

(F)(2) Ensuring successful conditions for high-performing charter schools and other innovative schools (40 points)

The extent to which—

- (i) The State has a charter school law that does not prohibit or effectively inhibit increasing the number of high-performing charter schools (as defined in this notice) in the State, measured (as set forth in Appendix B) by the percentage of total schools in the State that are allowed to be charter schools or otherwise restrict student enrollment in charter schools;
- (ii) The State has laws, statutes, regulations, or guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize, and close charter schools; in particular, whether authorizers require that student achievement (as defined in this notice) be one significant factor, among others, in authorization or renewal; encourage charter schools that serve student populations that are similar to local district student populations, especially relative to high-need students (as defined in this notice); and have closed or not renewed ineffective charter schools;
- (iii) The State’s charter schools receive (as set forth in Appendix B) equitable funding compared to traditional public schools, and a commensurate share of local, State, and Federal revenues;
- (iv) The State provides charter schools with funding for facilities (for leasing facilities, purchasing facilities, or making tenant improvements), assistance with facilities acquisition, access to public facilities, the ability to share in bonds and mill levies, or other supports; and the extent to which the State does not impose any facility-related requirements on charter schools that are stricter than those applied to traditional public schools; and
- (v) The State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.

In the text box below, the State shall describe its current status in meeting the criterion. The narrative or attachments shall also include, at a minimum, the evidence listed below, and how each piece of evidence demonstrates the State’s success in meeting the criterion. The narrative and attachments may also include any additional information the State believes will be helpful to peer reviewers. For attachments included in the Appendix, note in the narrative the location where the attachments can be found.

Evidence for (F)(2)(i):

- A description of the State’s applicable laws, statutes, regulations, or other relevant legal documents.
- The number of charter schools allowed under State law and the percentage this represents of the total number of schools in

the State.

- The number and types of charter schools currently operating in the State.

Evidence for (F)(2)(ii):

- A description of the State's approach to charter school accountability and authorization, and a description of the State's applicable laws, statutes, regulations, or other relevant legal documents.
- For each of the last five years:
 - The number of charter school applications made in the State.
 - The number of charter school applications approved.
 - The number of charter school applications denied and reasons for the denials (academic, financial, low enrollment, other).
 - The number of charter schools closed (including charter schools that were not reauthorized to operate).

Evidence for (F)(2)(iii):

- A description of the State's applicable statutes, regulations, or other relevant legal documents.
- A description of the State's approach to charter school funding, the amount of funding passed through to charter schools per student, and how those amounts compare with traditional public school per-student funding allocations.

Evidence for (F)(2)(iv):

- A description of the State's applicable statutes, regulations, or other relevant legal documents.
- A description of the statewide facilities supports provided to charter schools, if any.

Evidence for (F)(2)(v):

- A description of how the State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.

Recommended maximum response length: Six pages

(F)(2)(i)

(See Appendix F1 for complete charter school statutes and Appendix F2 for regulations.)

Massachusetts' charter law (G.L. c. 71, § 89) defines two primary types of charter schools:

1. *Commonwealth charter schools* are independent local education agencies serving students from either a single district or a region made up of multiple districts. Massachusetts currently has 55 operating Commonwealth charter schools, serving more than 26,000 students. Students are accepted into a school through an open lottery and retain the right to attend if they move out of the district or region. Charter school teachers and staff are not subject to the sending districts' collective bargaining agreements, enabling schools to establish their own work rules and working conditions.
2. *Horace Mann charter schools* also operate as independent local education agencies, but teachers remain a part of the local collective bargaining unit. Massachusetts currently has seven Horace Mann charter schools. The primary differences from a Commonwealth charter are that the original charter application, subsequent applications for renewal of the charter, and any requests to the Board of Elementary and Secondary Education to amend the charter must receive approval from the school committee and local collective bargaining unit prior to Board approval.

Massachusetts' charter school statute was amended in January of 2010 to allow for a significant expansion of high performing charter schools in the state's lowest performing districts. In writing the "smart charter cap lift" legislation, the Governor and the state legislature recognized the successes of many existing urban charter schools. With this statutory change, Massachusetts' charter law now has a focus on creating strong charter schools to serve those students most in need. On May 25, 2010, the state Board of Elementary and Secondary Education adopted regulations that clear the way for implementation of the new statute.

The new statute seeks to increase the number of charter schools operated by proven providers that will serve high needs students in low performing districts primarily through three provisions. First, for the state's 30 lowest performing districts, the net school spending cap (i.e., the amount of the district's net school spending (NSS) that can be reallocated to charter schools) is doubled from 9

percent to 18 percent.¹ Second, in districts exceeding the 9 percent NSS cap, only high performing, “proven providers” may apply to operate a charter. Third, these charters must develop recruitment and retention plans for high needs students.

The new education legislation also allows for the creation of 14 Horace Mann charter schools that do *not* require local union approval. Further, conversion of an existing district school into a Horace Mann charter does not require union approval but instead a memorandum of understanding (MOU) regarding any waivers to applicable collective bargaining agreements, and this MOU requires approval by a majority vote of that school’s teachers.

The 62 charter schools currently operating in Massachusetts represent 3 percent of the state’s schools and 2.8 percent of the state’s students. In Boston, the state’s largest district, charter schools there currently represent approximately 12 percent of all public schools, and the new law allows for a doubling of the allowable spending on charter schools in Boston.

In addition to doubling the spending cap in the lowest performing districts, the new law made two other significant changes to charter school caps. It eliminated the cap (of 4 percent) on the total number of students statewide who can attend charter schools, and it eliminated the cap on the number of district schools that can convert to Horace Mann charter schools. The new law maintains the cap of 120 charter schools statewide—72 Commonwealth charters and 48 Horace Mann charters—but this cap does not apply to the Horace Mann conversions, nor does it apply to the “smart cap” lift in the state’s lowest performing districts. The state has 1,770 non-charter public schools, so the traditional Commonwealth and Horace Mann charter schools can represent what amounts to approximately 6 percent of all public schools, while the new law’s allowance for unlimited Horace Mann conversions and more proven provider charters in the lowest performing districts enables the total number of charters to exceed 6 percent of all public schools. With the exception of the state’s lowest performing 30 districts, the amount of a district’s spending that can be reallocated to charter schools can be no more than 9 percent.

¹ In fiscal year 2011, the NSS cap in these districts is set at 12 percent; by statute, it increases by one percentage point per year to reach 18 percent in 2017.

The charter statute also ensures in two other ways that the state's sole charter authorizer, the state's Board of Elementary and Secondary Education, focuses on high need districts. It maintains the statutory requirement that the first two charters granted in any year must be granted in districts where overall student performance on the statewide assessment system is in the bottom 10 percent for two consecutive years, and it continues to provide that only one regional charter can be granted in a district in the top 10 percent. Lastly, the board is now authorized to give priority to proven providers when determining to which applicants it will award a charter.

(F)(2)(ii)

Massachusetts is one of only two states in the nation with a single charter school authorizer, the Board of Elementary and Secondary Education. For this reason, accountability is handled consistently for all charter schools in the state. The Charter School Office of the Department of Elementary and Secondary Education operates under a comprehensive set of standards and protocols that have been in place since 1993, when the state's charter legislation was first enacted. Over the past several years Massachusetts' authorizing and accountability process has been hailed as a national model. Massachusetts was one of eight charter authorizers highlighted in USED's 2007 report "Supporting Charter School Excellence Through Quality Authorizing."

Under Commonwealth of Massachusetts Regulations 603 CMR 1.00, charter schools are held accountable in three areas: faithfulness to charter, academic success, and organizational viability. The process of accountability begins with the application for a charter, which uses an extensive set of criteria in all three areas of accountability in addition to an assessment of the capacity of the board of trustees. The most detailed section of the application requires answers to questions on curriculum development and implementation, instruction, professional development, and use of instructional time. The information provided against these criteria becomes a critical element in determining if the application should be chartered. Massachusetts uses a two-stage application process in which applicants first submit a prospectus and, depending on the outcome of the prospectus review, may be invited to submit a full application. Newly chartered schools are required to complete an opening procedures process to ensure schools have met state and federal statutory and regulatory requirements. Enrollment is by open lottery.

The state's recently revised charter statute has a focus on ensuring that charter schools serve a student population that is similar to the local district's student population. The new law requires that all charter schools create student recruitment and retention plans to attract and retain a student population that, when compared to students in similar grades in schools from which the charter school is expected to enroll students, contains a comparable academic and demographic profile. In districts authorized to exceed the 9 percent net school spending cap (i.e., in the lowest performing districts in the state), charter applicants must provide and annually update recruitment and retention plans designed to attract and retain, when compared to the population of students in the grades and schools from which the charter is expected to enroll students: (1) a comparable or greater percentage of English language learners or special needs students; and (2) a comparable percentage of students from two or more of the following categories: students eligible for free lunch; students eligible for reduced price lunch; students who are sub-proficient; students who are determined to be at risk of dropping out of school based on predictors determined by ESE; students who have dropped out of school; and other at-risk students who should be targeted in order to eliminate achievement gaps among different groups of students. Additionally, the statute requires that, at the request of a charter school, districts must provide a third party mail house authorized by the SEA with the addresses for all students in the district who are eligible to enroll in the charter. This last requirement allows charter schools to do broad-based recruiting in order to meet their recruitment and retention goals.

A charter school's success in the three areas of accountability is defined by Common School Performance Criteria developed by the Department. These criteria were used to create protocols for site visits during the charter term, renewal inspections in the fifth year, and federal programs inspections to ensure schools have implemented requirements. ESE has also developed numerous guidance documents for charter schools, including a guide on fiscal policies and procedures, technical advisories on amendments and transportation, and annual report guidelines. Each charter school is required to submit an annual report of the school's progress on an accountability plan that details goals and measures in the three areas of charter accountability, and each charter school must annually contract for and submit an independent audit. The charter school statute also requires that, when deciding on renewal, the ESE Board must consider the extent to which the school has followed its recruitment and retention strategies.

Over the course of each school's charter term, the Department builds a body of evidence regarding the school's success, using data from the annual statewide assessment, the school's annual reports and audits, and information contained in reports produced after interim site visits by the Department and the final renewal inspection visit. Academic success is also assessed by statistical comparisons with the sending district(s) to determine if the charter school is achieving at an equal or higher level. At the five year mark, charters may be renewed, non-renewed, renewed with conditions, or placed on probation, also with conditions. Revocation, as defined in the regulations, is possible at any time during the charter term.

Charter applications are denied when a combination of factors are unveiled through the review panel process and interview with the founding group. Factors may include poor quality of the proposed model for curriculum and instruction, or lack of capacity of the founding board to implement the proposal.

Lack of academic success was a major factor in the closure of three of the four charter schools closed in the past five years. The first school was closed at the five year renewal, primarily for academic and governance reasons. The second was renewed with stringent outcome conditions regarding academic success and meeting the terms of its charter; the conditions were not met and the charter was revoked. The third school's charter was revoked in the second year of operation for failure to meet accountability standards in all three areas, including implementation of the academic program, governance, and financial oversight and management. The fourth school's charter was revoked in May 2010 for fraud and gross mismanagement.

Table F3: Charter School Applications and Approvals, 2005–2010

School year	Charter prospectuses submitted	Final charter applications invited	Charter applications approved	Charter applications denied	Charter schools closed by the Board
2004–05	8	5	2	3	2
2005–06	14	4	3	1	0
2006–07	10	4	1	3	0
2007–08	10	5	3	2	0
2008–09	7	3	1	2	1
2009–10	14	7	6	1	1
Total	49	21	10	9	4

(F)(2)(iii)

The funding formula in the Massachusetts charter school statute ensures that charter schools receive equitable funding when compared to traditional district schools. The statute uses three components to calculate charter school tuition rates. The first is a per-pupil foundation rate, based on student demographic and enrollment factors and adjusted annually for inflation. The foundation rates are the same rates used to establish foundation budgets for traditional school districts. The second factor is the “above-foundation” adjustment. The foundation rates are adjusted upward to reflect the amount by which the sending districts’ spending on their own students exceeds their foundation budget. The third component is a per-pupil facilities component, which is discussed under F2iv.

In general, the charter tuition formula is designed to ensure that charter schools are receiving the same amount per pupil as is spent in the sending districts. The only differences result from adjustments for student demographics (for example, a charter school with a higher percentage of low income students than the sending district will receive relatively more funding per pupil) and exclusion of

certain cost elements not borne by charter schools. In fiscal year 2008, charter schools on average spent \$10,628 per student as compared with \$12,454 for districts, a difference of \$1,826 per student. This difference is mainly attributable to the fact that districts bear higher costs for special education than charter schools do. Massachusetts' disability rate is high (approximately 17 percent) relative to other states, as is the rate at which students with disabilities are educated out-of-district. Districts must pay tuition for students placed in private special education schools, while charter schools do not.

Charter school tuition is paid by the sending districts, and as a result draws from the same local and state revenue sources that fund traditional public schools. The state provides reimbursement to sending districts for the amount that their charter school tuition increases from one year to the next. Based on recently enacted legislation, in each fiscal year, districts are reimbursed for 100 percent of the increase in tuition over the prior year, and 25 percent of the difference in increased costs for the next five years. Reimbursement to districts for charter facilities costs is based on a statewide rate that is calculated annually (see description in section F2iv). Federal grants are distributed directly to charter schools by the Department in accordance with federal requirements.

(F)(2)(iv)

The funding formula for Massachusetts charter schools includes a facility component that is based on a set per-pupil amount, adjusted annually for inflation. In addition, the Massachusetts Development Finance Agency, a quasi-public agency, issues tax-exempt bonds to finance the acquisition, rehabilitation, or construction of charter schools through multiple vehicles, including Qualified Zone Academy Bonds for school renovations and upgrades; real estate loans of up to \$5,000,000 for facility acquisition, renovation, construction, and permanent financing; and charter school loan guarantees for a portion of a bank loan or tax-exempt bond for acquisition, construction, or renovation of owned and leased charter school facilities. The education legislation enacted by the state in January of 2010 offers incentives to districts to offer unused school buildings to charter schools. No facility requirements are placed on charter schools beyond the normal building code and accessibility requirement, and these same requirements apply to traditional district schools. Lastly, the state legislature passed a law in 2009 requiring the Massachusetts School Building Authority (MSBA) to

oversee Massachusetts' allocation of American Recovery and Reinvestment Act Qualified School Construction Bonds (ARRA QSCBs). (See text of Section 137 of Chapter 27 of the Acts of 2009 in the appendices.) The MSBA was authorized to use a portion of the state's allocation of ARRA QSCBs for charter schools.

(F)(2)(v)

Both the state and local districts enable the operation of innovative, autonomous schools other than charter schools.

The Innovation Schools initiative, a key component of the groundbreaking education legislation that Governor Patrick signed in January 2010, provides educators and other stakeholders across the state with the exciting opportunity to create new in-district schools that will leverage the lessons learned from the state's top performing charter schools while keeping school funding within districts. These unique schools—which may be established by superintendents, school committees, teachers, parents, colleges and universities, charter school operators and others—will operate with increased autonomy and flexibility in the areas of curriculum, budget, school schedule and calendar, staffing (including waivers from or exemptions to collective bargaining agreements), school district policies, and professional development. In exchange for greater authority to establish the school conditions that will lead to improved teaching and learning, the operators of Innovation Schools will be held accountable for meeting annual benchmarks for student achievement and school performance. There are no caps on the number of Innovation Schools, and new schools can be created or existing schools can be converted in every district in Massachusetts.

Unlike charter schools, which must be approved by the state Board of Elementary and Secondary Education, the development and establishment of Innovation Schools is entirely locally based. An applicant works with the local superintendent, teachers' union, and school committee to develop and refine a plan that includes detailed information about the innovative strategies that will be implemented. The local school committee has the authority to approve the Innovation Schools.

To support the establishment of Innovation Schools, ESE is responsible for the provision of planning and implementation grants, technical assistance and support to eligible applicants; and the collection, publication, and dissemination of data, research, and best

practices in Innovation Schools that may be adopted by other public schools. ESE and the Executive Office of Education have supported early adopters of this model by issuing \$200,000 in planning grants to 16 districts in the summer of 2009, and by providing both statewide and site-based technical assistance to these districts to support the development of innovation plans and collaboration among stakeholders.

The first Innovation School—the Paul Revere Innovation School in the Revere Public Schools—was established by unanimous vote of the school committee on May 25, 2010. Additional schools are poised to open in September 2010, and many other applicants are engaged in the process of establishing schools that will open in September 2011. We have included funds to support further expansion of these schools in our Race to the Top budget proposal.

Additionally, the Boston Public Schools currently operate a total of 23 pilot schools: district-based schools with autonomy over staffing, budget, curriculum and assessment, governance and policies, and school calendar, and with greater accountability for results.

(See Appendix F3 for an excerpt from the legislation pertaining to Innovation Schools and Appendix F4 for a fact sheet on Innovation Schools.)