements of charter schools.

Recognition may be made to secondary schools or charter schools of high performance by a national recognition program (United States Code, Title 20, 2009).

While the No Child Left Behind Act outlines the highly qualified requirements of traditional public education teachers, the decision about teacher qualifications for charter schools remains with the state (Selwyn, 2007). Charter schools are defined as high need schools (United States Code, Title 20, 2009). The definition of a high need school is a school that has at least 50 percent of its students from low-income families, or a school that has a large population of students who qualify for assistance under the Individual for Disability Education Act.

Section 7213 of Chapter 70 allows use of state funds for planning, designing, and implementing charter schools. Additionally, Section 7221 identifies the importance of charter school reform and provides for financial assistance.

“Purpose: It is the purpose of this subpart [20 USCS §§ 7221 et seq.] to increase national understanding of the charter schools model by--

- (1) providing financial assistance for the planning, program design, and initial implementation of charter schools;
- (2) evaluating the effects of such schools, including the effects on students, student academic achievement, staff, and parents;
- (3) expanding the number of high-quality charter schools available to students across the Nation; and
- (4) encouraging the States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount the States have typically provided for traditional public schools.” (United States Code, Title 20, 2009).

Specifically, subsections of 7221 identify financial aid in the form of grants for

the planning and implementation of charter schools. In addition to providing funds, Section 7221 allows for the need to evaluate and review the progress of the schools (USCS 20, Chapter 70, 2009). It explicitly says that states review charter schools every five years, unless the state determines reviews are needed more frequently based on the academic performance goals established in the charter agreement.

Priority to grant funding is given to states where 1) the authorizing board is not a local educational agency, such as a state chartering board or 2) the local educational agencies act as authorizers, and the state provides an appeal process at the state level and 3) the state ensures the charter school has a high degree of autonomy in expending funds (United States Code, Title 20, 2009). In addition, in providing funding the Secretary of Education will take into account the number of charter schools within the state.

Obviously, this section encourages states to increase the number of operational charter schools. The protection of charter schools through the operation of the authorizers and the inclusion of appeal procedures is clearly noted for states. In addition, the section clearly outlines the need for dedicating funds to charter schools without regulating spending.

Furthermore, Section 7221 includes an extensive piece that provides assistance and training for initiating a charter school. It contains information for charter schools on funding eligibility, and it also provides methods for gathering data on charter schools including teacher and student information (United States Code, Title 20, 2009).

While the No Child Left Behind Act outlines the highly qualified requirements of traditional public education teachers, the decision on teacher qualifications for charter schools remains with the state to decide (United States Code, Title 20, 2009). One reason often used to entice parents to a charter school includes teacher quality (May, 2006; Baker & Dickerson, 2006).

Another subsection of 7221 allocates funds specifically for charter school initiatives. In addition, a per-pupil facility funds program provides assistance to charter schools to obtain and finance a facility based on student enrollment. It outlines the federal allocation of funds for charter schools during the first year and in expansion years (United States Code, Title 20, 2009). It requires that federal funds be provided to schools no later than five months after opening or after an expansion. It also provides protection to charter schools that open after November to ensure funding for the following year.

An exception to the allocation of federal funds for charter schools in Section 7221, and as decided in the case *Arizona State Board for Charter Schools v. United States Department of Education*, for-profit charter schools do not qualify for federal funds (United States Code, Title 20, 2009). This is based on the Elementary and Secondary Act and the Individuals with Disabilities Act. For-profit charter entities continue to flourish in the charter school market providing new partnerships with schools (Vergari, 2007; Bulkey & Hicks, 2005).

According to Section 7221, when possible, stakeholders of charter schools are to be included in discussions of regulations or laws impacting charter schools prior to implementation (United States Code, Title 20, 2009). Also, as part of paperwork reduction, a specific section designates minimum paperwork for any charter school or applicant of a charter school. Finally, contrary to all current accountability factors faced by traditional public schools, the last line of Section 7221 clearly says that states should not interpret this section to indicate that charter schools need to collect any data described in the section.

On another note, section 7912 titled Unsafe School Option allows students attending a persistently dangerous elementary or secondary school the option to attend

another public school; this includes charter schools (United States Code, Title 20, 2009). This rule also applies to any student who becomes a victim of a violent criminal offense.

Furthermore, the most powerful piece of Chapter 70 lies with Section 6311 regarding state plans of charter schools (United States Code, Title 20, 2009). It states, “(K) Accountability for charter schools. The accountability provisions under this Act [20 USCS §§ 6301 et seq.] shall be overseen for charter schools in accordance with State charter school law” (United State Code, Title 20, 2009). This segment of the law allows the control of accountability to be decided by the state. The state may determine the mandates with which charter schools must comply or from which they are exempt. At the same time, state regulations controlling charter schools are limited by the parameters for favorable review of charter school applicants seeking federal grants. The charter school movement rests on charter schools out performing public schools and allowing a competitive market to improve all schools (Crews & Anderson, 2003; Finnigan, 2007).

Code of Federal Regulations Impacting Charter Schools

The Code of Federal Regulations comes from the Federal Register providing a collection of executive-agency regulations (Garner, 2006). These executive-agency regulations provide technical guidance or requirements of the United States Code. The Code of Federal Regulations dealing with charter schools include 34 CFR 76, 106, 200, 225, 226, 230 and 300. The Code of Federal Regulations 34 Proclamation 8372 (2009) included a statement from the current president of the United States, Barack Obama, in which he established May 3rd through the 9th of 2009 as National Charter School Week and acknowledged the benefits of effective charter schools. Obama called upon “States and communities to support public charter schools and the students they serve”.

A review of the Code of Federal Regulations 34 CFR 76 (2009) concerning charter schools provides detailed information on the procedures for allotting funds to charter schools. These procedures ensure proper funding within a timely manner to charter school entities. These requirements are placed on the states and the local educational agencies overseeing charter schools. Regulation 34 CFR 106 (2009) provides clarification on the requirements of voluntary same sex programs within schools. A specific piece of the regulation allows for single sex non-vocational charter schools to operate.

The Code of Federal Regulations 34 CFR 200 (2009) deals with the United States Code of Restructuring. Schools identified as in need of improvement and requiring restructuring may accomplish the restructuring through reestablishing the public school as a charter school. Other options include turning the school over to the state, providing school choice options, providing supplemental services, or replacing the staff or the principal. The option of supplemental services must be provided by an outside agency of a non-secular nature. The supplemental services require advertisement through the school communication processes and input from parents about the effectiveness of the services. After the school makes Adequate Yearly Progress for two years, the restructuring no longer applies to the school. This regulation also provides information on how a teacher becomes highly qualified within the teaching profession.

Moreover, Regulation 34 CFR 225 (2009) deals with Credit Enhancement Programs that provide grants to be used for acquiring facilities for charter schools. It provides the scoring and criteria for grant applicants and a required performance

agreement that allows the funds to be dispersed. These funds allow charter schools to acquire a lease or to place a security for a loan. The funds, however, may not be used for direct construction or to purchase an establishment. In addition, Regulation 34 CFR 226 (2009) establishes the Charter School Facilities Incentives Program, which also deals with facilities purchases. This program provides grants to States allowing them to award funding to charter schools. A note of interest is the preference criteria used to award funding to charter schools within a high poverty area and where state assessments indicate low results. Access to facilities differentiates public schools and charter schools because charter schools typically struggle with infrastructure cost and access (Vergari, 2007; Bulkey & Fisler, 2003).

Additionally, Federal Code Regulation 34 CFR 300 (2009) provides an outline of requirements for students with disabilities. The regulation allows states to determine the licensure for special education students at charter schools. Regulation 34 CFR 300.209 (2009) caters to charter schools and the rights of disabled students stating that charter schools must provide all of the accommodations required by other public schools. In addition, the guide specifically references funding to charter schools for servicing special need students. This code confirms that while states may exempt charter schools of other mandates, all charter schools must comply with the Individual with Disability Educational Act. Charter schools, according to federal statute and code, operate under the same guidelines as traditional public schools in regards to special education regulation (Estes, 2004, 2008).

Florida State Statutes Impacting Charter Schools

In 1996, a law passed allowing the implementation of charter schools within the state of Florida (Florida Code, 1996). In investigating the Florida Code, it is pertinent to remember the power granted to the individual states to decide on charter laws. Currently, 413 charter schools exist in Florida with 131, 183 students served (charterschoolresearch.com, 2009). The following statutes deal with charter schools in the Florida Code (2009):

- 11 Legislative Organization, Procedures, and Staffing
- 39 Proceedings Related to Children
- 121 Florida Retirement System
- 159 Bond Financing
- 163 Intergovernmental Programs
- 196 Exemption
- 218 Financial Matters Pertaining to Political Subdivision
- 238 Teachers' Retirement System
- 943 Department of Law Enforcement
- 1001 Governance
- 1002 Student and Parental Rights and Educational Choices
- 1003 Public K-12 Education
- 1006 Support for Learning
- 1008 Assessment and Accountability
- 1011 Planning and Budgeting
- 1012 Personnel
- 1013 Educational Facilities

In examining the Florida Code (2009), Chapter 11 stipulates the rights of local government entities to perform financial, operation, or performance audits. The law indicates the completion of a financial audit every three years for districts with 125,000

or more students by the Auditor General with recommendations provided to the institution. As stated by Chapter 11, the following defines a financial audit (Florida Code, 2009):

"Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with generally accepted auditing standards and government auditing standards as adopted by the Board of Accountancy."

In addition to guiding the annual audits of financial statements, Chapter 11 requires yearly recommendations to legislation for statutory or fiscal changes for system improvement from the Auditor General based on information obtained from audits. Chapter 11 also authorizes an operational audit and defines it as the following (Florida Code, 2009):

"'Operational audit' means a financial-related audit whose purpose is to evaluate management's performance in administering assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines and to determine the extent to which the internal control, as designed and placed in operation, promotes and encourages the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets."

Furthermore, the following indicates a performance audit as authorized by Chapter 11 (Florida Code, 2009):

"'Performance audit' means an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The term includes an examination of issues related to:

1. Economy, efficiency, or effectiveness of the program.
2. Structure or design of the program to accomplish its goals and objectives.
3. Adequacy of the program to meet the needs identified by the Legislature or governing body.
4. Alternative methods of providing program services or products.
5. Goals, objectives, and performance measures used by the agency to monitor and report program accomplishments.
6. The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies.
7. Compliance of the program with appropriate policies, rules, or laws.
8. Any other issues related to governmental entities as directed by the Legislative Auditing Committee."

The Office of Program Policy Analysis and Government Accountability may conduct the performance audits (Florida Code, 2009). The significance of Chapter 11 lies in the ability and right of any local government entity to audit almost any facet of the school environment, from its handling of internal or district finances, daily programs, and plant

operations, to its specific implementation of enacted laws or requirements of legislation. Chapter 11 imparts the ability of the Legislative Auditing Committee to meet regarding findings of audits and to withhold funds from school entities based on questionable discrepancies found. In the case of charter school concerns, the sponsor may be notified with a termination of the charter.

Additionally, Chapter 39 of the Florida Code (2009) impacts charter schools in its outline of proceedings related to abuse. A specific point in Chapter 39 allows the principal of a traditional public school or charter school to share information of abuse with staff if abuse information is needed to effectively provide educational services. On another note, Chapter 121 bestows language allowing charter schools to make application to become a part of the Florida Retirement System and allows past services at a charter organization that becomes part of the Florida Retirement System to count towards years of service. Moreover, Chapter 159 allows charter schools to use bond financing for facilities. Furthermore, Chapter 163 allows charter schools to be calculated in planning for capital construction, with Chapter 196 granting tax exemption on land acquisitions and leasing.

Florida Code Chapter 218 addresses charter schools in its requirements of yearly independent financial audits where no notification has been given from the Auditor General for an audit (Florida Code, 2009). Chapter 218 requires charter schools to establish an auditing committee and complete a competitive bid process before entering into a contract with a company. Additionally, this chapter gives authority to the charter school board, the Governor or the Commissioner of Education to review any financial

information when questionable financial issues arise with a charter school. These entities may also halt state action if corrections occur with the questionable items.

Moreover, Chapter 238 of the Florida Code (2009) addresses employment issues and allows retired directors or principals of charter schools under the Florida Retirement System to return in a contractual teacher or staff member position after one month of non-work time. Also addressing employment, Chapter 943 indicates that when applying for a charter school position, an individual with expunged or court-sealed records must supply information regarding the arrest situation due to the position the applicant is seeking.

Additionally, Chapter 1001 identifies the State Board of Education as the authority responsible for overseeing and coordinating the goals of the K-12 sector (Florida Code, 2009). It allows the State Board of Education to delegate its authority to the Commissioner of Education or division directors. It specifically addresses charter schools in its right to inform school districts of the recommendation of the state board's appeal decision on charter school applicants and to implement the state board's resolution. It also contains a section creating a program to offer discounted computers and internet access to students in the 5th through 12th grade in all public schools and charter schools.

To continue, Chapter 1002 specifically details the school choice options available to parents and students (Florida Code, 2009):

“ EDUCATIONAL CHOICE.--

(a) *Public school choices.*--Parents of public school students may seek whatever public school choice options that are applicable to their students and are available to students in their school districts. These options may include controlled open enrollment, single-gender programs, lab schools, school district virtual instruction programs, charter schools, charter technical career centers, magnet schools, alternative schools, special programs, advanced placement, dual enrollment, International Baccalaureate, International General Certificate of Secondary Education (pre-AICE), Advanced International Certificate of Education, early admissions, credit by examination or demonstration of competency, the New World School of the Arts, the Florida School for the Deaf and the Blind, and the Florida Virtual School. These options may also include the public school choice options of the Opportunity Scholarship Program and the McKay Scholarships for Students with Disabilities Program.

(b) *Private school choices.*--Parents of public school students may seek private school choice options under certain programs.

1. Under the Opportunity Scholarship Program, the parent of a student in a failing public school may request and receive an opportunity scholarship for the student to attend a private school in accordance with the provisions of s. 1002.38.

2. Under the McKay Scholarships for Students with Disabilities Program, the parent of a public school student with a disability who is dissatisfied with the student's progress may request and receive a McKay Scholarship for the student to attend a private school in accordance with the provisions of s. 1002.39.

3. Under the Florida Tax Credit Scholarship Program, the parent of a student who qualifies for free or reduced-price school lunch may seek a scholarship from an eligible nonprofit scholarship-funding organization in accordance with the provisions of s. 220.187.

(c) *Home education*.--The parent of a student may choose to place the student in a home education program in accordance with the provisions of s. 1002.41.

(d) *Private tutoring*.--The parent of a student may choose to place the student in a private tutoring program in accordance with the provisions of s. 1002.43(1).”

The educational choice legislation offers many options for educating students (Florida Code, 2009). Scholarship opportunities help defray the cost of other educational choice options outside of traditional public school. Furthermore, the Florida Code allows charter school students to participate in extracurricular activities offered at the traditional public school if not available at the charter school. Section 1002 of the Florida Code (2009) delivers the guiding principles for charter schools:

“(a) charter schools in Florida shall be guided by the following principles:

1. Meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state's public school system.
2. Promote enhanced academic success and financial efficiency by aligning responsibility with accountability.

3. Provide parents with sufficient information on whether their child is reading at grade level and whether the child gains at least a year's worth of learning for every year spent in the charter school.

(b) charter schools shall fulfill the following purposes:

1. Improve student learning and academic achievement.
2. Increase learning opportunities for all students, with special emphasis on low-performing students and reading.
3. Encourage the use of innovative learning methods.
4. Require the measurement of learning outcomes.

(c) charter schools may fulfill the following purposes:

1. Create innovative measurement tools.
2. Provide rigorous competition within the public school district to stimulate continual improvement in all public schools.
3. Expand the capacity of the public school system.
4. Mitigate the educational impact created by the development of new residential dwelling units.
5. Create new professional opportunities for teachers, including ownership of the learning program at the school site.”

The emphasis on choice and focus on learning is clearly articulated in the guiding principles. It is evident that legislators view charter schools as an avenue to demonstrate innovation within a school setting with better use of public funds. One purpose the

charter schools serve is that they provide competition for traditional public schools, with a focus on achievement.

In addition Chapter 1002 prohibits school districts from taking action against individuals participating in the charter school application processes; this includes eliminating or cutting back positions for which the individual is applying (Florida Code, 2009). It allows school districts to adopt current schools as charter schools and allows universities to open lab schools as charter schools. Presently school boards offer sponsorship to charter schools within the district, but the policies of the school board do not apply to the charter schools unless indicated in the charter agreement. The sponsor ensures responsibility of the charter schools participation in the state's accountability system, and authorizers report charter schools not meeting expectations to the state. School districts may not place an undue burden of reporting data or providing information on the charter schools without a warranted reason.

Furthermore, the charter school application contains procedures for how the charter school will meet the guiding principles set forth in the statute, address the requirements of the Sunshine State standards, meet the needs of reading with the curriculum plan, and identify learning goals for students (Florida Code, 2009). The application requires a financial plan for the term of the charter, along with specific information on expenditures, operation costs, and expected funding from student enrollment.

The Department of Education provides both the initial and the renewal application for the charter (Florida Code, 2009). The school board or authorizer has 60 days to

approve or deny the application. If the application is denied, the authorizer must send information to the applicant within ten days outlining the rationale for the rejection. The charter school applicant may then appeal the decision with the State Board of Education. A charter school showing a trend of an A or B for three of four years may be granted a 15-year charter by the authorizer, subject to a yearly review. The state law requires that charter schools compare their grades to those of comparable public schools and that grade information be posted on the charter school website.

Additionally, Chapter 1002 outlines the reasons a charter may be terminated or not renewed (Florida Code, 2009). Causes that might prevent the renewal of a charter are: 1) failure to participate in the state's accountability system or failure to meet performance requirements set in the charter, 2) fiscal mismanagement 3) violation of law and 4) other good cause shown (Florida Code, 2009). A charter may be terminated immediately if "health, safety or welfare concern" threatens students. Non-renewal of the charter requires notice, and the charter school may appeal the decision. If, however, the school is closed, the charter school is responsible for the payment of any remaining debts and the return of all unencumbered funds to the sponsor.

The requirements of the charter school outlined by Florida state statute include the following: 1) charter schools operations will be non-secular in nature 2) charter schools are expected to comply with the performance agreement stated in the charter 3) charter schools may not charge tuition 4) charter schools must comply with all applicable state and local health, civil rights, and safety requirements 5) charter schools may not violate any of the nondiscrimination rules 6) charter schools are to keep financial records similar

to other public schools or a not-for-profit entities with specific items included, and 7) charter schools must accept students within the district without prejudice (Florida Code, 2009). The schools may use a lottery system to give applying students equal opportunity to attend, and preference may be given to siblings of current students, employees' students, and governing board members' students.

Also related to charter schools and addressed in Chapter 1002, a charter school may establish enrollment numbers based on a specific age or grade level, the number of students at risk of academic failure with the exception of special education students, students in work programs, the current student enrollment, students articulating from a specific charter school, and students living outside a reasonable distance (Florida Code, 2009). The governing board with the sponsor determines the annual enrollment capacity. Also specified in 1002 is that charter schools must complete the same number of instructional days as is required of public schools.

In addition, the governing board of the charter school ensures that the school follows proper auditing procedures, adopts a yearly budget, reviews audits and corrections, participates in governance training, provides an annual report of progress, and completes online accountability reports to include student performance, financial status, facility information, and personnel information (Florida Code, 2009). A sponsor may initiate an expedited review if the school delays or fails to respond to an audit. If through any audit, a charter school has a financial crisis, the charter school must submit a recovery plan to the sponsor. A charter school may not levy taxes.

Additionally, charter schools with grade issues require additional components

within their school plans (Florida Code, 2009). If a charter school receives a D grade, the director and a school representative meet with the sponsor once a year concerning noted deficiencies. The sponsor will provide in writing the services offered to assist the charter school. Upon a second D or an F grade, the school is required to develop and implement a school improvement plan. The Department of Education will support the charter school with technical assistance and training for establishing the improvement plan. If the school grade does not improve the following year one of the following actions may be taken: 1) contract the educational services for the school 2) review of the charter agreement 3) appoint a new principal or director whose primary focus is a strategic plan addressing concerns (Florida Code, 2009).

According to Chapter 1002, in addressing the issue of faculty and staff, charter schools may contract with sponsors for services of personnel, or it may select its own employees. According to the Florida Code, charter schools cannot employ relatives (Florida Code, 2009). Charter employees may collectively bargain, and employees of a charter school converted from a public school maintain public employee status unless employees choose otherwise. Likewise, educators currently teaching at a public school may take leave to teach at a charter school while retaining their position and years of service. The charter schools must establish standards and ethics for employees and provide their employees with training for the expected conduct (Florida Code, 2009). The schools will screen potential employees with a background check with evidence of effort to contact previous employers for references.

To continue, Chapter 1002, establishes funding for charter schools at the same

level as public schools (Florida Code, 2009). Federal funds provided to a public school district also shall be given to charter schools that provide the same level of services to students within the district. Just as with public schools, charter schools are eligible to receive Title I funds and IDEA. Also, Federal stimulus monies going to the public school district should also benefit charter schools. State statute requires timely payment of all funds. Funded lower than traditional public schools, charter schools typically struggle with operational costs and require committed stakeholders to address school needs (Bulkley & Fisler, 2003, Odden & Clune, 1998).

Furthermore, Chapter 1002 stipulates that charter school buildings need to meet the Florida Code (2009) of Chapter 553 and fire code requirements; however, charter school buildings are exempt from the Educational Facilities code compliance of Chapter 553. Charter schools may request to use existing public school buildings or land not currently in use. Also, the Department of Education may allow unused classrooms to be used for charter schools based on the work plan submitted to the Department of Education. In addition, Chapter 1002 clearly states that charter schools qualify for capital outlay funds.

Moreover, Chapter 1002 details extensive services to be provided by the sponsor at cost to charter schools (Florida Code, 2009). These services include giving assistance with data reporting, supplying administrative special education services, administering funds and reporting of federal lunch programs, and conducting state or district required assessments including cost. Also, charter schools are to be included on any district bids in place for bulk pricing. Charter schools may enter into an agreement with the school

district or with a private company for use of transportation, and a fee of not more than 5% may be charged for this service by the authorizer.

Also, Chapter 1002 reviews the requirement of all districts having a virtual school or contracting with Florida Virtual School (Florida Code, 2009). It indicates that charter schools may access online schooling for students within the district.

A pertinent piece of Chapter 1002 legislation specifies that legislature will review charter school operations during the 2010 legislative session (Florida Code, 2009). It specifically exempts charter schools from legislation pertaining to public schools in Chapter 1000-1013 unless charter school requirements are noted within the code. It also holds charter schools accountable to Chapter 119 and Chapter 286.011. Chapter 119 deals with securing student records and Chapter 286.11 declares meetings with charter school boards as open to the public.

In further review, Statute 1002.335 initiated an act in 2006 establishing the Florida Schools of Excellence Commission (Florida Code, 2009). While worthy of review, the Florida First Court of Appeal ruled this Commission unconstitutional in the case *Duval County School Board v. State Board of Education* (2008) (www.fldoe.org/fsacommission, 2009). Subsequently, the Commission was dissolved in January of 2009.

The legislation, as written, identified charter schools as a component of quality schools, providing valuable options and innovations to education within Florida and improving public schools with competition. The establishment of the Florida Schools of Excellence Commission aimed to provide an independent state commission working on

the development and support of charter schools (Florida Code, 2009). Private contributions and federal grants provided the financial support to begin the Florida Schools of Excellence Commission. This commission eliminated the need to have districts act as sponsors and identified one state board to oversee charter school operations, to process new applications, and to review renewal applications. This organization was to identify best practices of charter schools and establish a Florida Schools of Excellence based on outstanding charter school performance. In addition, the commission was to identify funding available to existing charter schools or to parties interested in establishing a charter school. The commission would also provide input for legislative changes, review possibility of special education charter schools, and work as a liaison between charter schools and districts for contracted services. Additionally, the legislation included a section that allowed a district to request exclusive power for authorizing and sponsoring charter schools within its designated district. The provisions giving the districts exclusive authority required districts to maintain purchasing agreements with the schools at cost for provided services, established that there would be no limit on enrollment of students at charter schools, and provided assistance with facility needs. Districts approved as sponsors would need to show that they had the necessary staff and structure for monitoring and assisting charter schools.

Chapter 1003 provides another option to states by allowing a district to enter an academic performance-based agreement to become a charter school district (Florida Code, 2009). This provision gives districts an exemption to state statutes in areas that mirror charter school exemptions with the exception of the requirement of differential

pay plans for staff and administrators based on performance. School districts that qualify for this option are districts with a grade of an A or B and with no schools having a D or F grade based on the state accountability system.

Chapter 1006 requires all public and charter school officials to report any type of abuse to the Department of Children and Family (Florida Code, 2009). Also, it further expands on the rights of charter school students to participate in athletics at the zoned public high school if the student maintains the appropriate grade point average and meets residency requirement. To participate in a sport, charter school students must register prior to the beginning of the practice season and follow the same behavioral and performance agreements as other students on the team.

In addition, Chapter 1006 addresses guidelines used for student transportation (Florida Code, 2009). The emergence of charter schools necessitated the creation of procedures for transporting students to school-sponsored events. Chapter 1006 establishes that the charter schools will follow the same transportation procedures used by public schools for private or school-sponsored trips.

Chapter 1008 provides for the statewide accountability system used to calculate student performance and learning gains into a grading scale of A to F (Florida Code, 2009). The primary assessment used for calculation is the Florida Comprehensive Assessment Test. For the 2009/2010 school year, 50% of the grade for high school-level calculations comes from the Florida Comprehensive Assessment Test for writing, reading, math, and science, with a specific focus that reviews performances and learning gains for students at the lowest 25% and at risk students. The use of Advanced

Placement, International Baccalaureate, Industry Certification, and dual enrollment participation and performance are also important to high school assessments. These, along with the graduation rate, provide points towards the high school grade. All alternative school test results return to the home school for grade calculation. The school grade is an important factor for the school not just because it assesses student progress, but also because the legislation may factor in performance pay for teachers based on school grading. In addition, schools receive Recognition Funds for an A grade or a letter improvement. These funds may be used for staff bonuses or redistributed into the school for students. A faculty vote decides the dispersion of Recognition Funds.

Chapter 1011 contains the Equity in School-Level Funding Act (Florida Code, 2009). This act requires 80% of funds generated by a school to be allocated to the school. In addition, funds not spent by the school stay with the school at the end of the fiscal year instead of returning to the school board. This chapter defines academic-based performance charter school districts as exempt from this ruling.

Chapter 1012 requires districts to complete background screenings for hired personnel or those seeking field experiences within charter schools. Fingerprints taken by law enforcement also need to be screened with the district (Florida Code, 2009). Additionally, Chapter 1012 allocates Teacher Lead Funds to each classroom teacher in both public schools and charter schools allowing teachers to make purchases for classroom supplies. Teachers must return unused Lead Funds to the district for the School Advisory Council to use.

In 2008, a section was added to Chapter 1012 outlining a list of crimes that, if

committed, disqualify an individual from working in the school system as an educator or administrator with direct contact with students. Individuals with charges from this list may not receive education certificates (Florida Code, 2009). These parameters also apply to charter schools. Crimes that would prevent employment in a school include the following felonies: sexual misconduct with a disabled person or mental health patient, adult abuse, murder, manslaughter, aggravated assault or battery, kidnapping, false imprisonment, crimes related to luring or enticing a minor, exhibiting a firearm or electric weapon or devise within 1,000 feet of a school, sexual battery, sexual activity with a minor, female genital mutilation, prostitution, lewd and indecent exposure, arson, voyeurism, theft in excess of \$3,000 or theft from someone over 65, dealing in stolen property, robbery, carjacking, home invasion, fraudulent sales of controlled substance, abuse, incest, resisting arrest with violence, or recruiting for a gang (Florida Code, 2009).

Another section of Chapter 1012 allows districts to adopt a Merit Award Program for high performing teachers or administrators (Florida Code, 2009). This act allows charter schools to participate with a district plan or to submit a separate performance plan on its own. The pay-for-performance plan allows districts to award a bonus of 5% to 10% for a teacher or administrator based on a student's performance on state assessments (Florida Code, 2009). The plan may recognize just one teacher, or it may reward a team of teachers. The performance of students on state assessments and a supervisor's recommendation determine the recipients of the bonus. Years of service may not play a part in the final decision. To participate in the Merit Awards Program, school districts must submit plans annually.

On another note, Chapter 1012 also provides the right to the Department of Education to investigate any teacher or administrator of a public or charter school for any action jeopardizing the health, safety or welfare of a student (Florida Code, 2009). The Department may continue the investigation even if the person complaining withdraws the complaint. School districts require reporting of any occurrence regarding a teacher and an incident that affects the health, safety, or welfare of students within 30 days of the event. The investigation could lead to suspension, termination of certificate, probation, fines, or other consequences. All complaints, whether founded or unfounded, remain available for public view. In addition, all school board policies require schools to have clearly stated ethics and standards for their staff as well as actions and penalties for any violations.

Lastly, Chapter 1013 provides Florida statute regarding educational facilities (Florida Code, 2009). This chapter outlines the requirement of submitting a five-year plan for school sites, student enrollment, and future buildings to the Department of Education. Within the requirement, the statute requests considering the option of less enrollment due to charter schools and other choice options. It also requests charter school buildings or plans for buildings to be included in the plan. Further in the chapter, it provides stipulations for charter schools to receive capital outlay funds. These funds may be used to purchase real property, to fund school construction, to lease property, and to purchase vehicles for a Driver's Education course or for transporting students to and from school. To receive capital fund allocations, charter schools must have a governing board in operation for three years or be a part of an existing charter school establishment. In

addition, the school needs to have accreditation, show financial stability, have satisfactory performance, and receive renewal of its charter. Student enrollment determines the amount of funds a charter school may receive. A charter school that receives capital funds must form an agreement with the school's sponsor allocating all resources to the sponsor in the event that the school closes. Also, any remaining funds upon termination of the school's charter return to the General Revenue Fund. Chapter 1013 further encourages the creation of an educational facilities' benefit district where outside municipalities and organizations fund facilities for charter schools (Florida Code, 2009). The benefit to these organizations includes the ability to apply and accept federal funds and gifts to support the facility. The establishment of a community development district allows non-ad valorem taxes to apply to the facility. To qualify for this distinction, district school funds may not be used.

Charter Schools and Federal Cases

Federal courts include the United States Supreme Court and any court having federal jurisdiction. This includes circuit courts, courts of appeals, and district courts (Garner, 2006; Segal, Spaeth & Benesh, 2005). These court cases impact a greater area due to their federal status. A number of cases exist at the federal court level with implications for charter schools. Each case has been identified, along with its topic and decision, by the highest court. In reviewing cases, those with three or more citations were included (Lexus Nexis, 2009; Westlaw, 2009).

The case of *Ohio Association of Independent Schools v. John Goff* (1996) revolved around a state requirement for proficiency testing in both public and private schools. The legislation indicated that failure to comply with testing requirements by private schools would result in the loss of the school's charter. The case was filed in the

Court of Appeals for the Sixth Circuit. The plaintiff brought the suit based on a violation of the First and Fourteenth Amendments. The court found on the Fourteenth Amendment that the minimum testing allows for basic standards to be met by the private school, and this coincides with certification and other regulations placed on private schools (*Ohio v. Goff*, 1996). The greater good of the testing outweighed other factors. Concerning the First Amendment and the testing requirements, while providing a foundation for what to teach, the test did not restrict the school from teaching any other area; therefore, it did not limit speech in any way. The Appeal Court agreed with the lower court ruling on the case (*Ohio v. Goff*, 1996). The Supreme Court declined to hear the case. A study by Crew and Anderson (2003) showed no difference in performance of charter and traditional public schools. They attribute the lack of performance to weak accountability systems with charter schools (Crews & Anderson, 2003; Manno, Finn, & Vanourek, 2000).

In another case, *Villanueva v. Carere* (1996), a group of parents sued the school district after a charter school opened and the following year, two public schools were closed. The parents filed suit based on Title VI of the Civil Rights Act and the Fourteenth Amendment Equal Protection Clause, citing that the Hispanic student population was impacted by the change. The case also questioned the Colorado Charter School Act and its constitutionality. The court found the act did not intentionally discriminate, the parents did not demonstrate impact of discrimination, and the act did not violate the state constitution (*Villanueva v. Carere*, 1996). The school board stated the two public schools were closed based on student enrollment, space utilization, and cost per student to operate. The case was heard at the United States Court of Appeals for the Tenth Circuit where the court affirmed the lower court ruling in favor of the school district, as the parents did not meet the burden of proof in showing discrimination

(Villanueva v. Carere, 1996). The court's opinion stated that the issues raised by the parents were political not legal.

Another federal case from the United States Court of Appeal for the Eighth Circuit is *Stark v. Independent School District* (1998). In this situation, the district made an agreement with a building landlord to honor his request that no technology be used in the curriculum at the school. The building, for all appearances, was donated to the school board with many of the costs for its use covered. The Brethren religious leaders assisted with the building donation and the teacher selection (Walsh, 1997). The total student enrollment for the Kindergarten through 6th grade school included 20 students. Opening the school was based on a community interest for a multiage curriculum in the area (*Stark v. Independent School District*, 1998). While the school was open to all religions, the enrolled student body followed the same religion as the landlord. The suit was filed due to alleged violations of the First Amendment, specifically the Establishment Clause, and violation of the Minnesota State Constitution. In making its decision, the court reviewed the Lemon test from *Lemon v. Kurtzman* (1971): 1) secular purpose 2) primary effect of advancing religion and 3) excessive entanglement with religion. The district showed that the school curriculum matched the other neighboring schools and met state guidelines (*Stark v. Independent School District*, 1998). In addition, the district verified that no religion was taught within the classes, and they showed that the minimizing of technology did not interfere with the curriculum. The court determined that the district did not violate the Establishment Clause based on the Lemon test. The court recognized that schools may, and sometimes must, accommodate religious practices and do so without violating the Establishment Clause (*Stark v. Independent School District*, 1998). The court reviewed the state's constitution and found that the district was within the requirements to not use funds for a religious entity or provide religious instruction. The Court of Appeal made the decision to return the case to the lower court for dismissal. A

key determinate for the decision was that in its initiation, the school was not established for a particular religion and was open to all students.

Moreover, another case at the federal level includes *Hunter v. Regents of the University of California* (2000). This case resides in the United States District Court for the Central District of California. A mother sued the University of California for not admitting her daughter, an Asian American, into the elementary school lab program, a university charter school, due to the ethnicity and demographics used to decide student entry by the school. The mother sued based on discrimination, thus citing a violation of Title VI of the Civil Rights Act of 1964. The school countered her suit claiming that the use of ethnicity and demographics as criteria for admission worked for the greater mission of the school to focus on challenging students, which was a state interest (*Hunter v. Regents of the University of California*, 2000). The school verified its use of race and ethnicity to allow for a cross sample of the population of minorities and disadvantaged students. The student in question was placed in the category of race, and the school indicated that selection in this category was made through a lottery. The courts found the focus of the school to be a benefit to the state and found in favor of the university without providing a slot to the plaintiff. This case decision differs from the Supreme Court case of *Parents Involved in Community School v. Seattle School District* (2007) where the courts found school selection for balancing races as a violation of Title IV of the Civil Rights Act. In this case, the court found that the school district did not provide a compelling reason for their classification other than to balance race, which in itself, was determined to be unconstitutional. This case focused on the research aspect of the selection for the “compelling why” of race classification instead of the educational focus (Walbourn, 1998).

On another note, in *Jenkins v. Missouri* (2002), a case ultimately decided at the United States Court of Appeals for the Eighth Circuit, the court examined the state’s

deaccreditation of a school district without a hearing. It should be noted that in a prior case, *Green v. County School Board* (1968), the court found the school board's actions unconstitutional in a dual school system as a result of race issues within the district. The issue of desegregation has been an ongoing issue with the Kansas City School Board and the courts (Tatel, 2004). In 1954, in the Supreme Court case of *Brown v. the Board of Education* the judicial system found separate but equal facilities in racially segregated schools as unequal (Alexander & Alexander, 2005). Even with this court decision, in 1974 the Kansas City School Board functioned in racially segregated schools (Tatel, 2004). The Kansas City School Board began desegregation in 1986; the system showed little change with dilapidated facilities and low student achievement (Tatel, 2004). The ongoing battle in the Kansas City School Board district provides the foundational case of showing no correlation between funding and student achievement (Green & Baker, 2006). The court system throughout the battle of desegregation required funding of up to \$14,000 per student, and even with this funding, no significant changes in achievement were seen (Green & Baker, 2006; Dyson, 2004; Parker, 2000). It should be noted that the district, in its slow adaptation to the desegregation policy, influenced the movement of the higher socio-economic families to other districts, leaving an area of mostly poor minorities (Green & Baker, 2006; Dyson, 2004). The documented success of the funds did include new and renovated schools, increased technology, and intervention programs for students at risk (Green & Baker, 2006). The failures in the district deemed by the courts included lack of a comprehensive instructional program, administrative instability, lack of a budget plan, and below state average scores on achievement tests (Green & Baker, 2006).

The Missouri State Board of Education, in reviewing the lack of success at the district, removed accreditation of the district without a hearing (*Jenkins v. Missouri*, 2002). In reviewing the issue of deaccreditation, Judge Gibson reacted to what he

perceived to be a disingenuous attempt to desegregate the city's schools by making the following statement:

“The fact is that 165 years of racial discrimination simply could not be overcome in fourteen short years of court supervision, particularly without the full cooperation of the State, the KCMSD, and the suburban schools. Over this period, none of these entities made any effort to implement a voluntary interdistrict transfer program, thus preventing complete integration of the Kansas City schools.⁹ Further, the State Board of Education took no responsibility for the KCMSD's performance, and never once during the fourteen-year period moved to implement the quality education programs called for in Judge Clark's plan. It simply complied with the district court's funding orders. In addition, the constant bickering between the State and the KCMSD and the numerous changes in leadership in the Kansas City schools obviously did not inspire community, parental, or student confidence in the school district (Jenkins v. Missouri, 2002).”

The court recognized two decisions impairing Kansas School District's ability to improve the quality of schools in the state (Jenkins v. Missouri, 2002). First, the actions taken by the state included creating charter schools in the state's two largest cities both with a large majority of black students. In addition, the state stipulated the school district would have to provide and pay for transportation to the charter school. This in turn reduced the funds available for teacher training and materials for students. The court reversed and remanded the lower court decision, finding due process was not provided in approving the deaccreditation of the school district (Jenkins v. Missouri, 2002). In reviewing this case, many individuals recommend eliminating the ongoing court intervention of desegregation, and recommend reviewing good faith effort in deciding desegregation (Dyson, 2004; Green & Baker, 2006).

Another case, *Charter School of Pine Grove v. St. Helena Parrish School Board*

(2009), began when a school board revoked a charter agreement. This case had an initial visit at the federal level when the school board appealed the case to a federal court claiming to have revoked the charter based on desegregation concerns. The Fifth Circuit Court dismissed the district's appeal and defined the incident as that of the board rescinding a valid contract (*Grove v. St. Helena Parrish School Board*, 2009). The next hearing of the case occurred at the First Circuit Court of Appeal where the board presented a case that financial concerns had led to the revocation of the contract. Specifically, the board claimed that opening the charter school adversely impacted the public schools. The court found the claim of financial concerns not valid since the board received payment for services from the charter school, and it lacked documentation showing a decrease in student enrollment at the public schools. The school board also alleged that it had failed to hold an open hearing on the approval of the charter school; however, documentation showed discussion of the charter at the board meeting as well as public notices in the newspaper. Ultimately, the board was found to have breached a valid contract and to be in contempt (*Grove v. St. Helena Parrish School Board*, 2009). The board was ordered to pay court fees and assist the charter school in opening with a five-year charter. In this case, the First Circuit Court of Appeal agreed with the lower court in its decision.

Furthermore, *Colorado Visionary Academy v. Medtronics* (2005), a United States Court of Appeals for the Tenth Circuit case, demonstrates the difficulties charter schools face when trying to obtain facilities for the school. In this case, a charter school academy had a verbal agreement with a private organization to purchase the facility while leasing back an area for its operation. The school moved in, began remodeling, and had parent meetings at the facility (*Colorado Visionary Academy v. Medtronics*, 2005). At the last minute the company pulled out of the agreement stating they had liability concerns with having children in the building. The school had to relocate, and it lost 100 students in the

process. The school sued Medtronics for misrepresentation and the loss of funding. In this case, the court found that, although Medtronics had misrepresented itself, it was not responsible for the school's loss of funding (*Colorado Visionary Academy v. Medtronics*, 2005). Therefore, the court determined that the school could not sue for the loss funding. This case recognizes the importance of having final, written contracts when establishing site locations. It also reveals the complications created when trying to increase student enrollment if permanent facilities are not secured.

Racine Charter One v. Racine Unified School District (2005), a case at the United States Court of Appeals for the Seventh Circuit, discusses the implications for both the district and the charter school in providing transportation to students at the charter school. The case began when the charter school requested the district to provide transportation for students attending the charter school. When the district denied the request, the charter school consulted with legal counsel before going to court and alleging that its students lived in the district and faced the same road hazards as students attending the public schools (*Racine Charter One v. Racine Unified School District*, 2005). Additionally, it claimed that siblings of the charter school students that attended another public school within the district rode school busses to school. In this case, another authorizer, not the school district, was responsible for overseeing the governance of the charter school. As stated by the court, there was no "legal relationship" between the district and the charter school and, in the end, the court found in favor of the school district (*Racine Charter One v. Racine Unified School District*, 2005). The interesting piece of this court document lies in the judge's declaration that the suit never should have appeared before the courts, and that the schools should have worked together to resolve the transportation issue for the benefit of the students.

Another interesting case at the federal level impacting charter schools is *Arizona Charter Schools v. United States Department of Education* (2006). This lawsuit

requested that federal funds provided by the Individual with Disabilities Education Act and the Elementary and Secondary Education Act be available to “for-profit” charter schools. An interpretation issue with federal code occurred as a result of the stipulation in a section of the code stating that these federal funds could only go to not-for-profit entities, but then listing charter schools as an entity entitled to federal funds (*Arizona Charter Schools v. United States Department of Education*, 2006). The court affirmed the lower court ruling based on legislative history, definition, and department interpretation which concluded that the funds may be provided to not-for-profit charter schools, but that this did not include for-profit charter schools (*Arizona Charter Schools v. United States Department of Education*, 2006). There is concern for the expansion of charter schools with this decision (Evans, 2008; Borja, 2006). For-profit charter schools face hardships in providing services to needy students, both students with disabilities and students from low socio economic families. Special need situations require expenditures of extraordinary measures on behalf of a small number of students. Currently, ten percent of funds come from federal aid for charter schools (Borja, 2006). Critics of the decision cite the Charter School Expansion Act of 1998 as support for charter school legislation funding regardless of profit or not-for-profit status (Evans, 2008). Presently, schools circumvent the decision through the use of a not-for-profit board overseeing the for-profit management companies, thus becoming a question of ethics in management decision-making (Evan, 2008). Federal laws require acceptance of all students to public schools, and the financial implications of removing federal funds may cause schools to counsel at risk students against applying to the charter schools.

In another example of a charter school case, *Rizzo v. Edison, Inc.* (2006), a United States Court of Appeals for the Second Circuit examined the complaint of a former teacher who was asserting false arrest and prosecution by the Edison Organization. Edison is a for-profit entity that specializes in charter school institutions. In this case, the

former teacher, while on leave from the school due to an incident involving a student, allegedly called in a bomb threat to the school and identified herself to the office staff. The office staff verified that it was the teacher who called, claiming that they had recognized her voice. This case demonstrates that, just as in public schools, charter schools must confront employee problems, although union protection does not typically apply to charter school employees. The court affirmed the lower court's ruling finding the action of Edison and the police as justified (*Rizzo v. Edison, Inc.*, 2006).

Also, with *United States v. Pierce* (2007), in a United States Court of Appeal for the Tenth Circuit, a couple challenged the amount of restitution determined by a lower court. A husband and wife operating a charter school were found guilty of multiple charges of conspiracy to commit offense against and defraud the United States. They were given jail time and were ordered to pay the state restitution in the amount of \$489,239.65 (*United States v. Pierce*, 2007). The individuals, over a course of four years, fraudulently directed funds to pay personal expenses while the charter school lacked appropriate textbooks and curriculum material. Based on state statute, a charter school must follow the same audit procedures and requirements as other public schools, but no financial records were available (*United States v. Pierce*, 2007). Based on the lack of records, the Division of Finance for the State Department of Education determined that they were unable to document the actual amount of funds missing. The couple continued to insist that the funds were used for school expenses even though documentation was not available. The Court of Appeal affirmed the lower court decision and required the same financial amount to be reimbursed to the state (*United States v. Pierce*, 2007).

Another case of interest is *Wideman v. Colorado* (2007). A part of this lawsuit involved a charter school student's father who claimed his rights of equal access to his son's records were not upheld. This piece of the suit was reversed and remanded to the lower court by the United States Court of Appeals for the Tenth Circuit (*Wideman v.*

Colorado, 2007). The case, which had many aspects, did not return to the lower courts for a decision. However, this case does suggest that charter schools may be sued for improper release of student records.

Moreover, in *Winn v. Arizona Christian School Tuition Organization* (2009) an Arizona statute on providing tax credit to families for private education was challenged. The court used the *Zelman v. Simmons-Harris* case to decide if the statute violated the Establishment Clause. In the court's review of the statute as it is written, it passed the neutrality test of *Simmons* with no preference to secular or non-secular, private schools (*Winn v. Arizona Christian School*, 2009). However, the implementation of the program found funding through three organizations that stipulated their funds go towards similar religious organizations. Overall, 85% of the funds went towards secular, private schooling. Based on the organizations funneling funds towards religious schools, the statute did not provide equal access to the funds and, therefore, was found by the courts to violate the Establishment Clause (*Winn v. Arizona Christian School*, 2009). Following the decision of the court, a request was made for the case to be heard en banc, or by all judges of the court versus just the panel of judges. This request was denied by the United States Court of Appeals for the Tenth Circuit.

Additionally, *Dillon v. Twin Peaks Charter Academy* (2008) and *Brammer-Hoelter v. Twin Peaks Charter Academy* (2008) are both cases that involved employees from a charter school who brought suit against the board and the former director of the school citing that First Amendment rights had been violated. In *Dillon*, a paraprofessional not only claimed that due process was not followed in eliminating her position, but asserted that the school had violated her First Amendment right to the freedom of speech. The court determined that the paraprofessional's job was an at-will position and did not require due process in elimination (*Dillon v. Twin Peaks Charter Academy*, 2008).

The *Brammer-Hoelter* plaintiffs included six teachers from the Twin Peaks Charter Academy who met on a regular basis and discussed school issues (*Brammer-Hoelter v. Twin Peaks Charter Academy*, 2008). Together, these teachers resigned from their positions due to their concerns about school policies. The director of the school resigned the next day following comments made by the board regarding the teachers' concerns and subsequent resignations. After the director resigned, the six teachers requested to rescind their resignations and return to their positions. The board denied their request to rescind. When the positions were not renewed, the teachers filed suit and claimed that the board's denial was in retaliation for the teachers expressing their concerns and was an infringement of their freedom of speech. They also argued that gag orders issued by the former director preventing them from disclosing school concerns to the public were unconstitutional (*Brammer-Hoelter v. Twin Peaks Charter Academy*, 2008). The courts found that the teachers were not entitled to return to their vacated positions once the resignation letters were submitted. This case went to the United States Court of Appeal for the Tenth Circuit and was remanded to the lower courts for decision. In reviewing the teachers' claim that their First Amendment right for freedom of speech had been violated, the court examined the following: 1) a letter of appropriate conduct regarding speech matters, 2) the director's statements to keep school matters on school grounds, 3) a discussion of charter renewal by the group, and 4) a discussion on board elections (*Brammer-Hoelter v. Twin Peaks Charter Academy*, 2008). The court used the case of *Pickering v. Board of Education* (1968) to consider whether the teachers' meetings met the public concern status for protection under the First Amendment. A similar case from the Supreme Court, *Garcetti v. Ceballos* (2006), found that when public employees make statements regarding their institution and position, the constitution does not protect the employee from discipline (Griffin, 2007). This decision left a gray area of doubt regarding freedom of speech for government employees. Some factors

determining the Supreme Court decision included whether the speech was private or public, the motive of the speech, and if the speech was given as an official position or as a private citizen (Griffin, 2007). In the previous historic case of *Tinker v. Des Moines* (1969), it was determined that “neither teachers or students left their rights at the school house gates” (Newman, 2009). In the *Brammer-Hoelter* case, the court decided that the topics discussed did not meet the test for constitutional protection of the speech (*Brammer-Hoelter v. Twin Peaks Charter Academy*, 2008). The *Pickering v. Board of Education* (1968) case established critical questions in reviewing freedom of speech with government employees. When reviewing such cases, the court asks first, do the statements create problems in maintaining rapport with staff or create discord, and second, is the employee a policy maker (Alexander and Alexander, 2005). It also reviews the speech to see if it is of “public concern”. With the *Pickering* case, in reviewing the teachers’ speech, the judges did not find it as a matter of public concern. In addition the court stated,

“ the First Amendment ‘does not apply with full force’ when the government acts as employer. *Arndt*, 309 F.3d at 1251 (citations omitted)(applying *NTEU*). A governmental employer 'may impose restraints on the job-related speech of public employees that would be plainly unconstitutional if applied to the public at large.' *Id.* (quoting *NTEU* at 465).”

In *Brammer-Hoelter*, the courts found the speech related to the position’s tasks and, therefore, was not protected (Chohan, 2008). In both of the Twin Peaks Charter Academy cases the courts ultimately found in favor of the defendants, the former director and the board.

Additionally, two significant cases that were initiated in the state of Florida and reached the federal level are *D’Angelo v. School Board of Polk County* (2007) and *White v. School Board of Hillsborough County* (2009); both cases were heard in the United

States Court of Appeals for the Eleventh Circuit. In *D'Angelo v. School Board of Polk County*, (2007), a school principal challenged his termination referencing retaliation regarding his open speech on converting a public high school to a charter school. In this case, the defendants argued that as a principal of a public school, he was expected to support the district's mission and vision. This expectation led to a request made by the assistant superintendent that he cancel a scheduled community meeting and redirect his focus to the district's mission and vision. He was later terminated despite the fact that he had received a positive evaluation. The court found that his speech was not protected by the constitution because at the time, he was speaking in his capacity as the principal of a district school and not as a public citizen (*D'Angelo v. School Board of Polk County*, 2007). He delivered his speech based on his position as principal therefore impacting his professional duties. This decision affirmed the lower court ruling.

Three federal cases relating to charter schools deal with employee speech and termination of employment, *Brammer-Holter v. Twin Peaks Charter Academy* (2008), *Dillon v. Twin Peaks Charter Academy* (2007), and *D'Angelo v. School Board of Polk County* (2007). In all cases, the termination based on speech issues was not found to violate the rights of the First Amendment. As a government employer, organizations become responsible for controlling the speech of employees to maintain the institution's focus (Griffith, 2007). These recent cases question how the Federal Courts and Supreme Court will deal with upcoming freedom of speech cases related to government employees and if the pendulum will swing to protect the speech of public employees.

The other case originating from Florida is the case *White v. School Board of Hillsborough County* (2009), which deals with a charter school operator suing for First Amendment retaliation and state law defamation. The charter school operator cited that his charter was terminated inappropriately and demonstrated a timeline of activities that led to the termination of the charter. These acts included a request from the operator for a

waiver of certification due to vocational certification. The district denied the request as the courses applicable to the certification were not being taught. Also, after an audit the district requested that the operator take corrective action due to concerns found; the operator did not comply with the directive. In addition, a social worker sent a confidential letter to the school board showing concern for the mental stability of the operator and the safety of the staff. Lastly, after the operator stated that an erroneous report showed fire safety issues, the fire marshal shut down the charter facility due to several citations. After the shut down, the superintendent terminated the charter based on concern for the safety of the students and the operator's disregard to directives and laws. The court reviewed all of the information and affirmed the lower court ruling approving the school board's action in terminating the charter (*White v. School Board of Hillsborough County*, 2009).

Florida State Court Cases Impacting Charter Schools

Florida legislation continues to work on changing the business of schools with a focus on choice options such as vouchers, virtual school, and charter schools. At the state level in Florida, a variety of cases exist with implications for the charter school reform efforts. The following cases examine the legal issues confronting charter schools. Only cases with three or more citations were considered for review using Shepardize in Lexis Nexis.

School Board of Osceola County v. UCP of Central Florida (2005) deals with a school board questioning the state board's approval of a charter application after the school board had denied it. The school board's denial was based on both a concern for the district's fiscal responsibility in funding other charter schools in the district and on the application's plan to use operational funds for capital ventures thus reducing the amount spent on instructional material. The school board rated the application highly in its review, yet denied the application due to the financial impact to the district. This case

discusses several interesting points regarding charter schools. The board filed an appeal in the district court system with a request to transfer to the circuit court. Based on the transfer request, the judges analyzed the proper court of review, which involved reviewing Article V of the state constitution and Florida's statute 1002.33 (2002). The state statutes allow for the denial of a charter application for "good cause" (Florida Statute, 1002.33, 2003) and provide for the right to judicial review. However, all of the documents reviewed lacked any indication of the proper review avenue. Therefore, the panel of judges reviewed the Florida Rules of Appellate Procedure and decided that the legislation did not intend for a three-tier review system. The judges concurred that a two-tier review system indicated that the district court would be the appropriate body for reviewing the case (*School Board of Osceola County v. UCP of Central Florida*, 2005). The school board used *Orange Avenue Charter School v. St. Lucie County School Board* (2000) in defense of the good cause denial. In *Orange Avenue* the decision of the St. Lucie School Board to deny a renewal of Orange Avenue Charter School was upheld due to the "good cause" reasons given of low-test scores, low parental involvement, low enrollment, and administrative disorganization and mismanagement. However, in the *Osceola* case, the court found that the school board's "good cause" reasons were not defined by the state statutes (*Osceola v. UCP*, 2005). Also, the court determined that the board's decision to deny renewal based on future funding calculations was not valid due to the inability to predict future state revenue. The school, when calculating future revenue, had maintained funding at the current level. The second reason the board gave for denial involved the lack of resources for instructional items due to the use of operational funds for capital. The court also found this unreasonable as current charter schools typically operate with deficit funds. The judges noted a former statute that allowed school boards the right to overturn the state board's recommendations with good cause (*Osceola v. UCP*, 2005). However, in the rewriting of the Florida code from a K-12

system to a K-20 system in 2002, the language that gave the school boards this right perished, and the final authority was given to the state board (Florida Code, 2009). The panel of judges ultimately affirmed the lower court ruling in favor of the state board and approved the denied charter application. The judges indicated of the school board “at best, it demonstrated that its district was woefully underfunded” (*Osceola v. UCP*, 2005). This statement affirms the recognition of fiscal concerns in funding for schools. The Florida Supreme Court denied the request for appeal in this case.

Another case of importance in reviewing Florida’s cases on charter schools includes the historic case *Bush v. Holmes* (2006). Jeb Bush, former Governor and a proponent of vouchers, established the A+ Opportunity Scholarship in 1999 for public school students attending a failing school to offer them an option to attend another public, private, or religious school (Dycus, 2006). A group of concerned citizens challenged the statute due to conflict of the statute with the Florida Constitution and the Free Exercise Clause of the First Amendment (*Bush v. Holmes*, 2004). The opponents of the vouchers declared funding of religious schools questionable and a violation of tax fund use. Bush’s attorneys defended the statute with the Supreme Court case of *Zelman v. Simmons-Harris* (2002). The Court of Appeal found the legislative intent to assist students in failing schools a worthy cause, however, based on the state constitutions language, could not judicially support the statute due to Article 1, Section 3 stating “Religious freedom.--There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury

directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution” (Bush v. Holmes, 2004). The issue ultimately arrived at the State Supreme Court where the plan was found unconstitutional in a decision of 5 to 2, however not because of the Religious freedom clause of the state constitution (Bush v. Holmes, 2006). The Supreme Court in its analysis Article IX, section 1(a) determined the following:

“the second and third sentences of article IX, section 1(a) of the Constitution. The relevant words are these: ‘It is [**9] . . . a paramount duty of the state to make adequate provision for the education of all children residing within its borders.’ Using the same term, ‘adequate provision,’ article IX, section 1(a) further states: ‘Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools.’ For reasons expressed more fully below, we find that the Opportunity Scholarship Program violates this language.” (Bush v. Holmes, 2006).

This decision determined that funds going to private schools were unconstitutional due to the lack of uniformity in the standards at a private school compared to those of public schools. The Florida Supreme Court failed to acknowledge the correct or incorrect decision of the Court of Appeals in regards to using funds as unconstitutional due to the prohibition of state funds going to religious institutions. In fact, it addressed the issue as not pertinent since the Opportunity Scholarship Program was found unconstitutional based on Article IX, section 1(a). The court also acknowledged funds for vouchers depleted public school funds (Bush v. Holmes, 2006; Gey, 2008). The Florida Supreme Court acknowledged that only with changes to the

state constitution could vouchers become applicable in the state of Florida. This case emphasizes the importance of state constitutions in initiating school reform efforts (Guilfoyle, 2007; Gey, 2008). Following the decision, Tappo (2006) quotes Bush as saying, “The public never benefits from the government protecting a monopoly”.

In 2008, another attempt was made to support vouchers through the election ballot with proposed amendments (Ford v. Browning, 2008). The amendments containing language that would remove the barriers of funds to religious institutions and private schools with vouchers was removed by the Florida Supreme Court. This action occurred due to the Taxation and Budget Reform Commission overstating their authority in their actions of proposing the amendments (Ford v. Browning, 2008).

Additionally, in the case *P.J. v. Gordon* (2005), a case in the United States District Court for the Southern District of Florida, a parent included the school board in a lawsuit filed against the school when her daughter was sexually abused at a charter school in the district. The school board requested a dismissal from the case. In reviewing the request for dismissal, the courts examined the state statute, a technical paper on charter school administration, the charter agreement, and review of common law. The state statute outlined the school board’s responsibility for the charter school as reporting students’ achievement performance and overseeing finances and expenditures for fiscal responsibility. The charter agreement stipulated that the charter acted in the capacity of a private employer with the responsibilities of overseeing personnel and ensuring the safety of students. Common law shows school boards connection to charter schools as legislative in nature and free from judicial decision (*P.J. v. Gordon*, 2005). Finally, the court decided the designation of employee issues rests with the charter school, and it granted the dismissal of the school board from the suit and found the

charter school responsible for any personnel issues (P.J. v. Gordon, 2005). This case shows the weight on charter schools to maintain the safety of all students on campus, the same as in public school, but with the burden of screening personnel as a private entity without the support of the departments of the district.

Moreover, the case *Imhotep-Nguzo Saba Charter School v. Department of Education and Palm Beach County School Board* (2007) examines issues related to the legality of the school board creating policy for charter schools. In this case the school board denied a charter application based on the board's policy of approving an affiliated charter school only with exemplary performance at the operational level. The attorney for the charter school argued in its appeal to the Florida Charter School Appeal Commission (FCSAC) that the policy contradicted the state statute 1002 exempting charter schools from school board policies. The FCSAC agreed with the charter school and recommended approval of the application to the State Board of Education. The State Board of Education upheld the decision to deny the application based on the school board policy, which stipulated approving a feeder charter school that showed exemplary performance in the operation of the charter school (*Imhotep-Nguzo Saba Charter School v. Department of Education*, 2007). This included demonstrating two years of compliance with the charter agreement, fulfilling the statute requirements, and maintaining at least a B grade or demonstrating significant learning gains. The court examined the statute and determined that, while it exempted charter schools from unrelated school board policy, it did not prohibit the creation of policies applicable to the charter school. The significance of the case comes in the court's affirmation of the decision of the school board based on the state board's approval of the denial. The court found that the agencies interpretation and approval of the school board as the defense in support of the school board (*Imhotep-Nguzo Saba Charter School v. Department of Education*, 2007). This case provides the basis for school boards in all of Florida's counties to implement specific charter school

policies.

Another Florida case dealing with charter schools is the *School Board of Volusia County v. Academies of Excellence* (2008). In this case the school board denied a charter application based on a lack of acceptable student performance goals and poor financial documentation. Specifically, the indicated goal placed student performance at the 25th percentile, lower than the state average. The financial forecast predicted a high enrollment with a low cost for facilities (*School Board of Volusia County v. Academies of Excellence*, 2008). After denial, the Academies of Excellence Charter School appealed to the Charter School Appeals Commission. The charter school indicated that an error had been made in the performance percentile and stated that 51 percentile was the proper goal. The Commission agreed that the goal was inadequate but still recommended approval of the application. The State Board of Education agreed with the Commission. The school board brought a complaint to the courts arguing the Appeal Commission lacked an evidence-based finding in its approval, claimed that good cause allowed the denial, and indicated the State Board unconstitutional in opening a school (*School Board of Volusia County v. Academies of Excellence*, 2008). The courts found the school board lacked the data to necessitate an evidence-based finding from the Charter School Appeals Commission (*School Board of Volusia County v. Academies of Excellence*, 2008). It established that the school board lacked the required grade information on the charter application, which made the good cause defense not sufficient for denial. The judges determined that the act of the State Board of Education was appropriate as it only made a decision to uphold an appeal. The charter agreement with the school board allowed for the process of opening the school. The court affirmed the action of the State Board of Education in approving the denied charter school application (*School Board of Volusia County v. Academies of Excellence*, 2008). Again, the issue of good cause rationale for denial continually points to the fact that the definition of good

cause lacks clear explanation in the statutes. The Florida Supreme Court denied the request to hear the case.

On another note, in 2006 a legislative statute passed establishing the Florida Schools of Excellence Commission to oversee public charter schools (Florida Statute 1002.335, 2006). This Commission's authority included overseeing all aspects of charter schools in the state of Florida. Several school boards applied to remain as an authority over charter schools in their district; however, the State Board of Education approved only three district applications. In *Duval County School Board v. State Board of Education* (2008), several denied districts filed suit against this action claiming statute 1002.335 (2006) unconstitutional; the districts stated the statute conflicted with the Florida Constitution, Article IX, Section 4, particularly the sentence, "The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein" (Florida Statute, 2009; 2006). The Court of Appeals of Florida First District found the statute in conflict with the constitution and cited the similar case of *Bush v. Holmes* (2006). In *Bush*, the legislation intended a public service to improve education; however, its conflict with the constitution made the statute unconstitutional. This ruling provided districts with the affirmation that school boards operate public schooling and allowed the authority of overseeing charter schools to remain with the districts. Following this decision, the Florida Schools of Excellence Commission was dissolved effective January 2009 (*Duval County School Board v. State Board of Education*, 2008).

Another case of interest, *School Board of Palm Beach County v. Survivors Charter School* (2009) at the Florida Supreme Court level dealt with a charter school

receiving 24 hours notice to termination of the charter from the School Board. In this case, the Administrative Procedure Act in chapter 120 of the Florida statutes references immediate as anything less than ninety days. The charter school questioned the applicability of the Administrative Procedure Act in the termination of the charter by the school board (*School Board of Palm Beach County v. Survivors Charter School*, 2009). The case went to the Supreme Court based on its challenge with a Florida statute interpretation by a lower court. The Supreme Court found the lower court in error in finding the Administrative Procedure Act applied to charter schools and returned all other questions to the lower court for decision. The lower court upon reviewing the case again found no merit for the charter school challenges and ruled in favor of the school board (*School Board of Palm Beach County v. Survivors Charter School*, 2009).

Additionally, two significant cases that initiated in the state of Florida and reached the federal level are *D'Angelo v. School Board of Polk County* (2007) and *White v. School Board of Hillsborough County* (2009); both cases were heard in the United States Court of Appeals for the Eleventh Circuit. In *D'Angelo v. School Board of Polk County* (2007), a school principal challenged his termination referencing retaliation regarding his open speech on converting a public high school to a charter school. In this case, the defendants argued that as a principal of a public school, he was expected to support the district's mission and vision. This expectation led to a request made by the assistant superintendent that he cancel a scheduled community meeting and redirect his focus to the district's mission and vision. He was later terminated despite the fact that he had received a positive evaluation. The court found that his speech was not protected by the constitution because at the time, he was speaking in his capacity as the principal of a district school and not as a public citizen (*D'Angelo v. School Board of Polk County*,

2007). He delivered his speech based on his position as principal therefore impacting his professional duties. This decision affirmed the lower court ruling.

White v. School Board of Hillsborough County (2009) deals with a charter school operator suing for First Amendment retaliation and state law defamation; the charter school operator cited his charter was terminated inappropriately. The school demonstrated a timeline of activities that led to termination of the charter. These acts included a request from the operator for a waiver of certification due to vocational certification; the district denied the request as the courses applicable to the certification were not being taught (*White v. School Board of Hillsborough County*, 2009). Also, after an audit the district requested a corrective action due to concerns found; the operator did not comply with the directive. In addition, a social worker sent a confidential letter to the school board showing concern for the mental stability of the operator and the safety of the staff. Lastly, after stating an erroneous report showed fire safety issues, the fire marshal shut down the charter facility due to several citations (*White v. School Board of Hillsborough County*, 2009). After the shut down, the superintendent terminated the charter based on concern for the safety of students and the disregard to directives and laws by the operator. The court reviewed all information and affirmed the lower court ruling approving the school board's action in terminating the charter.

A related case *Wilbesan Charter School and Mary White v. School Board of Hillsborough County* (2006) dealt with the charter school and Mary White claiming the school was held to a higher standard due to its tie to African American students. She accused the school board of differentiating the requirements of Wilbesan Charter School compared to other white established charters, a violation of the Fourteenth Amendment,

specifically, due process and equal protection violations (Wilbesan Charter School and Mary White v. School Board of Hillsborough County, 2006). The court found no merit on any of the points brought forward by Wilbesan.

Case Interviews Regarding Charter School Legislation

Four prominent individuals involved in charter school reform efforts or with knowledge of one of the primary cases involving charter school were interviewed. The essential cases identified from the primary and secondary research include *Bush v. Holmes, D'Angelo v. Polk County School Board*, and *Duval v. State Board of Education*. All interviewees were male and in a professional career. A recording of the interview was transcribed and given to the individual for edits to increase the reliability of the information gathered. All names and locations were removed from the transcripts with the exception of high profile names known to be associated with the cases. Only partial transcription of Interviewee A has been included to protect the identity of the individual providing the information. Interviewee B, C and D received minor edits to withhold the identity of the individuals. These interviews allow a deeper understanding of charter school cases and the impact of decisions made in the court system. The data system NVivo 8 contains the full interview transcript, along with demographic information.

Interviewee A – D'Angelo v. Polk County School Board

The interviewee, an expert on the D'Angelo case, revealed the importance of the case in its original purpose of righting a wrong. An individual previously in a position as a principal of a public school began pursuing charter school status to improve conditions

at the school. This decision led to the dismissal of the individual after receiving a glowing evaluation three weeks earlier. Interviewee A has reviewed all of the cited text from the interview for accuracy and validity. Only excerpts were used to protect Interviewee A's identity. The interviewee regarded the case as important; however, with the events occurring in the *D'Angelo* case as they did, Interviewee A did not foresee the *Garcetti* case impacting the *D'Angelo* decision as it did. As stated by Interviewee A:

“The sequence of events made it a really difficult outcome to accept....as the case goes along, the facts unfold, and the law reacts to the facts. The facts don't react to the law. So when this case unfolded, I was aware of the *Garcetti* decision working its way up through the court system (Interview A, March 30, 2010).”

The *D'Angelo* case differed from the Supreme Court case *Garcetti v. Ceballos* in its focus on a position of a government employee to performing a function outside of his occupation. The focus of the attorneys providing counsel on the *D'Angelo* case was based on a violation of *D'Angelo's* First Amendment rights. As a principal, *D'Angelo* began pursuing a charter school status for his public school. The interviewee explains the condition of the school upon *D'Angelo's* arrival:

“When Mike *D'Angelo* was hired at the high school, it was in terrible shape... They had drug dealing in the hallways. They had teachers that were just mailing it in. Numerous examples of one teacher covering for another – leaving during the day, running businesses from their classrooms, just no discipline whatsoever. *D'Angelo* came in and immediately turned things around. He got a

very dynamic school resource officer... Together the two of them established a rule that there will be zero tolerance for drug dealing, violence, or gangs. If you deviate from the expected, then you will be removed from the school. They laid down the law” (Interview A, March 30, 2010).

D’Angelo began reviewing the need for charter school conversion based on funding provided to the public school by the school board. He acted in a manner to allow his school to prosper, raise achievement, and fund programs needed for students. His mindset focused on the needs of the school and how to acquire funding for support. As stated by an expert familiar with the case:

“As time went on he realized that in order to fully implement the academic programs and make the changes that they wanted at the high school he was going to need more funding. So he started paying attention to that kind of thing. Now, the School Board and Superintendent gave him a mandate when he came in. They said clean up the high school, do whatever way you need to, that’s what we’re looking for. They had had a revolving door of principals, I think, and some problems with some previous principals. At any event, when D’Angelo started looking for funding. He began to realize the way the funding was doled out, that they were taking money from the high school and giving it to different programs. Now right, wrong, or indifferent, that’s the school board’s decision, but Mike was an advocate for the high school, not an advocate for the entire system. So, when he sees that his school is getting 80 cents on the dollar in funding, and other schools are getting 120 cents on the dollar, he wanted to make sure that he had the

money to implement the programs to make the school successful, and some of the School Board members didn't like that. So D'Angelo said, 'well if we can't get the funding that we're entitled to, then maybe we'll have to consider going to a charter school, converting it to a charter school.' In that circumstance, the funding that should have been accorded to the high school based on the student population would be accorded; the school board would not have control over it" (Interview A, March 30, 2010).

The D'Angelo outcome ultimately was decided based on the Supreme Court case *Garcetti v. Ceballos*. The *Garcetti* case was influential because it was a critical case in the protection of public employees and their First Amendment rights of freedom of speech. As stated by Interviewee A:

"In *Garcetti*, the employee, named Ceballos, was doing what his job required him to do. It was his official duty to make the reports that he made as an assistant district attorney. *Garcetti* fired him because he did not like the reports, so Ceballos sued, claiming his First Amendment rights were violated. The Supreme Court held that an employee performing his or her official duties is not protected by the First Amendment" (Interview A, March 30, 2010).

The deciding factor of *Garcetti v. Ceballos* deals with defining the actions of the individual seeking protection of the First Amendment as related to or not related to the official duties of the individual. The lack of protection both in *Garcetti* and D'Angelo results in a cautious approach by public employees in regards to freedom of speech issues. Comments shared by Interviewee A:

“I can tell you that D’Angelo’s loss has had a tremendous impact on public employees’ comfort level in engaging in speech. My advice to anyone who came in and said, ‘I work for a government employer’, would be never engage in any speech at work that you feel may cause you discipline. Never presume that you will be protected by the law, because you may not be. If you have a beef, write a letter to the editor, that’s still protected by Supreme Court authority or attend a school board meeting and make sure that you emphasize that you are not speaking about a matter that is a part of your official duties, that you are speaking on a matter unrelated to your official duties. And even then, there is no guarantee that you are going to have protection. So I know that the pursuit of charter conversion by current employees has diminished dramatically since D’Angelo” (Interview A, March 30, 2010).

Many political aspects riddled the dismissal of D’Angelo from his position as principal. This included the school board’s concern of charter school conversion and the loss of control of funds and procedural operations with the changeover. The legal battle on D’Angelo’s side showed an individual truly committed to his school and students. D’Angelo showed characteristics of dedication, passion, and the willingness to battle for the rights of students. The D’Angelo decision proved devastating in its inability to support an individual pursuing the rights of a public school to operate outside the constraints and lower funding as managed by the school board. In reviewing the decision many may ask, what else could be done to change such a decision? Interviewee A explains:

“After Garcetti, if there was a ground swell of support for people like Mike D’Angelo, and people felt people within the school system needed protection, then the state law that protected people who are pursuing charter school conversion could have been strengthened. They could have said if you are retaliated against for pursuing a charter school conversion, you have a right to a jury trial, lost wages, and any other damages that the law will allow” (Interview A, March 30, 2010).

The story of D’Angelo provides a new perspective of First Amendment rights of public employees. It also demonstrates the need for individuals to act within the realm of the institution’s expectation if expecting to continue employment. This decision could impact teacher actions outside of the classroom if concerning classroom activities. In addition, this case shows the continual battle of traditional public school operations against charter school implementation. The obvious loss of funding to the school board with a conversion of a public school proves to be an area of great concern for school boards.

Interviewee B – *Duval County v. State Board of Education*

An individual with expert knowledge of the *Duval County v. State Board of Education* case provided a rich background of thought regarding the factors leading up to the case and the decision of the case. The interviewee’s full text has been included due to the great interest, importance, and uniqueness of the case. The interviewer’s questions contain formatted bold text.

The *Duval County v. State Board of Education* involved 12 school board counties suing the State Board of Education after their applications to authorize charter schools in their districts were denied by the State Board of Education. The State Board of Education acted based on the development of a state charter school authorizer to oversee, authorize, and monitor charter schools across the state. Following is the initial reaction of Interviewee B to the *Duval County v. State Board of Education* case:

“That one is one in which everyone all school districts saw it [the legislation] coming. We all kind of watch the legislation involved, and everyone chewing on their nails: ‘how is it exactly... how is that going to impact school districts?’ (Interviewee B, May 14, 2010).”

Why do you think that case was important?

“Well. I think for a number of reasons. I have a personal philosophy about law. I think law is funny because it is often a technical issue that is what we fight about and dispute and litigate, and there is a huge political issue (that is kind of the 800 pound gorilla in the room) that no one wants to deal with it. In this case they are not so far apart, it was not that *cloak and dagger*. The reality is the technical problem I think was well decided by the court. I mean there is this fundamental problem of having a constitutional mandate that local districts are responsive to local electors concerns, needs, and governance. I mean it was a problematic solution ... the legislation was problematic from the start because it really, (and I wasn’t part of the legislative process)...it just seemed to be that the whole idea of

the legislation was based on the perception that a lot of districts were being unfair to charter schools, so the legislature created the commission to let's just lift all of that control from the local districts and bring it to the state level. There was, I think, the reality of it all was there was this feeling by the school districts, how can you do this? That you are going to take from us the authority to control and regulate and that who is having charter schools in our district, but we still have to pay for them, and we still have to be responsible for them and we still have to clean up the mess if and when they go out of business and they go bust? This was right around the time the district was licking our wounds from another charter financial problem. The charter looked and smelled like a viable entity in the beginning and then just started to self-destruct. I guess the technical problem was that the local districts were going to be stuck with the problem to oversee and regulate charter schools, but we wouldn't have the ability to regulate who was going to be approved for a charter contract so that got to be the technical problem. I am sure you are aware of it. You have the constitutionality issue, constitutionality of granting authority of the local school districts to operate, control, regulate public schools in their district, and then you have the state taking the piece of that control away and putting it up at the state level. So the political problem was very simple in that I think local districts were starting to say 'we can't control who gets the charters we won't be able to control what they do, and we are going to be stuck basically in our charter contracts without any authority or any ability to fix their problems'. And we don't have the ability in the end. At

the end of the whole thing to say that we are the ones that created you, and you are here because we got this original charter contract. We don't have any leverage to deal with charters in enforcing compliance, operational compliance. So, in a simple overstatement of things, it was like a *turf fight*. The state was going to take away some significant control issues for the local governments, the local districts, and we are going to be stuck with whatever control the State Commission gives us and the feeling from the districts was since there was such a strong legislative push to get charter schools going. We had a big push to open up and expand charter schools. The concern is that we would end up with a ton of charter schools over which we would have no control in the district (Interviewee B, May 14, 2010)."

In the Duval County School Board v. State Board of Education case, what were the legal steps in the process? What transpired, what happened?

"It originated as a really what we call a chapter 120, an administrative hearing process, because the commission heard the issue of the local applications for autonomy as the administrative agency. The statutory scheme was the application for autonomy was to be filed and heard by the Department of Education as an administrative office. Under the administrative procedure act, when an administrative agency renders a final determination as to what is going to happen, there is one remedy. The only remedy if you do not agree with the decision is that you have to file what is called a judicial review. I could talk about this for an

hour. Here is how it all breaks down in the big scheme of life. You have 67 counties, there are 20 or 25 judicial circuits that have trial courts, and the county courts are within the circuit courts. All of them, throughout the state, they all fall into five district courts of appeal. The law is that if you have an administrative review, it is to be filed in the corresponding District Court of Appeal rather than the local county or the judicial circuit. That proceeding goes like an appeal. It is not a trial where there is a judge that sits and hears what all occurs, that trial, the fact finding components, all happens at the administrative level. So when each district put in its application for autonomy and it was denied, that was similar to a trial court ruling. That process [the administrative hearing by the commission] was similar to the trial court. A review of that proceeding goes straight to the District Court of Appeals for review as a cold record. The District Court of Appeal then deals with it [the review]. Step one was to... after the denial... there was the appeal that was made (but what I call appeal) was really a request for judicial review under chapter 120 which went to the 2nd District Court of Appeals. Since we had one law firm that was advising, I guess multiple districts from Tallahassee, there is another provision that says that such appeals have to be heard where Department of Education has its office, which was based in Tallahassee, Leon County. It made a lot more sense [for all the local school districts to transfer the 'local' cases to a single appeal in the District Court of Appeal for Tallahassee] by stipulation, rather than have five different District Courts of Appeal hearing the same dispute. They collapsed them all [the local cases] into

one [consolidated appeal] and ship that up to Tallahassee District Court. So the whole matter was going to be resolved in Tallahassee. That [decision for the consolidation into one judicial review case] was in and of itself all driven more by stipulation than by law. It would be harder to do that; it would be a lengthy process if each local district had to do a motion to consolidate, and if we had to litigate whether or not to consolidate. I think there was at least some spirit of cooperation in trying to say ‘look we all know the issue, it is a constitutional issue, let’s consolidate all of these lesser procedural problems and bundle this issue into one case so that it can go straight to the district court of appeal in Leon county.’ If we don’t like the result, the next step would be to appeal to the Supreme Court (Interviewee B, May 14, 2010).”

Attorneys got together and made that decision.

“Yes, as the attorneys for the Florida School Board Attorneys Association the option to participate was formed in conference calls to discuss whether that made sense. We discussed first of all the idea of having one counsel representing all of the districts for economic purposes only. It was pretty easy to come to consensus on because it was, you know, each school district was going to individually spend a lot resources becoming an expert on the constitutional issue, or they could collectively pool funds to find one law firm that serves as the ‘expert’ and spread the cost of the litigation to all of the districts. So that was easy to do. It was the same reasoning that said, well, that one firm is going to represent us all of us and

then have to go to five different court of appeals, or we can one for convenience of them, and for the plaintiff counsel and the commission counsel, let it all happen there (Interviewee B, May 14, 2010).”

What were the difficulties throughout the case? Or was there concern a decision would be made that would not support the school boards?

“My involvement was to assemble information and consolidate information, and provide information. We provided our take on the research. Together we sounded off as part of the group as to identify the issues and what we wanted to be argued as issues, so there was not a great deal of drama from my vantage point. During the litigation or the appellant process and again I don’t know if you don’t know this...If you don’t know there is literally no court room drama in appeals. It is just paper, it is a cold record. I have several cases up on appeal right now. The *excitement* is the week before you get the brief done, because you are trying to distill everything down to its smallest and sharpest edges and legal points, and once you release that into the district court of appeals, you are like ‘alright it’s gone’. Then you sit and wait, powerless. You wait and see what happens. The only spikes of enthusiasm that occurred in that case basically was when we launched the first brief and there is 20 days of peace and quiet and then there is the responsive brief. Then there is the opportunity to answer that brief. There was an amicus brief filed by a consortium of the ‘not-for-profit’ charter schools. I have their appeal. There was a consortium of charter schools that requested all

together that right to submit its own brief. If you are not a party, you only have the right to file a brief by permission of the Appellate Court. You request the right to do this as an *amicus brief* (Interviewee B, May 14, 2010).”

Wouldn't you say they don't have a standing on that?

“Since they [the not-for-profits] were not a party to the initial application request, it was up to the Appellate Court to allow or disallow their amicus brief. The court may say ‘we don’t care what you have to say, go away’. In this circumstance, the District Court said ‘we will let you throw in whatever you want. We will let you throw in your arguments to this mix as long as they are germane to the issues that we have before us’(Interviewee B, May 14, 2010).”

I was not aware of that.

“I don’t know if this will help you or not. I have copies of some brief that may answer some of your questions. I printed summaries from the briefs, the summary of the argument that was submitted by the collectively the school boards and a summary of the arguments that I printed of the amicus brief. That might help you (Interviewee B, May 14, 2010).”

What organization, documents, or individuals supported you most through the process? Was it the other attorneys?

“Yes and the local districts. There was a huge amount of support just in combining, consolidating that record. From that, this was an atypical case. It really wasn’t very factually driven. You can glean this from the opinion itself. Read between the lawyers’ lines, the court could have either taken this issue, you know it may or may not be a constitutional issue depending upon how it is the Department of Education conducts its hearings. If it would have gone that route we would still be litigating probably. It would be a messier disposition, because then the issue would not be that the statute itself was unconstitutional; it was just unconstitutional on how it was applied. They did not go that route. The opinion was written to say, ‘hey this is on its face unconstitutional’. Why that is important, it is a very subtle point that was argued. The primary argument was not factually driven. This statute on its face value just doesn’t get it [pass constitutional muster]. It has a very narrow point of law that it was up against on the appeal, so that kind of answers it. It did not need a lot of support because it was not factually driven; it was statutorily driven (Interviewee B, May 14, 2010).”

What were the issues on the other side and what do you think were their strong points and why do you think that in reviewing the statute that the judge did not go the other way?

“The first part of that is, I think, this is more evident from the summary of argument from the charter schools. I think they embodied the problem, they said their problem with the whole thing, ‘we feel as though collectively that charter

schools are getting a bum rap. A lot of districts who are being purely territorial and not wanting to give us a chance just because they are trying to keep charter schools out because they perceive it as we are in competition with them.’ So their whole argument was we need to have the state intervene to protect us all from the evil school districts that are otherwise unwilling to share FTE dollars with us. So their whole case was driven by the statute was constitutionally warranted to fix an evil. I think they [the charter schools] had a problem with that because each of the districts that were there has charter schools. It wasn’t like no one had a charter school anywhere and all of the districts shut down and said we are not going to let anyone have charter schools in which case the department’s argument might be more compelling. Since each of the districts had a number of charter schools operating successfully within the districts, that argument never got any wheels. Maybe that was one of the *reality* issues, it is not in the paper, not in the text, but that was one of the realities that were one of the undercurrents in the brief (Interviewee B, May 14, 2010).”

What about the appeal procedure where a charter school may appeal any denied application to the state where the decision may be altered?

“Right, so they had without the statute, they already had a process. There was a process available, a due process available. If a district unilaterally, unreasonably or arbitrarily denied a charter application, then there was already a remedy in place [without the commission being required]. They did not have an exclusive

remedy created by this statute. This statute was just a consolidation of the agency's review, and I think that goes back to the merits of why the appellant court looked at it and said hey on its face it is unconstitutional. You are lifting... you are creating a more aggressive statute towards your remedy then what is warranted under the circumstance. There are other due process remedies available (Interviewee B, May 14, 2010)."

How do you think that decision impacted the education system? What do you think that did for the school districts and to the charter school reform efforts?

"I think the greatest impact was to keep status quo. The impact would have been far greater if the statute was not overturned. Basically, it was we will keep things as they are. I think it deflated some of the momentum of the charter school movement. Charter schools would have been able to say, 'Hey we are going to move this all up to Tallahassee and have greater authority and control so we don't even have to deal with you guys [local districts] anymore. We can just go straight there and get whatever we want and come back.' It didn't change much; it just stopped a huge change. It thwarted a very large change (Interviewee B, May 14, 2010)."

This case is interesting because it is actually saying a law passed by legislators is unconstitutional. How do you think it impacted legislators? Are you aware of any feelings from the decision?

“I don’t know any of them. I have purely personal thoughts and opinions about this that I will share with that caveat. It seemed to me that there are some ideological and philosophical arguments at work here. There is an ideological consensus in Tallahassee with regards to charter schools, that they are a good thing and that they exist to provide an alternative to the public school system. They are part of the public school system; they just provide a different choice. They really want to do everything within their power, legislators, to make the creation of charter school easy and deregulate them as much as possible. To give them as many freedoms as possible. This opinion hurt that movement considerably. It reiterated, and I think for a good technical legal reason, it is a constitutional mandate that the local districts have the control. It is offensive in a sense to say local districts you have to control, regulate, you are ultimately responsible to your local constituents. You have to do your districts duty and be responsive to those voters, but we are going to take away the authority to control and regulate charter schools in your district by granting or denying their applications in Tallahassee. It is a really sensible, legally logical and consistent decision. It made sense. It would have been hard for me to get my head around taking the control over charter schools away from the local district but keeping all of the other support requirements. It would have made a mess. I think the legislators are probably grown up enough to know they cannot always get what you want. I think it frustrated that movement to say well you know we really need to push, push harder. These charter schools, it kind of limited one way to

get those to grow. It didn't kill the charter school movement. In fact there is legislation to reduce the fees. Districts are still forced to comply with class size, strictly comply with class size, and charter schools not so much. Most of the laws that come down regulating charters give them just a tiny more favorable treatment on some of the administrative things than the district gets. There is a perception, some of the envy there, and some of the conflict between the charters and the districts is from that. Those to me speak a fact that the legislature is trying to give charter schools every opportunity to compete, and it's almost like affirmative action. They are trying to give them a little bit more than a fair shot to try to make up for them not having near the taxing authority that the ability to collect or raise taxes or revenue (Interviewee B, May 14, 2010)."

Is there anything the state board of education could have done to change the decision that was made? Was there something they could have done or cited?

"I don't think so. I did not get the impression that this was something that, if it was argued better, would have come on a different result. I don't think there was an argument that was missed or something they did not adequately address or develop. I want to believe, I think they the argument that was advanced by the school boards was just a better argument. When you have the constitution that states something, it is hard to wiggle around that when you have legislation that is inconsistent with the constitutional framework (Interviewee B, May 14, 2010)."

Would there have been a case if the applications were not denied?

“If earlier in the process the state would have been more liberal in which district they allowed to retain autonomy, then it probably would not have been as many people upset by their decision. It would have been harder to get a bunch of districts together to cause a riot. I don’t think that was a realistic thing for them to do. The Department of Education was trying to effectuate the intent of the law [to consolidate the application process to the state level]. Districts needed to lift the denial [of their autonomy], the removal of the charter school application process from the local districts. That was the point. The unwritten intent was to try and bring all of the application process to the state level within State authority and take that from the local districts. It would have been hard for the districts to prevail in the suit, if the commission was more restrained in exercising its control; if the statute was designed to consolidate the authority at the state level and Department of Education was doing what they were supposed to be doing in denying the applications...if they were much more judicious about denying local autonomy, and restrained themselves then perhaps the districts would not have challenged the statute. I think the whole thing was brilliant, and I think it is accurate to say that most of the districts would not have pursued the concern. Only three out of all of the districts who sought local control got to retain autonomy, it just doesn’t make sense (Interviewee B, May 14, 2010).”

What legislative impacts or changes do you foresee in charter schools?

“I don’t know. I think the underlying current trajectory of trying to still give charter schools advantages to keep them viable, that’s continuing. The charter movement was not squashed, killed, or derailed. That particular point of the state commission determining applications at this particular junction has been shut down. They will probably continue with legislation along that same trajectory (Interviewee B, May 14, 2010).”

The review of the *Duval v. State Board of Education* case indicates issues relating to the competition between charter schools and traditional public schools. It also relays the impact of legislators pushing legislation to change the business of public schools. This case proves interesting in the court’s decision to strike down the legislation passed to create an entity to oversee charter schools in the state of Florida. The decision proves to be a win for the school boards in the state of Florida. The Interviewee clearly articulates the changing dynamics of traditional public schools with the creation of charter schools and acknowledges that the win in *Duval v. State Board of Education* will do little to change the current trend of charter schools within the state of Florida.

Interview C – *Perspective on Charter School Reform and Cases*

An individual with expert knowledge regarding charter school development in Florida provides an interesting perspective on current trends, events, and cases in the charter school reform efforts of Florida. The interviewee’s full text has been included due to the insight and interesting prospective brought by the individual. The interviewer’s questions contain formatted bold text.

Why do you think the charter issue is so important?

“The charter schools as a whole are different definitions of charter school reform. But I think if you talk about school choice reform that’s really when charter school fits in. One size doesn’t fit all for all students. Charter schools are unique in that they’re not better and they’re not worse than public schools, they are just different. Some children would flourish in a charter school and some would not. But yet we have an education system, for the most part, that is monolithic in the way it’s structured. Charter schools offer that innovation to say that all children aren’t the same. I think that it’s important our schools specifically don’t emphasize sports. Not that sports are bad. We lose a lot of kids in middle school because that’s important to them. And that’s good, that’s good. We emphasize other issues that are important to them that make themselves available. So it’s important because it offers, it offers a better, I like to the word, fitness. Fitness between the educator, the education system and the child and parent (Interviewee C, May 25, 2010).”

Tell me about what statutes or constitutional items impacting charter schools.

“There are really no constitutional issues dealing with charter schools. However, there are many statutes on how to authorize, govern, and regulate charters. One of the big issues, and I’ll say challenges, that are out there for charter schools is, Charter Schools basically get no local property tax money. For the most part they

get about \$.70 on the dollar of the traditional public schools. So one of the challenges is how do you make an equitable funding system for a non-equitable system that's out there. Charter school districts, it's very difficult for districts and their relationship and the relationship of charter schools because their success, in some people's view, reflects their non-success. Which isn't always the case, meaning that some districts, they've taken the philosophy, the more charter schools that they have the less revenue that they so call receive. There are different schools of thought so the real challenge from statutes to be specific that we're working for is, how do we have stable capital funds for charter schools. Should we force districts to share their 2-mill money with charter schools? Should we force charter schools to be part of the five-year plan and submit five-year plans? Should we force charter schools to be compliant with all aspects of services and not allow them to specialize in the programs that they want to specialize in? Because one of the chief criticisms, and there is some validity to this, is that charter schools may say that we want to specialize in the arts programs so that means if for example dance, that means if a child does not have the ability to do the dance, what incentive is there for them to go to that school. Not that that's a problem, but then the counter effect is by default then their in the traditional public school and the perception is that since academics tend to be higher in the charter school says that academics are higher thus students that cannot achieve academic that level are by essence defaulted and go back into the traditional public school. So trying to equalize those statutes ensuring that there is

equal funding, ensuring that there is equal service, but at the same time not weakening the strong to strengthening the weak is a balance that we have been trying to work on (Interviewee C, May 25, 2010).”

Are there any specific events that lead you to support the charter initiative?

“Of needs in the community? Absolutely. The needs I saw first hand, the needs in the community, were really basically that students were being lost in the public school system. It’s no fault of any person, but the way economic models were for Florida, not so much in other states; there is both good and bad. If you look at other states and the way their districts are set up, you don’t have many districts that are over 5,000 students. What that does is that really causes a disconnect in my view, between administration and a board policy a principal set scenario and just the sheer size of the school. When we have high schools with 1,000 students, it’s hard for the principals to know every single student and every single child’s need. Where as traditional charter schools tend, not all of them, tend to be around 250 students. And the reason why you see the number is because there are a lot of studies out there, independent research that shows when schools get over a certain size the overall that you have, I call acres of excellence and miles of mediocrity. You have those yet pockets within that school that succeed, but as a whole that overall school is not as successful. And one of the kinds of anecdotal validations of those independent studies is if you look at the A plus plan and how it ranks high schools. I mean how many A high schools do we have in the state? I think I

can count them on my hand. And the reason why is because, what are the sizes of the schools. Elementary schools tend to be smaller tending to be more focused, more engaged. Middle schools tend to be larger. As you move up in terms of the size of the school, you also see an inverse relationship with the quote unquote overall aggregate effectiveness of that high school (Interviewee C, May 25, 2010).”

What have been the difficulties through your support of charter schools?

“From a statutory phase is educating other members of what charter schools really are. You know folks think they are a private school, that they don’t take the FCAT, teachers aren’t certified, and that people pay tuition that they are allowed to cream. There is a lot of constantly educating elected officials of what charter schools really are. In the error of term length where the average legislature only serves four to six years, by the time they understand what a charter school is, they’re out of the system and you have to re-educate folks. Another thing that is difficult with charter schools is you are making a square peg fit in a round hole. The system there is about 130,000 charter school students in the state with about 430 charter schools. We have 200 to your 2,000,000 public school students. So we are looking at less than 2 or 3% of the total population. Most of the issues you deal with legislatively are for the bulk of the students and they get applied to the charter, but the intent of the charter is to exempt it from everyone else to allow them to be flexible. So that is a constant battle that we are constantly trying to

educate other members on. On a local front, it's really educating teachers, parents that it is a public school, that it's free but yet they have flexibility to meet the needs. So I think educating folks on what a charter is, is very challenging. I still get questions from school board members who don't really know what a charter is, and they have been a school board member for four to six years. And they govern charter schools. It's not that they are ignorant it's just such a small population that they don't get it (Interviewee C, May 25, 2010)."

What organizations, documents, or any visuals have supported you the most through the process of charter school reform efforts?

"You know, the biggest group that I use, I have to back it out and say it's not just charter but education reform as a whole, it's called SREB, Southern Regional Educational Board. I rely on them heavily, heavily. They are a panel of experts from the southeast region that basically are nothing but a think tank on education policy. But I wanted to say charter school and education as a whole greatly influences how I view how charter school fit into the picture. I don't rely on the charter school advocates as much because I listen and hear, but I treat them almost as more of a special interest group because that is what they are. They advocate for just for charters. Even at the detriment of maybe other entities. Where as SREB looks more at the system of education and how it's all intertwined and works together (Interviewee C, May 25, 2010)."

There are a couple different pieces that have come up out of my research and I really just wanted to get your opinion on them. The D'Angelo case, which was in Polk County, was actually a freedom of speech suit. Essentially a local school board let go of a principal for pursuing a conversion to a charter school.

What are your thoughts on that?

“Well in the issue, and I don't know the specifics of that case, I've read about it in the press. I've learnt not to comment on what I hear about it in the press. It's not always accurate. The issue of conversion charter schools, and I'm not an expert on because I haven't been involved with them, but I've know from a policy standpoint it's very problematic for districts because what makes those even more challenging is because not only are you dealing with programs, the problem I'll unwind it a little bit, is that the misnomer that school board members have in my view is charter schools take away money from public schools. If you want to agree with that premise, you also then have to agree that they also take expenses away from charter schools because now they no longer have to pay for the teacher, they no longer have to pay for the resources to go along with it because the idea of the state and the FEFP program is you get the revenue to pay for the expense. So if you agree that they are taking revenue, they are also taking expenses away so it should be a zero sum game. That's theory. That doesn't apply necessarily to charter schools and the conversion schools, and the reason that may not apply as equally as to conversion schools is because you are dealing

with a fixed asset that is already been built and that's been appropriated for in that tax levies have been allocated for, and that they may have been a five year plan and bonding issues that then built out for those issues so when it comes to conversion school I think, and mainly rightfully so, districts are more concerned because they invested their planning resources on a school that now is no longer under their control period. But yet they spent money that could have been put elsewhere knowing that that school was being built and they have no control over who is accessing that school on those issues. So that issues tough for me to comment on specifics, but if I'm a board member of a school district, I would be concerned about conversion schools as well about at what ease they become charters (Interviewee C, May 25, 2010).”

Another highly sighted case is of course Bush verses Holmes.

“I know a lot about that one (Interviewee C, May 25, 2010).”

What are your feelings on that?

“Sure, I mean the court took a very unique approach when, it really, the heart of that issue is the uniformity provision. I mean that was, absolutely, Florida is probably the leader of the nation when it comes to uniform funding. You look at Texas, New York, all these other states our FEFP formula without a doubt is a model from the use of the compression models and discretionary issues, it's very uniform on how it applies on I think the court tried to apply this uniformity issue,

and it opened the door for a lot more problems than it probably saw. Our McKay scholarships are a violation of the uniformity provision and everyone who read that provision said, absolutely yes they are. Is the corporate tax scholarship in violation of the uniformity provision? Absolutely, they are. Are charter schools in violation of uniformity? Absolutely, they are. But on the backside, what was the legislative intent of all those provisions as we stated earlier, is to say we want schools that are not exactly the same because our students are not exactly the same. I believe the intent of the legislature is always been that we provide uniform funding but we don't necessarily have uniform results. It's that old argument of equality of opportunity verses equality of condition. You can have equality of opportunity but it doesn't necessarily equal equality of condition. It's what the court viewed in this, is that they viewed the opportunity scholarships as being not uniform. But if they are going to use that, it's left it open and we're really waiting for someone to file a lawsuit because, we think the courts would if they are following that same logic, would have to apply to charter, McKay and corporate tax. They reason why we don't think there is McKay, is there is a consensus among public schools as a whole they'll say or not, but I can say from a legislative view that they view McKay as actually helping them because it takes the most challenging students out of their classrooms and allows a private institution to pay to educate them with success. It would be counterproductive for the system to reverse that because now you have those students back into the system. Your most challenged students would be now educated in the system that

is actually over burdened in their view itself. Charter as it grows you will probably see a lawsuit on that (Interviewee C, May 25, 2010).”

What about the decision of Duval verses State Board of Education dealing with the Commission of Excellence?

“I disagree with them, but I think rational minds can disagree on this. I knew this would be a Supreme Court issue. This gets them into constitutionality. I view that they were wrong but I understand the constitution under Article 9 says aspects of the schools have to be under local control, but it also says that in Article 1 that all regulations and all programs are under the office of the State Board of Education. You have two provisions in the constitution that on face value appear to be conflicting with each other. Took a stab at it and said okay let’s see if the State Board of Education, since charter schools typically cross county lines, and this becomes a more larger legal argument that we are going to be crossing in the 22nd century when it comes to virtual. Because now we are having education that is no longer bound to certain geographical boundaries. It’s across the state. You can have a student in one county take an educational course in another county. Well, whose student is that? Is it where he physically lives or is it where the education takes place? All those things are open ended, and you are going to see the issue of *Duval* probably be revisited because our education system itself has changed. As we get away from the 19th century model of education where one student in one class with 20 students in a class and one

teacher. As we get more to an international model where students are taking classes from teachers who are not necessarily in their room. It's going to change the way that lawsuit affected. And if it doesn't change, I think you are going to have some, your going to see Florida lagging in a lot of areas because the rest of the nation is going to amend their laws to allow for more virtual interaction of districts. I really believe the 67-district model Florida is out dated. It's just out dated. It's too big, it's too cumbersome and it's too restrictive. That's the way we have it and it's hard to change away from that (Interviewee C, May 25, 2010).”

What do you the feel the issues on the other side of the groups not supporting charter schools?

“You have a quiet opponent and you have a vocal opponent. Your quiet opponent is probably your school districts. Because if you probably speak to most school board members, the elected officials and the elected superintendents, they all say they support charter schools. As long as they don't take money away from schools and they operate the same and are regulated the same and administered the same. Which basically means, as long as they are the same as the public school. Which basically means, it's not really a charter school. But when you start diving down deep and you ask them, well what if it was this type of school is charter. Well we don't support that. The first reaction is its takes away public dollars. I've yet to understand how it takes away public dollars. I don't quite get

it. If money is leaving, so is the expense. Is it in what you see in 2003-2006 was really, probably a deterrent of the school districts as it relates to charters because we had a huge influx of students? They couldn't build schools fast enough. So they viewed charters as okay, they are taking students; fine it's not a problem. But as you see this contraction in student growth you've also seen probably, well not probably, you've seen the hostility, if you want to use that word, from school districts. Where was that argument five years ago when you needed them to take away students? So I think you see there is a belted hostility there. Also, because of kind of the underlying premises in *Duval*, is and this is the charter school movement, uses this movement a lot, is in a free market system you would not have Burger King tell McDonalds how to operate. But in a charter school environment you have the school district basically regulating the charter school and telling them how to operate. So there is that built in tension that you're our competitor in essence but we are going to regulate you, audit you and tell you how to operate. That was one of the underlying premises behind *Duval*. The schools of excellent, is perhaps they are hostile school districts and I think some of the school districts will tell you they are hostile because they have rightfully been burnt. That they don't want any charter school. Well that is probably not a good approach either. That's one group. The real hostile group towards charter is probably teachers union. Because basically, most charters are not unionized. Most charters have annual contracts. Most charters have student performance as part of the teacher evaluation, most charter schools are completely at will. Most

charter schools actually pay their teacher more on average than public schools with less money, about \$.70 on the dollar more. So there it is, the union itself is threatened by the success of charter schools because if they are successful and they are unregulated and are on annual contracts and have higher performance, that really goes against some of the core things they advocate which is basically they are not, first hand they are against performance pay. There is, I don't care what, they are against performance pay, they are against annual contracts, they are against differential pay. Those three systems are integrated in almost every charter school (Interviewee C, May 25, 2010)."

What do you think will be the ultimate outcome of the charter school movement?

"I think they will get to a point where it has reached equilibrium. You know, I am more of an Aristotle kind of guy. I believe in golden meaning. I believe there is equilibrium where charter schools will grow to a point where they are not needed in terms of the numbers anymore. The free market will say you know what the public serving these students; these charters are serving these students. Right now if you take a look over the last two years, while the state of Florida, has had maybe a 1%, I forget the exact number, but like a 1% student growth, a 2% student growth, charter schools are growing in double digits. What that says is basically, while public schools aren't growing because of the influx of new students coming into the state, charter schools are. So that hostility is beginning

to develop between the school boards. There will be a point though where the market, unless these charter schools are innovated in the way they operate that the public school will morph and they will become more attractive and so they will balance each other out (Interviewee C, May 25, 2010).”

What future changes do you foresee for charter school legislation?

“I think you are going to need a stable capital revenue source. There is going to have to be some sort of capital dollars that are designated or stabilized. The issue of two-mills is going to have to be resolved. Because that is not uniform. The way it’s currently set up is, basically you have tax payers that are paying two-mill dollars and a charter school for capital growth, and that their child is not receiving those things is going to other schools and how do you equalize and say well they are a public school but they are not entitled to public school capital funds. Is that a difficult thing to argue and I anticipate lawsuits eventually on that and the Court is going to have resolve it somehow. You know, they are going to have to resolve the two-mill issue. I think eventually you are going to have to have, because of virtual not because of charter, you are going to have to revisit *Duval* because virtual is going to upended in the next five years the way these geographical boundaries operate. When virtual upends those geographic boundaries, charters will probably kind of get caught underneath it. *Duval* tried to make charters kind of the groundbreaker. It is too much of a brick and mortar school still. But now that district is letting them do virtual, now that we have Florida Virtual and now

that basically the market is saying you have to keep up in virtual. Florida is not as much as we hoped. Probably in about five years, the citizens are going to say, why can't my child, who I just moved in to a new county, go to the same virtual school they went to in the previous county? They will have to resolve it eventually once you start seeing movement again (Interviewee C, May 25, 2010).”

The capital dollars, I did notice in the statutes that it actually says that after three years they can apply for some capital money. But it still causes a problem with opening a charter school that they don't have funds for the facility and it really makes it difficult.

“Absolutely, and the way it works right now, and if you don't mind me going into and separate the two, is charters do get capital but it's state allocated capital not local allocated capital. So the local allocated capital, they have no access to. So what happens, states set separate funding mechanisms for charter for capital. The intent was to be 1/15th of the student stationed. Take the total FTE divide it by 1/15th and that would be how much they would get. It's never been even close to that. On average, to give you a number, and numbers change because of inflation, \$2,000 in the average charter school for elementary schools is about \$900. That's how much they got for capital per student. It got down to as low as \$200 in 2003. The state doubled the funding and it is back up to \$650-700. It's now down to about \$500. The state allocates every year, charter fund capital dollars for charter

schools. This year it was about \$52,000,000. They take the total number of students out there, divide it by \$52,000,000 basically and that is how much they get. You are right. They don't get it for the first three years. The reason why, is because existing charter schools that signed long term leases, as new charter school opened up, it depleted those dollars and you had a yoyo effect in terms of revenue sources. So one year you could get \$800 next year \$400 next year \$700. And as you know in long-term leases on building projects loans all those things become difficult to budget. So in order to equalize that or provide stability I should say, to provide stability they put in a three-year provision to say it allows planning for three years so they can see who is coming in the pipeline. It also, quite frankly, is to discourage charters to open up that did not have some sort of financial stability in the long term (Interviewee C, May 25, 2010)."

Why didn't charter schools come up with the virtual schools first?

"Because they are prohibited by statute to do virtual. The statute specifically prohibits charter schools from offering virtual schools. And the reason why you cannot do charter virtual is because there was a great fear that you would have charters offer virtual and it would grow rapidly. Because they would have the flexibility to do it. Virtual no question about it, is going to, I look at the unions as unions typically change. I'm not saying that is good or bad; it's human nature to fear change. They don't like things that are different. If you ask any union leader who's statewide, or national, what is the thing you are most fearful of, they will

tell you no question about it, virtual education. Because virtual education basically neuters all forms of collective bargaining. It totally reforms the way they do education. You have Florida virtual, which is the fastest growing in the state of Florida that is non-unionized. It's growing by double digits, left and right and teachers are clamoring to teach in virtual. With charter, so that you see a great reservation there, but virtual will change it. But why charters couldn't do it, is because they are prohibited by statute. Every year we have tried to change that and districts have aggressively, aggressively fought it. To the point where there are lawsuits, they threaten lawsuits saying if you allow it we will go after, we go back towards *Bush v Holmes* (Interviewee C, May 25, 2010)."

In charter schools, in reading the Florida statute, there is a lot of regulations on charter schools, and it is supposed to be that innovative school that can open up and really get out of the district rules, policies and can kind of do their own thing as long as they show that they are making student achievement. Why so much regulation on them?

"It is nature of government to regulate. It's just the nature of government. The nature of the school districts aren't to say and it's not negative, they are not like us. You take the bad actor and you write laws based on the actor. We have had bad actors in the system and they should have never opened up a charter school. We call it regulation reload and it happens in government. Every 20 years you free government that is why you have in my view, you have Ronald Regan's then

you have Obama's. You have free market people that get elected we keep government of peoples back. Then we have, we have got to have more regulation to protect people from the free enterprise system. What you saw in 96, is you saw let's free education from all these regulations, the paperwork, the involvement and then what you have, is you have districts and you have people pointing to the bad actor and saying we have to have more oversight we have to have more accountability. It is not fair that they can do this and we can't. Even though that was the intent (Interviewee C, May 25, 2010)."

I also noticed that there was a piece in there about if a public school isn't using all of their facility, that a charter school could use a piece of their facility. Do you know anything about the background of that?

"Yes, and there are ways around that. We tried to clarify that more this year. Basically the idea was, if you have a public school that not utilizing a building or a part of the building, that a charter could negotiate a contract with the public school to utilize that for the services. What happened is, some districts had basically an empty building that was sitting there and the community would like to have a school here. We have a company or we have a group of individuals that could operate it and the school board said no they did not want that to happen. I forget what school district it was that instigated that, so they changed it and said if it's not being utilized and it's an empty building that is sitting there, why not use it for educational purposes. The problem with the way the laws read, it says it's

not being utilized so basically you can use it for storage. As long as it is being utilized period. So what you see is a lot of empty schools that are storage spaces right now. Because once they lose that facility to a charter they are probably not going to get it back. You know, that place has become revitalized and they will grow again and they will want the school back and they are unable to do it (Interviewee C, May 25, 2010).”

The interviewee acknowledges the complex relationship between the school boards and charter schools. Rationale for charter schools evolves around the school choice reform efforts desiring to maximize student learning. The interviewee’s beliefs on factors prohibiting public schools from flourishing include large districts, lack of performance for pay plans, and tenure. The impact of charter schools provides a way for all students’ needs to be met. The interviewee acknowledges the difficult regulations confining charter schools such as access to capital funds, regulations with the Florida Code on accountability and performance, and the changing face of public schools. Current legislation of virtual schools have transformed the way students learn overnight, with students engaging in learning through technology without ever leaving their homes.

Interviewee D – *Bush v. Holmes*

Interviewee D is an individual with expert knowledge regarding the *Bush v. Holmes* case. The interviewee’s full text has been included due to the significance of the case. The interviewer’s questions contain formatted bold text. The *Bush v. Holmes* case generated from school reform efforts guided by Governor Bush’s A+ plan initiated in

1999. He desired to formulate a seamless education system from kindergarten through college. Part of the plan included voucher options to students at failing schools. This case proved important to the school choice reform effort therefore outlining potential issues for charter school reform efforts.

“What were the events that led up to that lawsuit, Bush verses Holmes?”

“In 1999 Jeb Bush’s planned to revamp and reform the education system actually not just K-12, but K-college in the State of Florida. He had some very, very specific ideas about what he thought should be done and part of that was an approach to revamping K-12 education which was known as the, he called it, the A+ plan. Of course Governor Bush won the election rather handily. He had somewhat of a mandate and the A+ plan was passed by the Florida legislature. In 1999 his first term in office, the A+ plan was a rather far reaching series of measures all of which in the view of the Bush administration were meant to improve not only student performance but also accountability on the part of teachers, principals, school boards and district administrators. And the approach was very specific in laying out what was going to be required in order to move things along. Part of that approach was a program that became known as the Opportunity Scholarship Program. The idea was that if you get to the point that a student is in a school system and their particular school has, over a period of time, failed to meet certain standards and is just not meeting expectations, the student and their parents would have the opportunity to remove the student from the

school and either place them in another public school in their community or they could get one of these Opportunity Scholarships which allow them to attend a private school. So my first involvement was when the bill was going through the legislature. So that was probably the beginning of my involvement, literally as the bill was being put together and finally passed” (Interview D, June 1, 2010)

“What transpired as the lawsuit was being filed?”

“There were a number of issues revolving around the A+ plan and sort of how it was going to play out and it was the very traditional Democratic constituencies in Florida politics who were very opposed to it. These included the Teacher Unions, members of the Democratic Caucus of the Florida legislature, many within the educational community, so on and so forth. There was a lot. This is where FCAT came from. So there was a lot of opposition to the entire scheme of the proposal. But one of the issues that really hit, you know was sort of a hot button issue, was this notion of these Opportunity Scholarships. Many people felt that this was a sort of direct assault on a uniform system of public education in our state. It was an effort to move the students out of the system and put money into private schools and so it was also a concept that is, that the scholarships began to be known in common, as vouchers. These were being tried throughout the United States and early on interestingly enough, they survived constitutional challenge in Ohio and in, I believe in the city of Milwaukee. And so, Florida legislature took I think, some solace or confidence in the ruling of the courts in

these states giving support to these programs. So the first time we were sort of aware that there could be lawsuits about these scholarships was actually, there were already things going on at the time this bill was going through. As far as the litigation itself, it was filed I think relatively soon and there are others that I can send you to that can be more specific. But it was filed relatively soon I think after the law was enacted and began to wind its way through the court system. It went up to the First District Court of Appeal I think twice and then ultimately went to the Supreme Court of Florida where it was ultimately resolved. But it was driven in part by a coalition of interested parties. If you look at the list of parties from the, I'm going to get the, court opinion out here. You had a mixture of parents' groups and then there was Holmes, who was the plaintiff and the other parents. Then there were a variety of Amicus Curie on both sides. The Governor intervened because this was near and dear to his heart. The Catholic Conference intervened. I'm just looking through this thing real quick here. The ACLU lawyers were actually on behalf of Ms. Holmes. The City of Jacksonville intervened. The Coalition of McKay Scholarships and the Association of Private Schools intervened, and Sandy D' Alemberte, the former dean of the College of Law at Florida State, President of Florida State University and several law professors intervened in their own right. The Union for Reformed Judaism, I mean there was a huge interest, and then finally the National PTA and the National School Board Association and the American Associates Order Association. There was a huge conglomeration of interested groups on both sides

of the issue from all around the United States that came into this case because I think it was viewed as a situation where if Florida enacted this, following the success in Ohio and up in Milwaukee, then it would probably move the scholarship voucher program forward nationally. So it became a real national issue in a Florida context very quickly” (Interview D, June 1, 2010)

“How important was this case? What were the implications with the system? I know it would have changed the whole realm of vouchers. You kind of touched on that. Was there anything else?”

“At the end of the day what happened was very simply, the Supreme Court of Florida, and it was a divided vote and it bears noting that all through the court system judges disagreed throughout the process and there was never any sort of unanimity about whether this was or was not a system that was in violation of the Florida Constitution. There was a lot of back and forth among legal minds. Let me stop and say that because this is sort of to your question. This case was decided unlike the other cases I alluded to. This case was decided based upon certain language in the Florida Constitution. So it was significant in that, well it was significant for a couple of reasons. One for what the court did and one for what the court did not do. Let me take on first of all what the court did. What the Supreme Court of Florida did, was it looked at this provision in the constitution of the State of Florida and the majority of justices said by taking money that has otherwise been budgeted to a local school district under the state funding formula

by taking that money out of that pot and giving it to parents and allowing them to take it and spend it in a private school, you are violating that part of the Florida Constitution that requires the legislature provide for a free and uniform system of public education. So the court said you can't do that. You can't take that money and spend it that way. Then secondly, the other major problem in their view was that even if there was some way to spend the money that way you were allowing children to be educated in a non-uniform way and they used, they had several examples. They said number one, the requirements for getting the teaching certificate in the state system were higher than requirements in a private system. Number two, there were certain areas of study that Florida law requires the public schools to instruct and the examples were things like, the history of the State of Florida, the history the Holocaust, African American studies, reading and study of the Declaration of Independence. These are some of the examples and they said there is no requirement that students going to a private school study these things. So they said there are two problems. One is you are taking money out of the public system and putting it in the private system and two, you are allowing students to get an education that is not uniform. That is roughly where the Supreme Court of Florida majority found problems with the law. But the other significant thing is what the court did not do. The Florida Constitution, like many state constitutions has a provision regarding education that is known sort of generally as a Blaine Amendment. The Blaine Amendment is named after a very prominent Republican legislator of the post civil war era, who was very

prominent in fighting efforts to allow the Roman Catholic Church to obtain funding for their school systems from state governments. This was a big issue in sort of the post civil war era as there were a lot of Irish Catholics coming into our country. The Catholic Church set up this whole system of education and it was beginning to use its political power to take money out of state coffers and put it in the Catholic schools. So there were a series of these particularly, in the South, and efforts to put language in the state constitutions to absolutely not allow any state money to be used to fund religious education, particularly Catholic education. And so these amendments or this language began and became known as Blaine Amendment language. When this case came up to the trial court Bush verses Holmes and into the Court of Appeals, the major arguments that were made had to do with whether the Blaine Amendment language in the Florida Constitution precluded the use of Opportunity Scholarships or vouchers. That's where the fight was. When the case got to the Supreme Court of Florida they simply ignored that issue. Just didn't even talk about it, instead focused on this other language as a way to resolve the case. That was very significant because if the Supreme Court of Florida had ruled on the grounds that there was a Blaine Amendment problem here that would have impacted the laws in other states that had Blaine Amendments. But the Supreme Court didn't do that. They used this other language, which is fairly unique as a way to strike it down. In terms of significance what was significant about the case, was not only what the court did but what the court didn't do, which is it never addressed the Blaine Amendment.

This issue is coming up in a current case, so they are going to have to deal with this. At the end of the day, the practical implications for what the striking of the Opportunity Scholarship Program had were in my view, probably fairly small. First of all, the court allowed everybody that was in school that particular school year to finish out. They made a point about it, that we are not going to interrupt anybody, and we are not going to try and get the money back. There really weren't that many students in the program at the time. In terms of the number of students at the time, it really wasn't that large" (Interview D, June 1, 2010).

"What were the difficulties throughout the case?"

"I think the Blaine Amendment arguments about not using state monies to support a religious school. Those were very difficult arguments because the language in the Florida Constitution was pretty clear in many ways on that point. And so you know, sort of trying to work through and articulate why that shouldn't apply in this circumstance was really a great challenge. One of the things that the legislature did in crafting this law is they put a lot findings of fact into the legislative history so that there was a lot of legislative special findings that courts are supposed to defer to. So there was a little bit of a road map there. But it, I'd say the other challenge was simply to get, and this is probably true on both sides, is to get all of these Amicus groups these other interest groups that had a feel for this working in concert on the approach, you know, what are the best arguments and what is the best, who is the best one to convey a particular point. Those kinds

of practical things. But it wasn't, it's not the kind of case where you had you know, a lot of witnesses or you took oath or live testimony or anything like. It was very much a paper case and so that moved it along. Made it a lot easier to move the case along" (Interview D, June 1, 2010).

"What organizations or documents or individuals supported the case the most through the process? Obviously the Governor at the time."

"Yeah, I would say what you had on the state side, was you had a lot of support from the Governor. The legislature is always supportive. But there were also a lot of these, and I think I read some of these to you a minute ago; there a lot of these Amicus groups, the Florida Catholic Conference was very supportive. The Institute of Justice in Washington D.C. was another group that was very supportive of the state. As was, actually the Pacific Legal Foundation filed a brief in support, as did the United States. This was the early part of the Bush administration. There was actually support by the Department of Justice Civil Rights Division. They actually supported the State of Florida on this case and the, see there are a couple others here; the city of Jacksonville is another one" (Interview D, June 1, 2010).

"What were the strong points on the other side? I know they obviously won in the end. But what do you think made the case win?"

“Well I guess the most objective way to look at this, is if you look at the makeup of the Justices on the Supreme Court, we all expect our judges to be fairly neutral. We expect them not to put their own personal feelings in the things or their own emotions or whatever. There is a lot of language by both the concurring; I mean the majority opinion and the dissenting opinion. But at the end of the day, the vote on the court was, all the judges that had been appointed by Lawton Chiles, the former Democratic Governor whose views were not in support of the A+ plan. They all voted to strike this down. The two judges that voted to uphold the law were two judges that had been appointed by Governor Bush. So I would say one of the things, and I want to be careful how I phrase this, but basically you know judges are human beings too and we all come with particular ways we approach things, we think about things, we study things. I think that one of the things that the other side had going for it was the majority of judges that had been appointed to the court, had been appointed by the democratic predecessor, and in many ways shared a view of the reading of these terms. They viewed these terms in the constitution in a very strict way. They were very clear that to them the constitution just flat out forbid the legislature from doing this. So that was probably at the end of the day, the biggest challenge that the A+ plan faced was how it was going to be reviewed and interpreted in light of the constitution. Both sides have lots of data, both sides had a lot of compelling individual stories, both sides had very good reasons for or against the law. As the dissenting judges pointed out their view was, look, as a court we are supposed to presume that a law

that is passed by in the legislature is constitutional. They pointed out that this had all been heavily debated, and it had been a focal point of the election. The legislature had overwhelmingly passed this and in their view the language in the constitution did not prohibit this but it actually just told the legislature you need to be thoughtful and measured in how you do it. So to them all these kids were getting a good education and didn't think it was their role to knock this down. So that really at the end of the day, I think is how it was just basically the perspective that many of these judges had was, you know, was the one that struck it down" (Interview D, June 1, 2010).

"How do you think the Bush verses Holmes impacted the education system in Florida?"

"You know, I'm really not a good person to speak to about that directly. I would again suggest that there are probably others out there that are better suited. I would say this; I don't think it had a major impact in the sense that very few students had the Opportunity Scholarships made available to them. Even after struck down, there were, to my understanding, there was another law that was passed that allowed for a different form of scholarships. I don't know at the end of the day that it had a very, very dramatic impact on the education system. Most of the A+ plan law survived. When we talk about the FCAT, when we talk about A schools, B schools, those kinds of things, those are all the legacies of that

original A+ plan. They all still remain in place. They were not in my estimation impacted at all by the court's ruling" (Interview D, June 1, 2010).

"Do you think that case had any impact for legislatures regarding charter schools?"

"Regarding charter schools I think, well obviously it would have an impact on the legislature because as a body what they would now know is there are certain limits on what they could and could not do going forward, because the courts had spoken. I say I believe, I really apologize I'm not better informed on this, but I believe what they did do was pass a law that set up the opportunity for corporations to fund a form of these scholarships. So I think that was probably one of the impacts" (Interview D, June 1, 2010).

"How was the case Zelman versus Simons Harris viewed in comparison to the Bush versus Holmes? Obviously, in reading the background, I remember when that case was coming up and everything. It really looked like the Supreme Court of Florida was going to say because of the Supreme Court of the United States case involving voucher program was constitutional."

Correct. Again, what occurred here was the Florida Supreme Court avoided the proponents of striking the law were very, very in depth in focusing in on these aspects of the Florida Constitution as opposed to just the general United States constitutional challenge which if memory serves me, was more what Zelman was

about. Did these things violate the separation of church and state? That kind of argument. So what they did in Florida was they did attempt to more narrowly focus these arguments on provisions of the state constitution. By doing so basically rendered anything done by the federal courts of no importance (Interview D, June 1, 2010).

“Are there any factors that you think could have changed the decision?”

“Potentially, it’s hard to say because what we don’t have in this case is, we only have two opinions. We have the majority opinion by Justice Pariente and we have the dissenting opinion. As I say, Justice Pariente raised several reasons why the law was in her view, unconstitutional. Part of which was this notion that children attending these private schools weren’t going to get the same sort of ‘uniform education’. Perhaps if the legislature had demanded that any private school that was going to take a student under this program had to meet those higher standards. That may have moved, you know, two of the votes off. That would have given the dissent the four votes they would have needed. It’s hard to say because politically, my memory, for example the Catholic Conference, Bishop and some of the other private school entities were very adamant that they would not accept any sort of government regulation over what they did or how they did it. So it was probably an impossible situation the legislature couldn’t have overcome. So I really don’t know if there is much more that could have been done in that way” (Interview D, June 1, 2010).

“In your experience is it typical for it to come down to the state constitution as far as in deciding a case?”

“You know more and more that is true. I think that historically Florida’s constitutional structure of government is very unique and the struggles that we’ve had in our state, beginning with the segregation issues in the 1885 constitution. Which were not just, again there was not only direct efforts to segregate the schools and provide African American children with lesser educations. But also this Blaine Amendment approach, which was to sort of prevent any sort of Catholic educational going forward. Since that time we really have seen a lot of attention put on our state constitution, and as you are probably aware, over the past few years we have added to our state constitution a number education related amendments. That’s where the class size restriction that we have in our school system came from. Those are in the constitution. We now have universal law pre-k approach and that’s in our constitution. So you have more and more, it’s very important to understand what’s in our state constitution and how it impacts these things” (Interview D, June 1, 2010).

“Do you foresee any legislative changes or outcomes of the charter school movement or school choice that you can foresee coming up in the next five years?”

“I’m not really a good person to ask that question. I haven’t really followed it closely so I don’t want to venture an opinion on that” (Interview D, June 1, 2010).

“Is there anything else that you might be able to share that you think might be pertinent to the study?”

“I think that again, one of the things that all of us who are Floridians should remember is we’re now among the foremost significant states in the union in many, many ways. The country was looking at Florida to see what we were going to do in this program. I think that had the court ruled the other way you may have seen more of these programs rolled out across the country. I think if the Blaine Amendment argument, it may have set the stage for further federal review and would have knocked that out. I think it just reinforces, for good or for bad, Florida as one of the leading states in the country and what we do here does have implications for the other states” (Interview D, June 1, 2010).

This interview reveals the importance of the charter school reform efforts to many parties. It also indicates the importance of the constitution to the courts in deciding cases at the state level. In addition, the interviewee acknowledges the importance of decisions made in Florida and the impact of the decisions to the entire nation in trends and movements.

Summary

The three most significant cases in the state of Florida regarding charter schools and the school choice reform effort include *Duval v. State Board of Education*, *Bush v.*

Holmes, and *D'Angelo v. Polk County School Board*. The citation of these cases exceeds other court cases. Florida proves to be a trendsetter for charter schools in the growing number of students enrolled in these schools and the impact of the court cases to other state initiatives. These cases outline the changing framework supporting charter schools, the impact of legislators, and the complexity of the relationship between school boards and charter schools.

NVivo 8 Analysis

All documents obtained in researching charter school reform efforts were digitalized when possible for review by the NVivo8 Analysis system. A total of 177 electronic resources were entered in the NVivo 8 data analysis system. The NVivo 8 data system analyzes documents for trends in key terms. Documents were coded in the system as sources for state or federal level information on the charter school reform effort. In addition, transcripts of the four interviews were included with the documents for review. All of the documents provide pertinent information on the decisions guiding the charter school reform efforts. Table 3 indicates the types of documents coded within the NVivo 8 software.

Table 3: Document Data Review

Type of Document	Number of Documents
Interviews	4
State Level	67
Federal Level	104

Analysis conducted includes review of common terms in each type of document as well as reference to constitutional law, statutory law, administrative law, case law, and contract law. Table 4 documents the number of documents indicating the type of law based on the search conducted.

Table 4: Type of Law

Type of Law	Number of Documents
Constitutional	78
Statutory	54
Administrative	68
Case	129
Contract	72

Both Table 3 and 4 indicate more resources available at the federal level and involving cases in the review of charter schools. This also designates the significance of charter schools at both the national and state level.

A word frequency query indicated key words identified within all documents, state documents, federal documents, and interviews. The NVivo 8 system identified the top 250 words within the queried documents. The researcher reviewed the words for themes and importance identifying a group of key terms from each group of documents queried. Table 5 indicates key terms identified for all documents.

Table 5: Key Terms for All Documents

<i>Word</i>	<i>Count</i>	<i>Percentage (%)</i>
school(s)	29909	1.00
Court	14005	0.70
State	13665	0.68
Education	12205	0.61
District	9073	0.45
Public	7870	0.39
Educational	7709	0.38
Law	6925	0.34
Uscs	6771	0.34
child or children	9509	0.32
Charter	5984	0.30
student or students	8939	0.30
Act	5479	0.27
Agency	5351	0.27
Section	4994	0.25
Local	4895	0.24
Judgment	4331	0.22
Evidence	4322	0.21
Program	4271	0.21
States	3835	0.19
Case	3538	0.18
Federal	3622	0.18
Parents	3555	0.18
Rule	3688	0.18
Funds	3148	0.16
Services	3294	0.16
Programs	2949	0.15
Party	2850	0.14
Disabilities	2525	0.13
Private	2492	0.12
Rights	2399	0.12
Findings	2262	0.11
Review	2139	0.11
Rules	2218	0.11

Another query conducted included the review of key terms for all federal documents. The 250 top terms were identified for importance by the research. The terms were screened for the most important concepts based on the research and interviews. Table 6 displays the key terms identified after screening by the researcher for federal level documents.

Table 6: Key Terms for Federal Level Documents

<i>Word</i>	<i>Count</i>	<i>Percentage (%)</i>
school or schools	36793 / 18054	0.96
Court	27207	0.71
State	25598	0.66
Education	22997	0.60
District	17125	0.44
Educational	15050	0.39
Public	14540	0.38
Uses	13542	0.35
Law	13285	0.34
Act	10823	0.28
Charter	10185	0.26
Child	9472	0.25
Local	9404	0.24
Evidence	8502	0.22
Judgment	8632	0.22
Student	8452	0.22
Program	7811	0.20
Rule	7280	0.19
Services	6393	0.17
Funds	5984	0.16
Programs	5673	0.15
Disabilities	5025	0.13
Required	5167	0.13
Appropriate	4700	0.12
Employee	4741	0.12
Private	4653	0.12
Rights	4715	0.12
Plan	4045	0.11

The state level documents were also analyzed through NVivo 8 for frequent terms. Table 7 indicates the terms identified.

Table 7: Key Terms from State Level Documents

<i>Word</i>	<i>Count</i>	<i>Percentage (%)</i>
School	3326	2.05
State	1666	1.03
Charter	1624	1.00
Education	1369	0.84
Schools	1330	0.82
Board	1319	0.81
Florida	1172	0.72
System	867	0.53
Program	722	0.45
Students	592	0.37
Law	507	0.31
Service	447	0.28
constitutional	375	0.23
Facilities	311	0.19
Funds	308	0.19
uniformity	266	0.16
Benefits	245	0.15
Holmes	231	0.14
performance	215	0.13
Programs	215	0.13
Standards	175	0.11
Adequate	158	0.10
construction	157	0.10
Decision	168	0.10
Facility	155	0.10
appropriate	140	0.09
Approved	151	0.09
Capital	150	0.09
Criminal	141	0.09
Fund	150	0.09
Quality	138	0.09
Voucher	134	0.08
opportunity	118	0.07

All interviews were analyzed in NVivo 8 for frequent terms. The top 250 terms were reviewed for importance by the researcher based on research and interviews.

Table 8: Key Terms from Interviews

<i>Word</i>	<i>Count</i>	<i>Percentage (%)</i>
School	199	1.66
Charter	159	1.33
Schools	116	0.97
Case	87	0.73
Court	81	0.68
State	66	0.55
Districts	61	0.51
Law	58	0.49
Florida	46	0.38
Education	44	0.37
System	43	0.36
Board	39	0.33
D'angelo	39	0.33
District	38	0.32
Public	38	0.32
Local	32	0.27
Students	31	0.26
Decision	30	0.25
Supreme	25	0.21
Amendment	24	0.20
Constitution	23	0.19
Control	23	0.19
County	23	0.19
Money	22	0.18
Process	22	0.18
Trial	22	0.18
Appeal	20	0.17
Issues	20	0.17
Legislature	20	0.17
Virtual	20	0.17

Summary

In reviewing the term searches, several commonalities surface from the key terms. The common terms within the top ten terms include: school, court, state, education, district, and public. It is obvious within school choice efforts that legal aspects guide the charter school efforts. The difference between all documents and federal documents involve 'children' identified as a frequent term on all documents and 'act' identified as a frequent term on the federal documents. The state documents include several terms in the top ten terms from all documents or federal documents; this includes: charter, board, Florida, and system. The interviews mimic all documents and the federal documents in the top ten terms outside of the terms 'case' and 'Florida'.

Summary of Findings

The legal system proves difficult to navigate and understand in its decisions. This research reviews the primary and secondary resources at the state and federal level dealing with charter school reform efforts, along with data analysis provided of the documents for key terminology.

Themes and patterns identified across the primary and secondary searches as well as data analysis from NVivo 8 include the following concepts:

- rules or regulations
- standards or accountability
- disability or special education
- funds and facility issues
- programs or innovations

- employee issues
- legislative issues

The charter school reform efforts evolve from the school choice movement or the desire for students attending underachieving schools to have the opportunity to attend better schools. The original intent of charter schools, as described by previous Florida code, included an innovative program for students. While the original intent of charter schools required a new type of education experience, most simply mimic the classroom practices of traditional public schools. A major identifiable difference in most charter schools is teacher pay and the lack of a retirement system offered to staff. In lieu of the traditional retirement plan, some charter organizations offer pay for performance bonuses. Florida, specifically the statutes regarding charter schools, requires many regulations and rules of the charter organizations. All require approved contracts with the districts stipulating accountability with student achievement. The original intent of charter schools included the elimination of bureaucracy in school operations; however, charter schools must meet most of the required legislation intended for traditional public schools.

In addition, charter schools struggle with funding issues, since the funding allocated differs from traditional public schools. Typically, charter schools require a three-year wait period before capital funds may be utilized for facilities. The infrastructure issue plagues charter school organizations. Also, charter schools struggle with properly providing accommodations required of special education students and frequently screen students out to avoid costly interventions for these students (Estes,

2004). Another legal issue faced by charter school operators includes employee issues. Employee issues have ranged from inappropriate conduct to fiscal mismanagement.

On another note, the three most cited cases in Florida's legal system involving school choice includes *Bush v. Holmes*, *Duval v. State Board of Education*, and *D'Angelo v. Polk County School Board*. Both *Bush* and *Duval* deal with legislative actions found unconstitutional by the courts. In *D'Angelo*, the politically charged battle of charter schools with school boards shows the drastic action of dismissing a qualified administrator due to concerns over charter school conversion. This case provides parameters to public employees on the limiting impact public employee institutes hold over individuals when the issue is related to their official position. The significant cases, both at the federal and state level, regarding charter schools show the complex legislative issues impacting the charter school reform efforts. These cases also identify the operational issues faced by charter school organizations.

Reviewing primary and secondary sources, interviewing experts in the field, and using a data analysis system for frequency of terms allows a development of the legal perspective of actions involving the charter school movement nationally and locally. The outcomes of this study contain pertinent implications to date of the evolving political and court decisions. Changes in themes, patterns, and development will occur with the overarching parameters of the decisions made by the courts and legislation.

Research Question One: What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?

Charter school reform efforts evolved from the ideology that competition would increase the performance of public schools (Bulkey & Fisler, 2003). The charter school movement evolved from the school choice reform efforts. The United States Constitution as well as state constitutions provide parameters guiding the charter school movement. The first law enacted supporting the implementation of charter schools began in Minnesota in 1991. In 1996 Florida passed legislation initiating charter school organizations.

The cases impacting the charter school reform effort on the national level include *Everson v. Board of Education* (1947), *Illinois ex rel. McCollum v. Bd. of Education* (1948), *School Dist. v. Schempp* (1963), *Wisconsin v. Yoder* (1972), *Allen v. Wright* (1984), *Wallace v. Jaffree* (1985), and *Zelman v. Simmons-Harris* (2002).

The cases impacting the charter school reform efforts in Florida include the significant national cases and several cases specific to the state of Florida. The significant cases impacting charter schools at the state level include the following: *School Board of Osceola County v. UCP of Central Florida*, Court of Appeal of Florida, Fifth District (2005), *Bush v. Holmes*, Supreme Court of Florida (2006), *P.J. v. Gordon*, United States District Court for the Southern District of Florida (2006), *D'Angelo v. School Board of Polk County*, United States Court of Appeals for 11th Circuit (2007), *Imhotep-Nguzo Saba Charter School v. Department of Education and Palm Beach County School Board*,

Court of Appeal of Florida, Fourth District (2007), *School Board of Volusia County v. Academies of Excellence*, Court of Appeal of Florida, Fifth District (2008), *Duval County School Board v. State Board of Education*, Court of Appeal of Florida, First District (2008), *School Board of Palm Beach County v. Survivors Charter Schools*, Supreme Court of Florida (2009), *Wilbesan Charter School and Mary White v. School Board of Hillsborough County*, United States District Court for the Middle District of Florida, Tampa Division (2009), and *White v. School Board of Hillsborough County*, United States Court of Appeals for 11th Circuit (2009).

Research Question Two: What are legal parameters regarding the charter school movement nationally? (e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)

On the national level, the portion of the United States Constitution providing guidelines for charter schools includes Amendment I, Amendment X, Article I, Section 8, and Amendment XIV.

The United States Supreme Court cases impacting charter school reform efforts include: *Everson v. Board of Education* (1947), *Illinois ex rel. McCollum v. Bd. of Education* (1948), *School Dist. v. Schempp* (1963), *Wisconsin v. Yoder* (1972), *Allen v. Wright* (1984), *Wallace v. Jaffree*, (1985) and *Zelman v. Simmons-Harris* (2002).

There are 66 United States Code citations impacting charter schools. The specific Code of Federal Regulations dealing with charter school include Chapter 34 Sections 76, 106, 200, 225, 226, 230, 300, and 3 CFR Proclamation 8372. The Federal Circuit Court of Appeals cases impacting charter schools include *Ohio Ass'n of Indep.*

Sch. V. Goff, United States Court of Appeals for the Sixth Circuit (1996), *Villanueva v. Carere*, United States Court of Appeals for the Tenth Circuit (1996), *Stark v. Independent Sch. Dist.*, United States Court of Appeals for the Eighth Circuit (1998), *Hunter v. Regents of the Univ. of Cal.*, United States Court of Appeals for the Ninth Circuit (2000), *Jenkins ex rel. Jenkins v. Mo.*, United States Court of Appeals for the Eighth Circuit (2002), *Charter Sch. Of Pine Grove, Inc. v. St. Helena Parish Sch. Bd.*, United States Court of Appeals for the Fifth Circuit (2005), *Colo. Visionary Acad. V. Medtronic, Inc.*, United States Court of Appeals for the Tenth Circuit (2005), *Racine Charter One, Inc. v. Racine Unified Sch. Dist.*, United States Court of Appeals for the Seventh Circuit (2005) , *Arizona State Bd. for Charter Sch. V. U.S. Dep't of Educ.*, United States Court of Appeals for the Ninth Circuit (2006), *Rizzo v. Edison, Inc.*, United States Court of Appeals for the Second Circuit (2006), *D' Angelo v. School Board of Polk County*, US Court of Appeals for Eleventh Circuit (2007), *Dillon v. Twin Peaks Charter Acad.*, United States Court of Appeals for the Tenth Circuit (2007), *United States v. Pierce*, United States Court of Appeals for the Eighth Circuit (2007), *Wideman v. Colorado*, United States Court of Appeal for the Tenth Circuit (2007), *Brammer-Hoelter v. Twin Peaks Charter Acad.*, United States Court of Appeals for the Tenth Circuit (2008) and District Court for the District of Colorado (2008), *White v. School Board of Hillsborough County*, United States Court of Appeals for Eleventh Circuit (2009), and *Winn v. Arizona Christian Sch. Tuition Org.*, United States Court of Appeals for the Ninth Circuit (2009). On the national front, charter school reform efforts receive support. This is evident through the grant and aid funds available to charter school structures.

Research Question Three: What present legal structures and parameters affect Florida's charter school movement?

The Florida Constitution and the statutes regulate the charter school movements in Florida. Article IX of the Florida Constitution addresses public schools, which includes charter schools.

The statutes impacting charter school reform include: 11 Legislative Organization, Procedures, and Staffings, 39 Proceedings Related to Children, 121 Florida Retirement System, 159 Bond Financing, 163 Intergovernmental Programs, 196 Exemption, 218 Financial Matters Pertaining to Political Subdivision, 238 Teachers' Retirement System, 943 Department of Law Enforcement, 1001 Governance, 1002 Student and Parental Rights and Educational Choices, 1003 Public K-12 Education, 1006 Support for Learning, 1008 Assessment and Accountability, 1011 Planning and Budgeting, 1012 Personnel, and 1013 Educational Facilities.

The significant cases impacting charter schools at the state level include the following: *School Board of Osceola County v. UCP of Central Florida*, Court of Appeal of Florida, Fifth District (2005), *Bush v. Holmes*, Supreme Court of Florida (2006), *P.J. v. Gordon*, United States District Court for the Southern District of Florida (2006), *D'Angelo v. School Board of Polk County*, United States Court of Appeals for 11th Circuit (2007), *Imhotep-Nguzo Saba Charter School v. Department of Education and Palm Beach County School Board*, Court of Appeal of Florida, Fourth District (2007), *School Board of Volusia County v. Academies of Excellence*, Court of Appeal of Florida, Fifth District (2008), *Duval County School Board v. State Board of Education*, Court of

Appeal of Florida, First District (2008), *School Board of Palm Beach County v. Survivors Charter Schools*, Supreme Court of Florida (2009), *Wilbesan Charter School and Mary White v. School Board of Hillsborough County*, United States District Court for the Middle District of Florida, Tampa Division (2009), and *White v. School Board of Hillsborough County*, United States Court of Appeals for 11th Circuit (2009).

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS, IMPLICATIONS, AND RECOMMENDATIONS FOR POLICY AND FUTURE RESEARCH

Problem Statement

The legislation on any school reform impacts the public school system and its function. Understanding legal parameters at the federal and state level is an important dimension of school leadership. Alexander and Alexander (2005) describe laws affecting schools as “often difficult to accurately assess and summarize” (p.XXXVII). All states have different perspectives and various statutes within the broader constitutional law.

Choice options with public funding creates concern due to monies leaving the public arena and going into a private enterprise or private organization, called a public school based on legislature statutes, while exempted from some guideline followed by public schools. This movement places governance of charter schools on school districts with no authority. In addition, as legislation changes, the rules change in how to operate and report charter school information.

Purpose of the Study

This research reviews the significant legal parameters surrounding the charter school movement to understand the background in its development and current existence. This study allows stakeholders to understand better the key issues related to the charter school movement and how the legal parameters impact both the charter schools and the public schools. Understanding charter school’s legislative issues at the federal and state level allows a framework for other reform efforts to be understood in relation to legal guidelines. There are five types of law generally overlapping affecting public schools;

constitutional law, statutory law, case law, administrative law and contract law (Alexander & Alexander, 2005; Permuth, 1999).

This study explores the ideas, perceptions, legal standings, and events leading to the implementation of charter schools in the United States and Florida to understand the impact of different levels of law within a reform or policy. In addition, it compares the federal rulings as well as state rulings in all five areas of law in regard to charter school reform. The analysis of charter school law provides a framework to understand the different levels of law impacting a school reform effort.

Research Questions

The researcher uses the evolution and legal parameters of the charter school movement in answering these questions.

The major research questions that guide this study are:

- 1) What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?
 - 2) What are legal parameters regarding the charter school movement nationally? (e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)
- and
- 3) What present legal structures and parameters affect Florida's charter school movement?

Methods

Data is obtained through three main sources as part of a qualitative exploratory case study. The first data collection involves reviewing legal standings and artifacts related to the charter school movement in Florida as well as the national level; these items include primary sources. The second data collection uses secondary sources regarding the primary sources. The third data collection includes focused interviews with key stakeholders regarding legislative action and charter schools. Databases such as Lexis Nexus and West Law provide the means to gather important legal documents regarding charter school reform efforts. Patterns and themes are induced through the analysis of each source of information. The researcher provides a comparison of the federal and state legal guidelines overseeing the charter school movement. This research provides a framework of federal and state laws affecting reform efforts.

Significance of Study

This study allows an understanding of the evolution of charter schools and legal parameters involved in the charter school movement. It provides an evolution of the development of charter law related to the United States and the state of Florida. It brings attention to the current impact of charter schools. The impact of legal standings is evident through the analysis of state and federal laws pertaining to charter schools. This research may be used to understand laws affecting other reform efforts.

The importance in this research rests with the implications of legal standings of the charter school movement. The patterns and themes within the primary and secondary sources as well as the interviews look at the patterns and themes to deduce the current

legal implications for the charter school movement. This research allows a comprehensive look at legislation involved in the charter movement and its meaning at the state and federal level.

Delimitations and Limitations

This study is specific to the state of Florida with a comparison to the federal law. At the same time, case law or statutes may be used from other states in the study; case law does not apply outside of the area where the case was determined. This study allows an understanding of legal parameters at the federal and local level. Personal bias is controlled through the use of multiple data sources. The data collected through the qualitative research methodology of guided interviews presents several limitations for consideration. These limitations include the controversial nature of charter schools with the traditional public school forum and the changing dynamics of charter school reform efforts.

The topic of charter school reform efforts competes with traditional models of education through funding, performance, and innovation. As a result, interviewees may tend to answer conservatively or politically correctly when responding to certain questions. To address this limitation, each interviewee was provided anonymity and a variety of perspectives were obtained.

Another limitation of the research rests in its focus areas of federal legislation and the state of Florida. Charter school legislation varies in each state. The research

collected pertains to Florida issues; therefore the results of the study provide an overview of federal legislation and pertain specifically to the state of Florida.

Summary of Findings

The legal system proves difficult to navigate and to understand in its decisions. This research reviews the primary and secondary resources at the state and federal level dealing with charter school reform efforts, along with data analysis provided of the documents for key terminology.

Themes and patterns identified across the primary and secondary searches as well as data analysis from NVivo 8 include the following concepts:

- rules or regulations
- standards or accountability
- disability or special education
- funds and facility issues
- programs or innovations
- employee issues
- legislative issues

The charter school reform efforts evolve from the school choice movement or the desire for students attending underachieving schools to have the opportunity to attend better schools. The original intent of charter schools, as described by previous Florida code included an innovated program for students. While the original intent of charter schools required a new type of education experience, most simply mimic the classroom practices of traditional public schools (Anderson & Crews, 2000; Bracey, 2004). A

major identifiable difference in most charter schools is teacher pay and the lack of a retirement system offered to staff. In lieu of the traditional retirement plan, some charter organizations offer pay for performance bonuses. Florida, specifically the statutes regarding charter schools, requires many regulations and rules of the charter organizations. All require approved contracts with the districts stipulating accountability with student achievement. The original intent of charter schools included the elimination of bureaucracy in school operations; however, charter schools must meet most of the required legislation intended for traditional public schools.

In addition, charter schools struggle with funding issues since the funding allocated differs from traditional public schools. Typically, charter schools require a three-year wait period before capital funds may be utilized for facilities. The infrastructure issue plagues charter school organizations. Also, charter schools struggle with properly providing accommodations required of special education students and frequently screen students out to avoid costly interventions for these students. Another legal issue faced by charter school operators includes employee issues. Employee and management issues have ranged from inappropriate conduct to fiscal mismanagement.

On another note, the three most cited cases in Florida's legal system involving school choice includes *Bush v. Holmes*, *Duval v. State Board of Education*, and *D'Angelo v. Polk County School Board*. Both *Bush* and *Duval* deal with legislative actions found unconstitutional by the courts. In *D'Angelo*, the politically charged battle of charter schools with school boards shows the drastic action of dismissing a qualified administrator due to concerns over charter school conversion. This case provides

parameters to public employees on the limiting impact public employee institutes hold over individuals when the issue is related to their official position. The significant cases, both at the federal and state level, regarding charter schools show the complex legislative issues impacting the charter school reform efforts. These cases also identify the operational issues faced by charter school organizations.

Reviewing primary and secondary sources, interviewing experts in the field, and using a data analysis system for frequency of terms allows a development of the legal perspective of actions involving the charter school movement nationally and locally.

Research Question One: What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?

Charter school reform efforts evolved from the ideology that competition would increase the performance of public schools (Bulkey & Fisler, 2003). The charter school movement evolved from the school choice reform efforts. The United States Constitution as well as state constitutions provide parameters guiding the charter school movement. The first law enacted supporting the implementation of charter schools began in Minnesota in 1991. In 1996 Florida passed legislation initiating charter school organizations.

The cases impacting the charter school reform effort on the national level include *Everson v. Board of Education* (1947), *Illinois ex rel. McCollum v. Bd. of Education* (1948), *School Dist. v. Schempp* (1963), *Wisconsin v. Yoder* (1972), *Allen v. Wright* (1984), *Wallace v. Jaffree* (1985) and *Zelman v. Simmons-Harris* (2002).

The cases impacting the charter school reform efforts in Florida include the significant national cases and several cases specific to the state of Florida. The significant cases impacting charter schools at the state level include the following: *School Board of Osceola County v. UCP of Central Florida*, Court of Appeal of Florida, Fifth District (2005), *Bush v. Holmes*, Supreme Court of Florida (2006), *P.J. v. Gordon*, United States District Court for the Southern District of Florida (2006), *D'Angelo v. School Board of Polk County*, United States Court of Appeals for 11th Circuit (2007), *Imhotep-Nguzo Saba Charter School v. Department of Education and Palm Beach County School Board*, Court of Appeal of Florida, Fourth District (2007), *School Board of Volusia County v. Academies of Excellence*, Court of Appeal of Florida, Fifth District (2008), *Duval County School Board v. State Board of Education*, Court of Appeal of Florida, First District (2008), *School Board of Palm Beach County v. Survivors Charter Schools*, Supreme Court of Florida (2009), *Wilbesan Charter School and Mary White v. School Board of Hillsborough County*, United States District Court for the Middle District of Florida, Tampa Division (2009), and *White v. School Board of Hillsborough County*, United States Court of Appeals for 11th Circuit (2009).

Research Question Two: What are legal parameters regarding the charter school movement nationally? (e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)

On the national level, the portion of the United States Constitution providing guidelines for charter schools includes Amendment I, Amendment X, Article I, Section 8, and Amendment XIV.

The United States Supreme Court cases impacting charter school reform efforts include: *Everson v. Board of Education* (1947), *Illinois ex rel. McCollum v. Bd. of Education* (1948), *School Dist. v. Schempp* (1963), *Wisconsin v. Yoder* (1972), *Allen v. Wright* (1984), *Wallace v. Jaffree* (1985), and *Zelman v. Simmons-Harris* (2002).

There are 66 United States Code citations impacting charter schools. The specific Code of Federal Regulations dealing with charter school include Chapter 34 Sections 76, 106, 200, 225, 226, 230, 300, and 3 CFR Proclamation 8372. The Federal Circuit Court of Appeals cases impacting charter schools include *Ohio Ass'n of Indep. Sch. V. Goff*, United States Court of Appeals for the Sixth Circuit (1996), *Villanueva v. Carere*, United States Court of Appeals for the Tenth Circuit (1996), *Stark v. Independent Sch. Dist.*, United States Court of Appeals for the Eighth Circuit (1998), *Hunter v. Regents of the Univ. of Cal.*, United States Court of Appeals for the Ninth Circuit (2000), *Jenkins ex rel. Jenkins v. Mo.*, United States Court of Appeals for the Eighth Circuit (2002), *Charter Sch. Of Pine Grove, Inc. v. St. Helena Parish Sch. Bd.*, United States Court of Appeals for the Fifth Circuit (2005), *Colo. Visionary Acad. V. Medtronic, Inc.*, United States Court of Appeals for the Tenth Circuit (2005), *Racine Charter One, Inc. v. Racine Unified Sch. Dist.*, United States Court of Appeals for the Seventh Circuit (2005), *Arizona State Bd. for Charter Sch. V. U.S. Dep't of Educ.*, United States Court of Appeals for the Ninth Circuit (2006), *Rizzo v. Edison, Inc.*, United States Court of Appeals for the Second Circuit (2006), *D' Angelo v. School Board of Polk County*, US Court of Appeals for Eleventh Circuit (2007), *Dillon v. Twin Peaks Charter Acad.*, United States Court of Appeals for the Tenth Circuit (2007), *United States v. Pierce*, United States Court of

Appeals for the Eighth Circuit (2007), *Wideman v. Colorado*, United States Court of Appeal for the Tenth Circuit (2007), *Brammer-Hoelter v. Twin Peaks Charter Acad.*, United States Court of Appeals for the Tenth Circuit (2008) and District Court for the District of Colorado (2008), *White v. School Board of Hillsborough County*, United States Court of Appeals for Eleventh Circuit (2009), and *Winn v. Arizona Christian Sch. Tuition Org.*, United States Court of Appeals for the Ninth Circuit (2009). On the national front, charter school reform efforts receive support. This is evident through the grant and aid funds available to charter school structures.

Research Question Three: What present legal structures and parameters affect Florida's charter school movement?

The Florida Constitution and the statutes regulate the charter school movements in Florida. Article IX of the Florida Constitution addresses public schools, which includes charter schools.

The statutes impacting charter school reform include: 11 Legislative Organization, Procedures, and Staffings, 39 Proceedings Related to Children, 121 Florida Retirement System, 159 Bond Financing, 163 Intergovernmental Programs, 196 Exemption, 218 Financial Matters Pertaining to Political Subdivision, 238 Teachers' Retirement System, 943 Department of Law Enforcement, 1001 Governance, 1002 Student and Parental Rights and Educational Choices, 1003 Public K-12 Education, 1006 Support for Learning, 1008 Assessment and Accountability, 1011 Planning and Budgeting, 1012 Personnel, and 1013 Educational Facilities.

The significant cases impacting charter schools at the state level include the following: *School Board of Osceola County v. UCP of Central Florida*, Court of Appeal of Florida, Fifth District (2005), *Bush v. Holmes*, Supreme Court of Florida (2006), *P.J. v. Gordon*, United States District Court for the Southern District of Florida (2006), *D'Angelo v. School Board of Polk County*, United States Court of Appeals for 11th Circuit (2007), *Imhotep-Nguzo Saba Charter School v. Department of Education and Palm Beach County School Board*, Court of Appeal of Florida, Fourth District (2007), *School Board of Volusia County v. Academies of Excellence*, Court of Appeal of Florida, Fifth District (2008), *Duval County School Board v. State Board of Education*, Court of Appeal of Florida, First District (2008), *School Board of Palm Beach County v. Survivors Charter Schools*, Supreme Court of Florida (2009), *Wilbesan Charter School and Mary White v. School Board of Hillsborough County*, United States District Court for the Middle District of Florida, Tampa Division (2009), and *White v. School Board of Hillsborough County*, United States Court of Appeals for 11th Circuit (2009).

The findings of this study implicate legislation as an authority influencing the implementation of charter schools. Many cases both at the federal and state level dictate the parameters for charter school operations. The significant cases, while providing essential principles guiding the charter school regulations, do not convey the politically charged topic of charter school and the turmoil with school boards. The interviews, rich in detail, provide clarity on the political implications of charter school legislation and its impact at the local front with public schools. All of the findings together signify the important role legislators and the judicial powers execute in the ongoing realization of the

charter school movement. The outcomes of this study contain pertinent implications to date of the evolving political and court decisions. Changes in themes, patterns, and development will occur with the overarching parameters of the decisions made by the courts and legislation. The following constructs emerge in reviewing the charter school research and require discussion 1) barriers for charter schools, 2) accountability and regulation, 3) charter school performance and 4) virtual school.

Barriers for Charter Schools

Through the research, the following barriers identified for charter school include funding, special education, infrastructures, and management and employee issues. Charter schools struggle with issues of funding. Funding data shows charter schools only receive 70% of funds received by districts; this makes market competition with public schools more difficult when funding needed materials and paying wages to staff (U.S. Department of Education, 2008). It also poses difficulty in funding an infrastructure for implementing a charter school. Charter schools operate on a smaller budget with the same regulation requirements of traditional public schools with federal special education mandates. Many schools counsel students out of a charter school environment if the individual education plan contains costly accommodations (Estes, 2004; 2008).

Another impact of funding causing concerns for charter schools deals with facility planning. In an effort to address infrastructure issues, the U.S. Department of Education (2008) identified solutions offered throughout the country to charter school establishments. Three specific programs aiding charter schools with infrastructures

include direct cash assistance, ability to borrow, and provision of facilities. The direct cash assistance provided funnels funds to charter school organizations for facility needs. Another option includes loan programs with interest free bond financing or low interest rate loans. Another category of assistance, provision of facilities, requires districts to provide or assist with infrastructure needs. The provision ranges from facilities provided at no cost to market value cost for an infrastructure. Strategies for funding facility options will become more difficult in the upcoming years due to the current budget shortfalls both within the public school budget and within the state. The U.S. Department of Education (2008) acknowledges in its report the difficulties facing charter school issues with facilities as well as legislators' desire to alter the situation for charter school organizations.

In all of the cases researched, it is apparent that charter schools deal with same issues of employee concerns as current public schools. This includes inappropriate criminal actions, fiscal mismanagement, and negative employees (P. J. v. Gordon, 2006; Dillon v. Twin Peaks Charter Academy, 2007; Brammer-Hoelter v. Twin Peaks Charter Academy, 2008). Perhaps, the power of charter schools lies in the ability to terminate employment more easily. Regardless, both charter and traditional public schools continually deal with problematic employee and managerial behaviors.

Accountability and Regulation

Charter school development arose out of the perception of needed innovation in traditional public schools and to allow site-based management free of the bureaucracy of

traditional public schools. In reviewing charter school research, the idealization of a school free of regulation does not exist. In fact, in Florida the statutes indicate a mass of laws dictating charter school practices. These requirements outlined in statutes require reporting and accountability parameters for all charter schools. Charter school performance data mimics the accountability requirements of traditional public schools. The regulation aspects of charter schools, with the lack of funding and the potential for liability, lead to concerns in operating a charter school without the protection of a district support system.

Charter School Performance

Charter school development began nationally in 1995, as indicated by references to charter schools in federal code. Presently over 5,000 schools exist with 1.5 million students enrolled in 40 different states (Gleason, Clark, Tuttle, and Dwoyer, 2010). Charter schools in Florida began in 1996 allowing 14 years of legislation supporting the development of charter schools. School choice options were furthered in Florida with the election of Governor Bush who initiated the A+ plan allowing grading of schools and vouchers for students where schools were underperforming. A 16 state study of charter schools by Stanford University recognized that the political nature differs from state-to-state of support provided to charter schools (Center for Research on Educational Outcomes, 2009). It further determined that charter law shapes school quality and, overall, concluded significant negative differences occur in performance of charter schools when compared to traditional public. The negative aspects of states hindering

charter school performance reveal caps on charter schools and multiple authorizers as binding factors contributing to lower performing charter schools. Regardless, the study's authors counter that parental choice occurs based on other factors than academic performance (Center for Research on Educational Outcomes, 2009).

A recent study of 15 states by the Mathematica Policy Research found no difference in performance of middle school students in public schools versus charter schools with lottery systems for academic success, behavior, or progress (Gleason, Clark, Tuttle, and Dwoyer, 2010). The study did find a difference for low achieving minority students when reviewing math performance, and a negative performance in charter schools for high achieving students. In addition, the researchers found differences among the charter schools in regard to performance, although no factors were identified across the schooling demonstrating qualities impacting the performance.

In another study evaluating the effectiveness of the Knowledge is Power Program (KIPP), a charter school program for middle schools, research found significant gains in math and reading after three years with the program. The 22 middle schools serve disadvantaged minority students, although the demographics do not match surrounding schools for the sub-population groups of Students with Disabilities and Limited English Proficiency Students ((Gleason, Clark, Tuttle, and Dwoyer, 2010). The school results appeared to close the achievement gaps of minority students within three years.

The United States Department of Education (2004) issued a document outlining several successful charter schools. The document indicates the mission driven environment of charter schools, innovations in the schools and treatment of parents as

“clients” allows for success. A few schools cited as successful include KIPP Academy, Basic Schools, and Community of Peace Academy. The profiles of the schools show specific curricula developed based on the mission of the school and the infusion of best practices, such as additional time, looping, common planning, and partnering with parents and the community (United States Department of Education, 2004).

All of the research revolving around charter schools finds varied reviews, although the research shows no significant difference in practice at charter schools from traditional public schools (Anderson & Crews, 2000; Bracey, 2004). Ravitch (2010), a former supporter of school choice and charter schools, cites no difference with performance between charter schools and traditional public schools. She further indicates concern with attrition rates. The recent studies by Stanford and on the KIPP schools show no significant variation between charter school and traditional public school scores (Gleason et al., 2010; Center for Research on Education Outcomes, 2009). The option of charter schools allows parental choice in the type of education offered to students. Charter schools can provide smaller classroom environments and responsiveness to parents (Estes, 2008). The performance of charter schools does not match the legislative support or the intended impact of charter schools.

Virtual School

Literature on online learning shows all states with enacted online schooling programs (North American Council of Online Learning, 2009). While research on virtual school is limited, Barbour and Reeves (2009) show both strengths and weaknesses from a

literature review of virtual schooling. The strengths included high quality education, improved student outcomes, choice, and efficiency in the administrative component of school operations and access. The concerns about virtual school include high start-up costs, student readiness, access, and accreditation.

In the debate of school choice, virtual will add a new dimension to options provided as a choice to parents and students. The virtual impact may, indeed, be the catalysis to change the traditional public school operations. Presently in Florida, legislatively mandated virtual schooling options require students to pass the course for funding, and require performance pay for instructors. Virtual schooling offers another choice to parents in educating students.

Implications

The review of primary and secondary resources, online databases, and interviews reveal certain themes regarding charter school reform efforts. The idea of charter schools at the federal level indicates a desire for de-regulated, innovated facilities designed to foster achievement. The Florida School Code indicates several statutes regulating charter school accountability requirements. Funding exists for charter schools at the federal level with preference given to states without enrollment caps of the number of charter schools in operation. Charter schools struggle with federal guidelines for students with disabilities due to limited resources. The cases against charter schools include employment issues, termination of contracts, and providing special education services. Charter schools lack the protection of the school board district for resources relating to human resources and special education. Issues identified through the research indicate

funding issues especially dealing with capital funds for school infrastructures. The development of the charter school reform effort shows multiple legislative pieces impacting the implementation. These areas provide the overarching themes from the research, which includes regulation, accountability, special education, facility, innovations, and employee and legislative issues.

Regardless of the current issues for charter schools, 2% of the student population enrolls in a charter school (charterschoolresearch.com, 2009). A poll from Phi Delta Kappan indicated parents' support of community charter schools (Bushaw & Lopez, 2010). Charter schools provide a niche to parents desiring a different environment from traditional public schools; charter schools meet the school choice need. Another significant choice option appealing to parents indicated through the interview data includes virtual schooling opportunities.

Final Thoughts

Charter school reform efforts remain strong across the nation. Legislators and the public desire higher performing and improved schools. Charter schools may contain fewer regulations in some aspects; however, the entities deal with similar issues of the traditional public school in employment issues and special education issues. Charter schools may provide viable options to some families, although charter schools serve a small percent of students across the nation. Florida is a leader in school choice initiatives and will continue to embrace options of public schooling. The latest trend of the virtual school allows one more viable option available to parents and students for education.

Recommendations for Future Research

In any organization, continuous review of best practice, procedures, and achievement should occur to ensure optimal performance. Charter school research requires this same focus. Topics of potential interest regarding charter school reform efforts include:

1. Replicate this study with other legislation from other states.
2. A study of charter school regulation in different states.
3. A study on the financial impact of charter school efforts in various states.
4. A study that focuses on the innovations occurring in charter schools verses traditional public schools.
5. A study of the accommodation offered at charter schools verses traditional public schools.
6. A study on accountability implications for charter schools by different states.

Summary

The purpose of this case study was to understand and to identify the legal parameters impacting charter schools at the state and federal level as well as to identify the legal significant events within the charter school reform efforts. The following questions were answered through the research efforts:

- 1) What is the evolution of the charter school movement in the United States and specifically in Florida, and the legal precedence that comes from this reform effort?

2) What are legal parameters regarding the charter school movement nationally?

(e.g. constitutional law, statutory law, administrative law, common or court/case law, and contract law)

and

3) What present legal structures and parameters affect Florida's charter school movement?

Data was gathered through the following qualitative case study methods:

collection of primary resources, collection of secondary resources, interviews, and analysis of all documents. Interviewees chosen for this study were involved in a significant court case involving charter schools or had expertise knowledge of charter schools based on their position. Significant documents and cases were identified through the use of Lexus Nexis and West Law, with cases Shephardized to view the number of citations received by each case.

Understanding the legal implications allows charter school proponents and opponents to navigate better the key issues regarding the charter school reform movement. It is obvious from school choice laws and decisions that Florida's actions sway other state decisions. This study may contribute to the expanding literature on charter school reform efforts. The constant changing of political and legal decisions will impact the current structures supporting or developing charter schools as challenges and political pressure review the movement.

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APPENDICES

Appendix A: Palmer and Gau's Research Sub set Criteria

State Charter Policy Environment

Support for Charter Schools

- A well-developed charter network or association exists
- Adequate access to technical assistance or resource center support exists
- Sufficient contracting services are available (e.g., accounting; special education)
- "Charter friendly" state department of education exists
- Sufficient political support for charter schools exists
- Charter schools are accepted by local school districts
- Parents and general public sufficiently understand what charter schools are
- Law provides opportunity to operate legally and financially autonomous charter schools
- Applicants have access to one or more authorizers that make chartering decisions on merit, not politics
- Ample opportunity exist for those with quality school proposals to obtain charters

Support and External Accountability for Authorizers

- Adequate funding exists for authorizer staff and activities
- Authorizers must make periodic reports to legislature or other state body
- State auditor general or other oversight body periodically examines work of authorizers
- Media watch closely and frequently report on authorizer actions
- Schools may appeal or seek a hearing regarding authorizers' decisions
- Comprehensive school-based accountability system exists for all public schools, including chartered schools

Charter Authorizer Behavior

Application Processes

- Authorizers make efforts to get application information to broad range of applicants
- Authorizers seek charter applicants to meet market gaps
- Detailed application timelines exist
- Informational meetings are held for potential applicants
- Technical assistance is provided by authorizers and/or referrals are made to others who can provide it
- Applicants receive approval standards for how proposals will be evaluated, including written rubrics or scoring scales

Approval Processes

- Multiple reviewers examine applications, including experts in finance, curriculum, etc.
- Applicants that reach a minimum baseline score can provide additional information if questions arise

- Applicants that are denied receive written explanation
- Adequate time period exists between charter approvals and school openings
- Authorizers strike the right balance between a rigorous approval process and giving schools a chance to open and succeed
- Overall, application review processes are merit-based and non-political

Performance Contracts

- School-specific mission and goals to be met are sufficiently covered
- Student recruitment and equal-access enrollment policies are sufficiently covered
- Provisions for serving special-needs students are sufficiently covered
- Student achievement and data requirements are sufficiently covered
- Clear consequences for not meeting prescribed outcomes are sufficiently covered
- Overall quality of performance contracts is suitable for holding schools accountable

Oversight

- Authorizers conduct periodic announced visits to schools
- Authorizers conduct periodic unannounced visits to schools
- Authorizers require annual financial audits and periodic progress reports
- Submitted reports are reviewed, potential problems flagged, and schools notified
- Authorizers have delineated actions to be taken if school problems are found
- Authorizers work to shield schools from red tape and excessive procedural compliance
- Authorizers have created systems that hold schools accountable, without micromanagement or excessive paperwork
- Overall, good oversight systems exist whereby authorizers collect essential data in consistent manner

Renewal and Revocation Processes

- Clear written criteria exist for formal review and renewal, against which schools are measured
- Renewal decisions are based largely on school progress toward student achievement goals
- Authorizers independently analyze schools' student performance data
- Processes exist for notifying poor performing schools, with adequate time to try to remedy problems
- Specific provisions exist for closing a school if warranted (e.g., reallocating students and assets)
- Authorizers have demonstrated ability and willingness to make difficult decisions (e.g., non-approval, revocation)

Transparency and Internal Accountability

- Comprehensive charter school application packets are readily available (e.g., on web)
- Key authorizer policies and decisions are readily accessible to the public (e.g., on web)
- Full proposals or summaries from approved applicants are made available to public in timely fashion
- Authorizers publish regular reports regarding progress made by each school they oversee

- Authorizers undertake formal evaluations of their own authorizing practices
- Overall, authorizers are fully accountable for and transparent about key decisions

Appendix B: List of United States Code related to Charter School, Title 20 Only

(Retrieved from Lexis Nexus on December 18, 2009)

1. 20 USCS § 1021, TITLE 20. EDUCATION, CHAPTER 28. HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE, TEACHER QUALITY ENHANCEMENT, § 1021. Definitions, UNITED STATES CODE SERVICE
2. 20 USCS § 1155, TITLE 20. EDUCATION, CHAPTER 28. HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE, MISCELLANEOUS, § 1155. Connie Lee privatization, UNITED STATES CODE SERVICE
3. 20 USCS § 1400, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, GENERAL PROVISIONS, § 1400. Short title; table of contents; findings; purposes, UNITED STATES CODE SERVICE
4. 20 USCS § 1401, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, GENERAL PROVISIONS, § 1401. Definitions, UNITED STATES CODE SERVICE
5. 20 USCS § 1411, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES, § 1411. Authorization; allotment; use of funds; authorization of appropriations , UNITED STATES CODE SERVICE
6. 20 USCS § 1412, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES, § 1412. State eligibility , UNITED STATES CODE SERVICE
7. 20 USCS § 1413, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES, § 1413. Local educational agency eligibility, UNITED STATES CODE SERVICE
8. 20 USCS § 1414, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES, § 1414. Evaluations, eligibility determinations, individualized education programs, and educational placements, UNITED STATES CODE SERVICE
9. 20 USCS § 1415, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES, § 1415. Procedural safeguards, UNITED STATES CODE SERVICE
10. 20 USCS § 1461, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES, PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, MODEL DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION, § 1461. Purpose; definition of eligible entity, UNITED STATES CODE SERVICE
11. 20 USCS § 1481, TITLE 20. EDUCATION, CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES, NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES, GENERAL PROVISIONS Comprehensive plan for subparts 2 and 3, UNITED STATES CODE SERVICE
12. 20 USCS § 2302, TITLE 20. EDUCATION, CHAPTER 44. CAREER AND TECHNICAL EDUCATION, § 2302. Definitions, UNITED STATES CODE SERVICE
13. 20 USCS § 2342, TITLE 20. EDUCATION, CHAPTER 44. CAREER AND TECHNICAL EDUCATION, CAREER AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES, STATE PROVISIONS, § 2342. State plan, UNITED STATES CODE SERVICE

14. 20 USCS § 2344, TITLE 20. EDUCATION, CHAPTER 44. CAREER AND TECHNICAL EDUCATION, CAREER AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES, STATE PROVISIONS, § 2344. State leadership activities, UNITED STATES CODE SERVICE
15. 20 USCS § 2351, TITLE 20. EDUCATION, CHAPTER 44. CAREER AND TECHNICAL EDUCATION, CAREER AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES, LOCAL PROVISIONS, § 2351. Distribution of funds to secondary education programs, UNITED STATES CODE SERVICE
16. 20 USCS § 2353, TITLE 20. EDUCATION, CHAPTER 44. CAREER AND TECHNICAL EDUCATION, CAREER AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES, LOCAL PROVISIONS, § 2353. Special rules for career and technical education, UNITED STATES CODE SERVICE
17. 20 USCS § 6301, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED, § 6301. Statement of purpose, UNITED STATES CODE SERVICE
18. 20 USCS § 6311, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED, IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES , BASIC PROGRAM REQUIREMENTS, § 6311. State plans, UNITED STATES CODE SERVICE
19. 20 USCS § 6316, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED, IMPROVING BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES , BASIC PROGRAM REQUIREMENTS, § 6316. Academic assessment and local educational agency and school improvement, UNITED STATES CODE SERVICE
20. 20 USCS § 6555, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED, SCHOOL DROPOUT PREVENTION, COORDINATED NATIONAL STRATEGY, § 6555. National activities, UNITED STATES CODE SERVICE
21. 20 USCS § 6602, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS, TEACHER AND PRINCIPAL TRAINING AND RECRUITING FUND, § 6602. Definitions, UNITED STATES CODE SERVICE
22. 20 USCS § 6612, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS, TEACHER AND PRINCIPAL TRAINING AND RECRUITING FUND, GRANTS TO STATES, §6612. State applications, UNITED STATES CODE SERVICE
23. 20 USCS § 6631, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS, TEACHER AND PRINCIPAL TRAINING AND RECRUITING FUND, SUBGRANTS TO ELIGIBLE PARTNERSHIPS, § 6631. Definitions, UNITED STATES CODE SERVICE
24. 20 USCS § 6661, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS, MATHEMATICS AND SCIENCE PARTNERSHIPS, § 6661. Purpose; definitions, UNITED STATES CODE SERVICE
25. 20 USCS § 6672, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS, INNOVATION FOR TEACHER QUALITY,

TRANSITIONS TO TEACHING, TROOPSTO-TEACHERS PROGRAM, § 6672. Authorization of Troops-to-Teachers Program, UNITED STATES CODE SERVICE

26. 20 USCS § 6674, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS , INNOVATION FOR TEACHER QUALITY , TRANSITIONS TO TEACHING , TROOPSTO-TEACHERS PROGRAM , § 6674. Participation agreement and financial assistance, UNITED STATES CODE SERVICE
27. 20 USCS § 6677, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PREPARING, TRAINING, AND RECRUITING HIGH QUALITY TEACHERS AND PRINCIPALS, INNOVATION FOR TEACHER QUALITY, TRANSITIONS TO TEACHING, TROOPSTO- TEACHERS PROGRAM, § 6677. Reporting requirements, UNITED STATES CODE SERVICE
28. 20 USCS § 7213, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, INNOVATIVE PROGRAMS, STATE PROGRAMS, § 7213. State uses of funds, UNITED STATES CODE SERVICE
29. 20 USCS § 7215, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, INNOVATIVE PROGRAMS, LOCAL INNOVATIVE EDUCATION PROGRAMS, § 7215. Local uses of funds, UNITED STATES CODE SERVICE
30. 20 USCS § 7221, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221. Purpose, UNITED STATES CODE SERVICE
31. 20 USCS § 7221a, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221a. Program authorized, UNITED STATES CODE SERVICE
32. 20 USCS § 7221b, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221b. Applications, UNITED STATES CODE SERVICE
33. 20 USCS § 7221c, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221c. Administration, UNITED STATES CODE SERVICE
34. 20 USCS § 7221d, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221d. National activities, UNITED STATES CODE SERVICE
35. 20 USCS § 7221e, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS , CHARTER SCHOOL PROGRAMS , § 7221e. Federal formula allocation during first year and for successive enrollment expansions, UNITED STATES CODE SERVICE
36. 20 USCS § 7221f, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE

- AND INNOVATIVE PROGRAMS,PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221f. Solicitation of input from charter school operators, UNITED STATES CODE SERVICE
37. 20 USCS § 7221g, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221g. Records transfer, UNITED STATES CODE SERVICE
 38. 20 USCS § 7221h, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS,PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221h. Paperwork reduction, UNITED STATES CODE SERVICE
 39. 20 USCS § 7221i, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221i. Definitions, UNITED STATES CODE SERVICE
 40. 20 USCS § 7221j, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CHARTER SCHOOL PROGRAMS, § 7221j. Authorization of appropriations, UNITED STATES CODE SERVICE
 41. 20 USCS § 7223, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223. Purpose, UNITED STATES CODE SERVICE
 42. 20 USCS § 7223a, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223a. Grants to eligible entities, UNITED STATES CODE SERVICE
 43. 20 USCS § 7223b, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223b. Applications, UNITED STATES CODE SERVICE
 44. 20 USCS § 7223c, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223c. Charter school objectives, UNITED STATES CODE SERVICE
 45. 20 USCS § 7223d, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223d. Reserve account, UNITED STATES CODE SERVICE
 46. 20 USCS § 7223e, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223e. Limitation on administrative costs, UNITED STATES CODE SERVICE

47. 20 USCS § 7223f, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223f. Audits and reports, UNITED STATES CODE SERVICE
48. 20 USCS § 7223g, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223g. No full faith and credit for grantee obligations, UNITED STATES CODE SERVICE
49. 20 USCS § 7223h, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223h. Recovery of funds, UNITED STATES CODE SERVICE
50. 20 USCS § 7223i, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223i. Definitions, UNITED STATES CODE SERVICE
51. 20 USCS § 7223j, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, CREDIT ENHANCEMENT INITIATIVES TO ASSIST CHARTER SCHOOL FACILITY ACQUISITION, CONSTRUCTION, AND RENOVATION, § 7223j. Authorization of appropriations, UNITED STATES CODE SERVICE
52. 20 USCS § 7225, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS, § 7225. Grants, UNITED STATES CODE SERVICE
53. 20 USCS § 7225a, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS, § 7225a. Uses of Funds, UNITED STATES CODE SERVICE
54. 20 USCS § 7225b, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS, § 7225b. Applications, UNITED STATES CODE SERVICE
55. 20 USCS § 7225c, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS, § 7225c. Priorities, UNITED STATES CODE SERVICE
56. 20 USCS § 7225d, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS, § 7225d. Requirements and voluntary participation, UNITED STATES CODE SERVICE
57. 20 USCS § 7225e, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE

AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS, § 7225e. Evaluations, UNITED STATES CODE SERVICE

58. 20 USCS § 7225f, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS, § 7225f. Definitions, UNITED STATES CODE SERVICE
59. 20 USCS § 7225g, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, PROMOTING INFORMED PARENTAL CHOICE AND INNOVATIVE PROGRAMS, PUBLIC CHARTER SCHOOLS, VOLUNTARY PUBLIC SCHOOL CHOICE PROGRAMS, § 7225g. Authorization of appropriations, UNITED STATES CODE SERVICE
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61. 20 USCS § 7861, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, GENERAL PROVISIONS, WAIVERS, § 7861. Waivers of statutory and regulatory requirements. , UNITED STATES CODE SERVICE
62. 20 USCS § 7912, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, GENERAL PROVISIONS, UNIFORM PROVISIONS, OTHER PROVISIONS, § 7912. Unsafe school choice option, UNITED STATES CODE SERVICE
63. 20 USCS § 8062, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, GENERAL PROVISIONS, EVALUATIONS, § 8062. [Repealed], UNITED STATES CODE SERVICE
64. 20 USCS § 8065b, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, GENERAL PROVISIONS, EVALUATIONS, § 8065b. [Repealed], UNITED STATES CODE SERVICE
65. 20 USCS § 8071c, TITLE 20. EDUCATION, CHAPTER 70. STRENGTHENING AND IMPROVEMENT OF ELEMENTARY AND SECONDARY SCHOOLS, GENERAL PROVISIONS, EVALUATIONS, § 8071c. [Repealed], UNITED STATES CODE SERVICE
66. 20 USCS § 9605, TITLE 20. EDUCATION, CHAPTER 76. EDUCATION RESEARCH, STATISTICS, EVALUATION, INFORMATION, AND DISSEMINATION, EDUCATIONAL TECHNICAL ASSISTANCE, § 9605. Regional advisory committees, UNITED STATES CODE SERVICE

Appendix C: Florida Constitution Article IX Education

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SECTION 1. Public education.--

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. To assure that children attending public schools obtain a high quality education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that:

- (1) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for prekindergarten through grade 3 does not exceed 18 students;
- (2) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 4 through 8 does not exceed 22 students; and
- (3) The maximum number of students who are assigned to each teacher who is teaching in public school classrooms for grades 9 through 12 does not exceed 25 students.

The class size requirements of this subsection do not apply to extracurricular classes. Payment of the costs associated with reducing class size to meet these requirements is the responsibility of the state and not of local schools districts. Beginning with the 2003-2004 fiscal year, the legislature shall provide sufficient funds to reduce the average number of students in each classroom by at least two students per year until the maximum number of students per classroom does not exceed the requirements of this subsection.

(b) Every four-year old child in Florida shall be provided by the State a high quality pre-kindergarten learning opportunity in the form of an early childhood development and education program which shall be voluntary, high quality, free, and delivered according to professionally accepted standards. An early childhood development and education program means an organized program designed to address and enhance each child's ability to make age appropriate progress in an appropriate range of settings in the development of language and cognitive capabilities and emotional, social, regulatory and moral capacities through education in basic skills and such other skills as the Legislature may determine to be appropriate.

(c) The early childhood education and development programs provided by reason of subparagraph (b) shall be implemented no later than the beginning of the 2005 school year through funds generated in addition to those used for existing education, health, and development programs. Existing education, health, and development programs are those funded by the State as of January 1, 2002 that provided for child or adult education, health care, or development.

History.--Am. proposed by Constitution Revision Commission, Revision No. 6, 1998, filed with the Secretary of State May 5, 1998; adopted 1998; Ams. by Initiative Petitions filed with the Secretary of State July 30, 2002, and August 1, 2002; adopted 2002.

SECTION 2. State board of education.--The state board of education shall be a body corporate and have such supervision of the system of free public education as is provided by law. The state board of education

shall consist of seven members appointed by the governor to staggered 4-year terms, subject to confirmation by the senate. The state board of education shall appoint the commissioner of education.

History.--Am. proposed by Constitution Revision Commission, Revision No. 8, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 3. Terms of appointive board members.--Members of any appointive board dealing with education may serve terms in excess of four years as provided by law.

SECTION 4. School districts; school boards.--

(a) Each county shall constitute a school district; provided, two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district. In each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.

(b) The school board shall operate, control and supervise all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein. Two or more school districts may operate and finance joint educational programs.

History.--Am. proposed by Constitution Revision Commission, Revision No. 11, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 5. Superintendent of schools.--In each school district there shall be a superintendent of schools who shall be elected at the general election in each year the number of which is a multiple of four for a term of four years; or, when provided by resolution of the district school board, or by special law, approved by vote of the electors, the district school superintendent in any school district shall be employed by the district school board as provided by general law. The resolution or special law may be rescinded or repealed by either procedure after four years.

History.--Am. proposed by Constitution Revision Commission, Revision No. 13, 1998, filed with the Secretary of State May 5, 1998; adopted 1998.

SECTION 6. State school fund.--The income derived from the state school fund shall, and the principal of the fund may, be appropriated, but only to the support and maintenance of free public schools.

SECTION 7. State University System.--

(a) **PURPOSES.** In order to achieve excellence through teaching students, advancing research and providing public service for the benefit of Florida's citizens, their communities and economies, the people hereby establish a system of governance for the state university system of Florida.

(b) **STATE UNIVERSITY SYSTEM.** There shall be a single state university system comprised of all public universities. A board of trustees shall administer each public university and a board of governors shall govern the state university system.

(c) **LOCAL BOARDS OF TRUSTEES.** Each local constituent university shall be administered by a board of trustees consisting of thirteen members dedicated to the purposes of the state university system. The board of governors shall establish the powers and duties of the boards of trustees. Each board of trustees shall consist of six citizen members appointed by the governor and five citizen members appointed by the

board of governors. The appointed members shall be confirmed by the senate and serve staggered terms of five years as provided by law. The chair of the faculty senate, or the equivalent, and the president of the student body of the university shall also be members.

(d) STATEWIDE BOARD OF GOVERNORS. The board of governors shall be a body corporate consisting of seventeen members. The board shall operate, regulate, control, and be fully responsible for the management of the whole university system. These responsibilities shall include, but not be limited to, defining the distinctive mission of each constituent university and its articulation with free public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. The board's management shall be subject to the powers of the legislature to appropriate for the expenditure of funds, and the board shall account for such expenditures as provided by law. The governor shall appoint to the board fourteen citizens dedicated to the purposes of the state university system. The appointed members shall be confirmed by the senate and serve staggered terms of seven years as provided by law. The commissioner of education, the chair of the advisory council of faculty senates, or the equivalent, and the president of the Florida student association, or the equivalent, shall also be members of the board.

History.--Proposed by Initiative Petition filed with the Secretary of State August 6, 2002; adopted 2002.

ABOUT THE AUTHOR

Monica Ilse received a Bachelor of Arts in Psychology, a Masters of Education Degree in Guidance and Counseling, and a Masters of Education in Educational Leadership from the University of South Florida. She has 15 years experience in education and previously worked as a guidance counselor before obtaining a position in administration. She grew up in the Tampa Bay area, and presently resides with her husband in Pasco County. She currently holds a position as principal of at a local high school. She has led three different schools as principal and specializes in working with at-risk youth.