



# LEGISLATIVE BRIEF

## Understanding Public Chapter 219: Public Charter School Commission

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Public Chapter 219 (2019) transfers the duties of the State Board of Education as an appellate authorizer for public charter schools to a new, nine-member state commission. The new law also makes several clarifications to existing law and practice related to charter school authorizers and charter schools. This legislative recap answers questions about changes made to the Public Charter Schools Act of 2002.

### What is the role of a charter school authorizer?

A charter school authorizer is the entity designated by law as responsible for oversight of charter schools within its jurisdiction. Authorizers are responsible for approving or denying applications to open a charter school; drafting and negotiating charter agreements and any fee for service agreements; overseeing the academic, organizational, and financial health of the schools; and renewing contracts with successful charters while closing those that fail to meet academic and financial expectations.

### What are charter schools?

Charter schools are public schools operated by independent, nonprofit governing bodies. State law requires that charter schools receive an amount equal to the school district's per-student state and local funding, including funds that exceed the BEP local match requirement. Charter schools do not receive local funds designated for debt obligations and associated debt service. Charter schools are entitled to all applicable federal dollars, including Title I and other Every Student Succeeds Act (ESSA) funds. As of the 2018-19 school year, 116 charter schools operate in Tennessee:

- Hamilton County Schools – 5
- Knox County Schools – 1
- Metro Nashville Public Schools – 29
- Shelby County Schools – 55
- Achievement School District – 24
- State Board of Education – 2

### Which entities will be allowed to authorize charter schools in Tennessee?

The new law maintains current authorizing practices for local education agencies (LEA) and the Achievement School District (ASD) but transfers the duties of the State Board of Education (SBE) as an appellate authorizer for public charter schools to a new, nine-member state commission, the Public Charter School Commission. Beginning in the 2020-21 school year, the three entities with authority to authorize charter schools will be:

- Local Education Agencies (LEAs)
- Achievement School District (ASD)
- Public Charter School Commission (appellate authorizer only)

### How will the charter school application process change?

The new law does not change the application process for new charter schools. Charter school sponsors (i.e., nonprofit entities and charter management organizations) will continue to submit applications for public charter

schools to their local boards of education. LEAs will continue to decide which charter school applications are approved or denied upon initial application. The Public Charter School Commission will only accept applications from charter school sponsors that have appealed their denials by local boards of education; the commission cannot accept new applications for public charter schools.

The application process for conversion charter schools does not change. Charter school sponsors will continue to submit applications to LEAs for the conversion of an existing public school to a public charter school. Local board of education decisions on conversion applications are final and cannot be appealed to the Public Charter School Commission.

### **How will the appeals process change?**

The new law transfers the authority of the State Board of Education as an appellate authorizer to a new, nine-member Tennessee Public Charter School Commission. The law also changes the basis on which the appellate authorizer may overturn a local board of education's denial of a public charter school application.

Previously, SBE heard appeals from charter school applicants that had been denied by local boards of education. On review, SBE could uphold or overturn the district decision to deny the charter application. If the State Board upheld the LEA's denial, the decision was final, and the public charter school would not open. If SBE overturned a district's denial, the State Board itself became the authorizer of the charter school in districts with one or more priority schools. In districts without a priority school, SBE would direct the local board of education and the charter school to mutually agree in writing that the local board of education would be the authorizer for the charter school.

The new law replaces the State Board as the appellate authorizer with the Public Charter School Commission.

If a local board of education denies a charter school sponsor's application, the sponsor may appeal the decision to the commission. Like the State Board's current process, the commission will conduct a *de novo* (new) review of the sponsor's application. The commission will review the applications on appeal in accordance with SBE's quality public charter school authorizing standards. The commission must either approve or deny the application no later than 75 days from its receipt of the notice of appeal. The commission's decision is final and not subject to appeal.

If the commission upholds the local board of education's denial of the charter school sponsor's application, the public charter school will not open.

If the commission overturns the LEA's denial of the application, the commission then becomes the authorizer of the charter school; however, the local board of education in which the charter school is geographically located and the charter school may agree in writing that the local board of education, rather than the commission, will be the authorizer for the charter school.

The new law sets the quorum for transacting all business coming before the commission as a majority of all the commission's nine members. A member of the commission, however, cannot vote on any matter that involves an LEA or public charter school of which the member is an employee.

The new law removes the requirement that a district must contain a priority school for the appellate authorizer – the commission – to become the authorizer and, in effect, the school district in cases where the commission overturns the local school board's denial of the application. Charter school sponsors denied by the Achievement School District cannot appeal to the commission.

## **How are members appointed to the Public Charter School Commission?**

The commission will be composed of nine members, appointed by the Governor. Members must be confirmed by a joint resolution of the General Assembly prior to beginning a term of office. If either the Senate or the House fails to confirm the appointment of a board member appointed by the Governor within 90 calendar days after the General Assembly's next regular session, then the appointment terminates on the day following the 90th calendar day. Members are subject to removal from the commission by a two-thirds vote of each chamber of the General Assembly for misconduct, incapacity, or neglect of duty.

## **Who is eligible to be appointed to the Public Charter School Commission?**

In making appointments, the Governor shall strive to ensure that the commission members who collectively possess experience and expertise in:

- charter schools or authorizing of charter schools
- public and nonprofit governance
- finance
- law
- school or school district leadership

The commission must have at least three members from each grand division and a majority of the commission members must reside within the geographic boundary of a school district in which at least one public charter school operates. Members will not receive compensation but will be reimbursed for travel expenses.

Terms for initial members begin July 1, 2019, in staggered tiers – three years for three members, four years for three members, and five years for three members. As the initial terms expire, successors will be appointed by the Governor for five-year terms.

## **How will the commission be staffed?**

The commission will employ a director of schools who has the same duties and powers as directors of LEAs. The director of schools may hire additional personnel, though the law does not specify a certain number of staff.

## **How will the commission be funded?**

Current law allows the State Board of Education to collect an authorizer fee of up to 4 percent of the annual state and local per-pupil allocation for its authorized charter schools. Beginning in the 2019-20 school year, SBE will collect a 3 percent authorizer fee from its authorized schools. At the end of the 2020-21 school year, the three public charter schools currently authorized by the State Board will transfer to the commission, and the revenue collected from the authorizer fee (up to 3 percent of the per-pupil state and local funding) for these three schools will transfer to the commission. It is assumed that at least some of the salary and benefit costs of the director and staff of the commission would be offset by this fee.

The Achievement School District may charge an authorizer fee of up to 3 percent of the annual state and local per-pupil allocation for its authorized charter schools. LEAs may charge an authorizer fee of either 3 percent of the annual per-pupil state and local funding allocation or \$35,000 per school, whichever is less.

## **Will student test scores for public charter schools authorized by the commission count toward an LEA's performance?**

For accountability purposes, the performance of a charter school authorized by the commission will not count toward the LEA in which the charter school is geographically located.

## **What is the State Board of Education’s new role?**

The State Board will no longer serve as a charter school authorizer in any capacity beginning on July 1, 2021. Its role related to charter schools will be to ensure the effective operation of charter school authorizers (LEAs, the Achievement School District, and the Public Charter School Commission). SBE will evaluate authorizer quality through periodic evaluations. Authorizers must remain in compliance with the requirements of the state charter school law, the rules and regulations of the State Board, and the State Board’s quality authorizing standards. SBE may reduce the authorizer fee for authorizers found to be out of compliance.

Until December 31, 2020, the State Board will continue to act as the appellate authorizer and hear appeals of denied charter school sponsor applications. Appeals made on or after January 1, 2021, will be heard by the commission. The three charter schools currently authorized by the State Board will be transferred to the Public Charter School Commission, effective July 1, 2021.

## **What other provisions of the Tennessee Public Charter Schools Act are addressed in the new law?**

Public Chapter 219 clarifies several other provisions currently in statute:

- redefining a Charter Management Organization (CMO):
  - old definition: a nonprofit entity that operates multiple charter schools, at least one of which is in Tennessee.
  - new definition: a nonprofit entity that manages or operates two or more public charter schools.
- confirming that a charter school sponsor may not be:
  - a for-profit entity,
  - a non-public school as defined by Tennessee law,
  - a private, religious or church school; or
  - a postsecondary institution not regionally accredited.
- confirming that charter schools:
  - are part of the state program of public education,
  - may not be granted to for-profit corporations,
  - may not be established by non-public schools, or other private, religious, or church schools,
  - cannot be authorized as cyber-based public charter schools, and
  - cannot charge tuition, unless arrangements are made in accordance with an LEA’s out-of-district policies.
- changes the terms “underutilized and vacant” to “underutilized or vacant” concerning LEA property that may be made available to charter schools. This is a technical change that makes references to such property consistent throughout the Public Charter Schools Act.





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