

# **Maryland Charter School Network**

## **Legal Issues**

### **Module VI B**

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All presentation materials were created  
by:

**Joni Gardner, President**  
**Maryland Charter School Network**

8002 Corkberry Lane, #205

Pasadena, MD 21122

Phone: 410-553-6240

Cell: 410-707-2676

Fax: 410-553-6243

[jonigardner@comcast.net](mailto:jonigardner@comcast.net)

and

**Jeffrey Lischin Consulting Services**

973-773-1468

[JLischin@aol.com](mailto:JLischin@aol.com)



Using documents originally published by:

- Foundation Center
- Illinois Charter School Resource Guide
- Maryland Public Charter Schools Model  
Policy and Resource Guide 8/2003
- The Massachusetts Charter School  
Handbook
- New Jersey Charter School Application
- Northwest Regional Educational  
Laboratories



# **Module VI B. Legal Issues Topics**

- A. MD Charter School Law
- B. District Mandates
- C. Charter School Incorporation

# **A. Maryland Charter School Law**

## Select Elements of SB 75 (PASSED 2003)

- Local boards of education are the chartering authority
- Founders have the right to appeal negative rulings to the state
- The district has 120 days to review applications.
- Eligible applicants include parents, staff, nonprofits, and public institution of higher education
- Charter schools must be open to all students
- Charter school staff are subject to the union contract of the chartering district
- State certification requirements apply to charter schools.

# Maryland Public Charter School Program (SB 75 of 2003) Title 6

STATUTE	DEFINITION
§ 6-401(e)	Public school employer means a county board of education, the Baltimore City Board of School Commissioners
§ 6-501(g)(1) § 6-501 (g)(2)	Public school employer means the county board in each county Includes the Baltimore City Board of School Commissioners

# Maryland Public Charter School Program

## Title 9

STATUTE	DEFINITION
§ 9-101 (A)(B)	There is a Maryland Public Charter School Program. The general purpose of the program is to establish an alternative means within the existing public school system in order to provide innovative learning opportunities and creative educational approaches to improve the education of students.
§ 9-102(1-13)	<ol style="list-style-type: none"> <li>1. In this title “Public Charter School” means a public school that: Is nonsectarian in all its programs, policies, and operations;</li> <li>2. Is a school to which parents choose to send their children;</li> <li>3. Is open to all students on a space available basis and admits students on a lottery basis if more students apply than can be accommodated;</li> <li>4. Is a new public school or a conversion of an existing public school;</li> <li>5. Provides a program of elementary or secondary education or both;</li> <li>6. Operates in pursuit of a specific set of educational objectives;</li> <li>7. Is tuition free;</li> <li>8. Is subject to Federal and State laws prohibiting discrimination;</li> <li>9. Is in compliance with all applicable health and safety laws;</li> <li>10. Is in compliance with § 9-107 of this title;</li> <li>11. Operates under the supervision of the public chartering authority from which its charter is granted and in accordance with its charter and, except as provided in § 9-106, the provisions of law and regulation governing other public schools;</li> <li>12. Requires students to be physically present on school premises for a period of time substantially similar to that which other public school spend on school premises; and</li> <li>13. Is created in accordance with this title and the appropriate county board policy.</li> </ol>

## Primary Chartering Authority

§ 9-103 (A)	The primary public chartering authority for the granting of a charter shall be a county board of education.
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## Secondary Chartering Authority

§ 9-103 (B)	The secondary public chartering authority for the granting of a charter shall be the state board acting in its appeal review capacity or as the public chartering authority for a restructured school in accordance with § 9-104 (A) of this subtitle.
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# Application Process

§ 9-104 (A)(1)	An application to establish a public charter school shall be submitted to the county board of the county in which the charter school will be located.
§ 9-104 (A)(2)(I-IV)	An application to establish a public charter school may be submitted to a county board by: I. The staff of a public school; II. A parent or guardian of a student who attends a public school in the county; III. A nonsectarian nonprofit entity; IV. A nonsectarian institution of higher education in the State; or V. Any combination of persons specified in items (1) through (IV).
§ 9-104 (A)(3)(I-III)	A public chartering authority may not grant a charter under this title to: I A private school; II A parochial school; or III A home school.

## Application Process (cont'd)

§ 9-104 (A)(4) (I)(II)(1-4)	<p>(I) Except as provided in subparagraph (II) of the paragraph, the county board shall review the application and render a decision within 120 days of receipt of the application.</p> <p>(II) For a restructured school:</p> <ol style="list-style-type: none"><li>1. The county board shall review the application and render a decision within 30 days of receipt of the application;</li><li>2. The county board may apply to the State Board for an extension of up to 15 days from the time limit imposed under item I of this subparagraph;</li><li>3. If an extension is not granted, and 30 days have elapsed, the State Board may become a chartering authority; and</li><li>4. If an extension has been granted, and 45 days have elapsed, the State Board may become a chartering authority.</li></ol>
§ 9-104 (B)(1)	If the county board denies an application to establish a public charter school, the applicant may appeal the decision to the State Board, in accordance with §4-205(C) of this article.
§ 9-104 (B)(2)	The State Board shall render a decision within 120 days of the filing of an appeal under this subsection.
§ 9-104 (B)(3)	If the county board denies an application to establish a public charter school and the State Board reverses the decision, the State Board may direct the county board to grant a charter and shall mediate with the county board and the applicant to implement the charter.

# Professional Staff

§ 9-105	A member of the professional staff of a public charter school shall hold the appropriate Maryland Certification.
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## Compliance of Law and Regulation

§ 9-106 (A)	Subject to subsection (B) of this section, a public charter school shall comply with the provisions of law and regulation governing other public schools.
§ 9-106 (B)	Subject to subsection (C) of this section, a waiver of the requirements under subsection (A) of this section may be sought through an appeal to the State Board.
§ 9-106 (C)(1-3)	A waiver may not be granted from provisions of law or regulation relating to: (1) audit requirements; (2) the measurement of student academic achievement, including all assessments required for other public schools and other assessments mutually agreed upon by the public chartering authority and the school, or (3) the health, safety, or civil rights of a student or an employee of the charter school.

## Special Education

§ 9-107 (A)	A public chartering authority may not grant a charter to a public charter school whose operation would be inconsistent with any public policy initiative, court order, or Federal Improvement Plan governing special education that is applicable to the State.
§ 9-107 (B)	A public chartering authority shall ensure that the authorizing process for a public charter school and the charter application address the roles and responsibilities of the county board and the applicants and operators of the public charter school with respect to children with disabilities.
§ 9-107 (C)	The public chartering authority shall ensure that, prior to opening a public charter school, the operators of the school are informed of the human, fiscal, and organization capacity needed to fulfill the school's responsibilities related to children with disabilities.
§ 9-107 (D)	The State Board shall provide technical assistance to the operators of a public charter school to help the school meet the requirements of Federal and State laws, including 20 U.S.C. § 1400, Et Seq. And § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

## Employees/Collective Bargaining

§ 9-108 (A)	<p>Employees of a public charter school:</p> <ol style="list-style-type: none"><li>1. Are public school employees, as defined in §§ 6-401(D) and 6-501(F) of this article;</li><li>2. Are employees of a public school employer, as defined in §§6-401(E) and 6-501(G) of this article, in the county in which the public charter school is located; and</li><li>3. Shall have the rights granted under Title 6, Subtitles 4 and 5 of this article.</li></ol>
§ 9-108 (B)	<p>If a collective bargaining agreement under Title 6, subtitle 4 or 5 of this article is already in existence in the county where a public charter school is located, the employee organization and the public charter school may mutually agree to negotiate amendments to the existing agreement to address the needs of the particular public charter school.</p>

## Funding

§ 9-109 (A)	A county board shall disburse to a public charter school, an amount of county, state, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction.
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## Educational Materials

§ 9-109 (B)	The State Board or the county board may give surplus educational materials, supplies, furniture, and other equipment to a public charter school.
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## Policy Guidelines

§ 9-110 (A)(1)	Each county board shall develop a public charter school policy and submit it to the State Board.
§ 9-109 (A)(2)	The policy required under paragraph (1) of this subsection shall include guidelines and procedures regarding: I Evaluation of public charter schools; II Revocation of a Charter; III Reporting Requirements; and IV Financial, programmatic, or compliance audits of public charter schools
§ 9-109 (B)	The Department shall designate a staff person to function as a contact person for the Maryland Public Charter School Program.
SECTION 2	The State Department of Education shall create and disseminate to each local board of education model public charter school policy language, which can be used to create a public charter school policy as required by this Act. Each local board of education shall submit its public charter school policy to the State Board of Education by November 1, 2003.



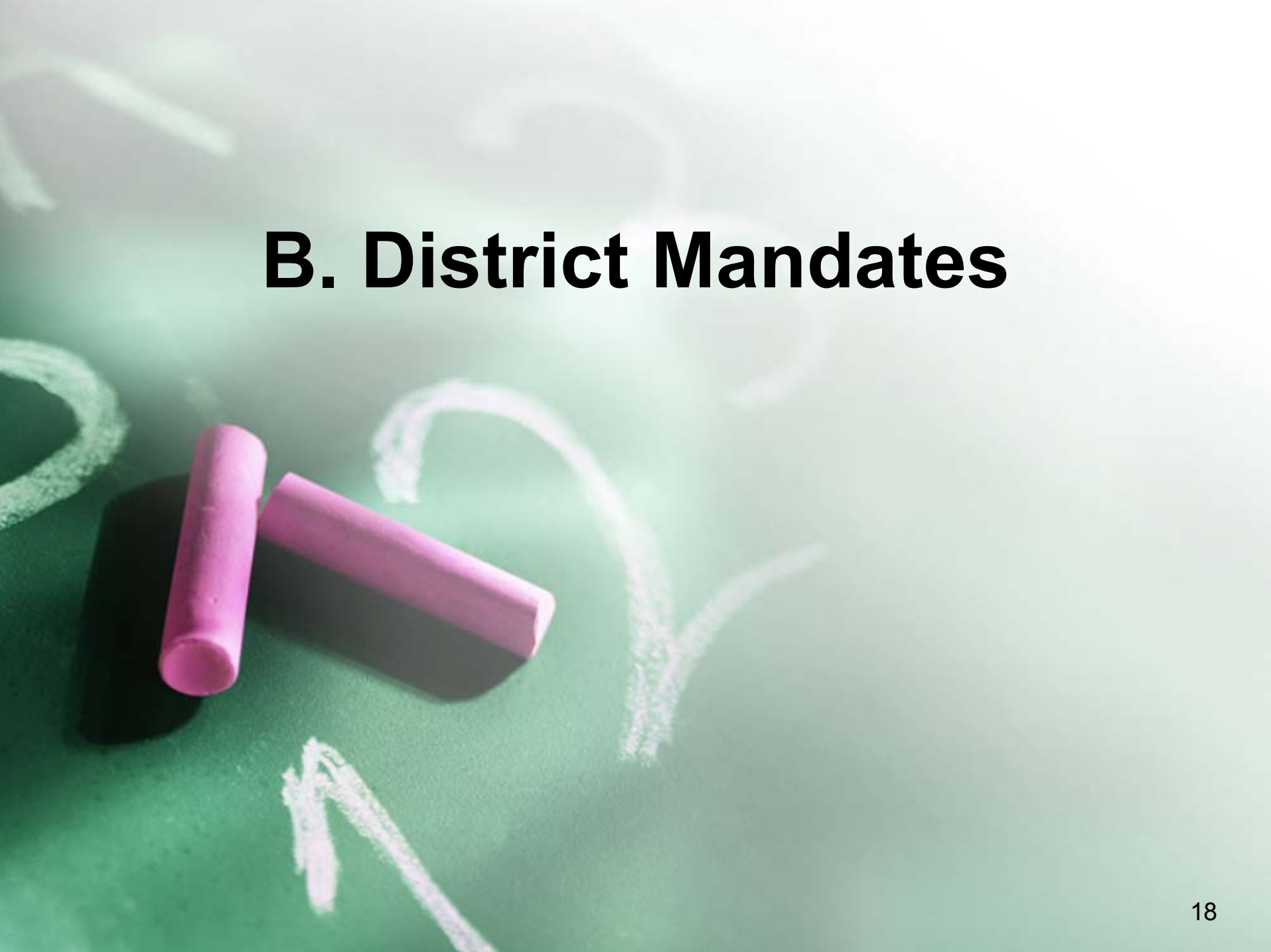
## Evaluation of Program

SECTION 3	That on or before October 1, 2006, based on information gathered from each local board of education, the Board of School Commissioners of Baltimore City, and the public, the State Board of Education shall submit to the General Assembly, in accordance with §2-1246 of the State Government Article, a report including an evaluation of the public charter school program. The report shall address the advisability of the continuation, modification, expansion, or termination of the program.
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## Evaluation of Program

SECTION 4	This Act shall take effect July 1, 2003.
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# **B. District Mandates**





## District Mandates

- Districts create local policies.
- MD law gives districts broad authority to create their own structure for charter schools.
- It is CRITICAL that all issues be clearly addressed in the charter school contract. Any lack of clarity can lead to terminal levels of conflict and destruction of the charter school

# **C. Charter School Incorporation**

# Charter School Incorporation

The charter school must be incorporated as a nonprofit to receive Federal funds – (planning, design and implementation funds).

The legal status of a charter school that is legally a part of the sponsoring school district is often referred to as “arm of the district.” These charter schools enjoy some autonomy granted by the district, but also have the extra protection of the school district’s liability insurance and legal counsel. In charter schools that are considered an arm of the district:

*Powers are delegated by the school district governing board to a person (school operator) or public body (board of directors) charged with responsibility for managing the operations of the school*

## **D. Policy Development – Waiver Requests**





# **Charter School Incorporation**

**Policies and procedures of the school district apply to the school unless waived by the terms of the charter or formal action of the school district governing board**

- Employees of the school are employees of the school district
- The school district governing board or administration may issue directives to the school unless areas of unrestricted authority are expressly agreed upon in the charter or prescribed by statute
- Another advantage of being an arm of the district is that collaboration with the district and other district schools is more likely to occur. The district may provide the charter school with special education, procurement, payroll and accounting, and other support services as agreed to in charter and/or contract agreements.



# **Charter School Incorporation**

**Disadvantages of being an arm of the district may include:**

- Minimal ability to contract for special services needed
- Minimal ability to accept funds because the funding process usually goes through the district channels
- The school's autonomy may be limited
- The school district's collective bargaining agreement and salary schedule may apply to the employees of the school (some schools may see this as an advantage)



# **Charter School Incorporation**

**Steps to Establish and Define the Structure of a Nonprofit Corporation will vary depending on your state law and on the formal structure selected by your school's developers. Basic suggestions in forming a nonprofit organization include:**

- Establish a school (corporate) name—make sure the one you choose is not taken
- Draft bylaws—bylaws outline how the school is to be governed and operated (see Module IV. Management Plan)
- Draft and file articles of incorporation—this step may require an attorney to first review your bylaws and then help draft articles of incorporation;
- The articles of incorporation are formally filed with the secretary of state and establish the corporation as a legal entity
- File for tax-exempt status—may need to file with the state and federal government



## **Tax-exempt Recognition**

**For charter schools, it is a good idea to apply as early as possible to the federal government and your state for tax-exempt status.**

**Charter schools need this tax-exempt status for many reasons.**



# Tax-exempt Recognition

## Advantages

- Foundations and other groups that you will approach for donations find it much easier to give to tax-exempt organizations
- Schools may receive a federal income tax exemption for revenues other than unrelated business income
- Schools may receive deductibility of contributions
- Schools may obtain more grant opportunities because of their eligibility status
- Schools may receive reduced postal rates
- Schools may receive employee benefit plans



## Tax-exempt Recognition

### Disadvantages

- Founders and investors cannot own any equity interest in the corporation.
- Employees can receive only “reasonable” compensation.
- Tax laws do not dictate size or composition of the board of directors, but court decisions indicate that a nonprofit corporation cannot be controlled by a single person or a small group of related persons.
- Founders may risk a loss of control.



## Tax-exempt Recognition

### **Application Process— Items to Include:**

- Completed Form 1023-Application for Recognition of Exemption (can be found online at the IRS Web site: [www.irs.ustreas.gov/prod/forms\\_pubs/forms.html](http://www.irs.ustreas.gov/prod/forms_pubs/forms.html))
- The school's articles of incorporation and bylaws
- A description of the school's activities
- Financial statements
- Fundraising activities descriptions

# End Module VI B

