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Cyber Charter Schools: An Analysis of North Carolina's Current Charter School Legislation

Meghan Knight¹

I. Introduction

In an era where businesses, industry, and postsecondary institutions recognize the value of and utilize online learning, online education for North Carolina's public schools may be inevitable.² Increasingly, virtual education is seen as "a model for the development of the 21st-century learning skills of working and collaborating with others at a distance."³ If North Carolina's public schools are to educate students so that they will be competitive in a marketplace that values online learning and virtual interaction, the state will need to ensure that its schools at the very least have a virtual component.

Currently, there are ninety-seven charter schools in North Carolina.⁴ There are, however, no *cyber* charter schools (hereinafter "cyber-charters") in the state. In fact, North Carolina has rejected two applications for cyber-charters.⁵ Despite the

¹ J.D. Candidate, University of North Carolina School of Law, 2006. Special thanks to David Hostetler for the topic idea, guidance, and encouragement along the way.

² See Kathleen Fulton, *The Brave New World of Virtual Schooling in the U.S.*, THE ST. EDUC. STANDARD, Summer 2002, at 30, available at http://www.nasbe.org/Standard/10_Summer2002/fulton.pdf (on file with the North Carolina Journal of Law & Technology).

³ *Id.* at 32.

⁴ Email from Jack Moyer, Director of the Office of Charter Schools, N.C. Dept. of Pub. Instruction, to Meghan Knight, Student, Univ. of N.C. School of Law (Mar. 10, 2005, 07:03:02 EST) (on file with the North Carolina Journal of Law & Technology); see also Todd Silberman, *Some Charters Fall Short: Failing to Meet Federal, State Standards Results in Probation for Area Schools*, NEWS & OBSERVER (Raleigh), Sept. 25, 2004, at B1.

⁵ See *HR Newswatch*, INTERNET STRATEGIES FOR EDUC. MARKETS: THE HELLER REP., May 2002; N.C. State Bd. of Educ., *Minutes of the State Board of Education, Raleigh, North Carolina*, 26, available at http://www.ncpublicschools.org/sbe_meetings/ (Jan. 9–10, 2002) (on file with

rejections, the North Carolina State Board of Education (“SBE”) has expressed interest in the continuing development of virtual learning in North Carolina.⁶ While the North Carolina General Assembly has enacted legislation addressing charter schools generally, it has not yet enacted legislation that directly addresses cyber-charters.

This comment examines the possibility and legality of cyber-charters in North Carolina under the state’s current charter school legislation and proposes that North Carolina amend and/or supplement its charter school legislation prior to granting any cyber-charters. This comment: (1) provides a brief history of the development of charter school legislation in the United States and in North Carolina; (2) describes the subsequent national development of cyber-charters and illustrates some of the problems that have arisen when they are opened under “regular” charter school legislation; (3) offers a recent history of online learning developments and considerations in North Carolina; and (4) provides an introductory analysis of North Carolina’s current charter school legislation as applied to cyber-charters, examining how the Charter Schools Act could be amended or supplemented in order to better address the unique nature of cyber-charters.

II. History of Charters and Cyber-charters

A. Development of Charter Schools

Charter schools are nonsectarian, publicly funded schools of choice that operate more independently than traditional public schools. Charter schools arose from a movement to reform public schools.⁷ The “charter school movement has roots in a number of

the North Carolina Journal of Law & Technology) [hereinafter *Minutes* (Jan. 9–10, 2002)].

⁶ See N.C. State Bd. of Educ., *Minutes of the State Board of Education: Raleigh, North Carolina*, 10, 35, available at http://www.ncpublicschools.org/sbe_meetings/ (Dec. 4 & 12, 2002) (on file with the North Carolina Journal of Law & Technology). These minutes indicate unanimous approval of recommendations to develop virtual schooling. *Id.*

⁷ See Sandra Vergari, *Charter Schools: A Significant Precedent in Public Education*, 59 N.Y.U. ANN. SURV. AM. L. 495, 495 (2003).

other reform ideas, from alternative schools, to site-based management, magnet schools, public school choice, privatization, and community-parental empowerment.”⁸ The movement was “[o]nce hailed as a kind of free-market solution offering parents an escape from moribund public schools.”⁹ The first charter school legislation was adopted in 1991 in Minnesota, where that state’s first charter school opened in 1992.¹⁰ As of January 2003, there were almost 2,700 charter schools in operation in the United States with more than 680,000 students.¹¹ A recent article in *The New York Times* indicated the number of charter schools in the United States is now at 3,000.¹²

There are conflicting reports, however, about the nature and extent of the success of charter schools. A recent publication from the American Federation of Teachers suggests charter schools are not performing as well as traditional schools on the National Assessment of Educational Progress (“NAEP”) in math and reading.¹³ The report stresses the significance of its findings in relation to the federal No Child Left Behind Act (“NCLB”). Signed into law in January 2002, one of the NCLB sanctions for a public school that fails to make “adequate yearly progress” (“AYP”) is restructuring the school as a charter school.¹⁴ Because “chronically failing traditional schools” may be converted to charter schools, NCLB is expected to cause significant growth in

⁸ U.S. Charter Schools, *History*, at http://www.uscharterschools.org/pub/uscs_docs/o/history.htm (last visited Mar. 8, 2005) (on file with the North Carolina Journal of Law & Technology).

⁹ Diana Jeane Schemo, *Nation’s Charter Schools Lagging Behind, U.S. Test Scores Reveal*, N.Y. TIMES, Aug. 17, 2004, available at <http://www.nytimes.com> (on file with the North Carolina Journal of Law & Technology).

¹⁰ Vergari, *supra* note 7, at 495.

¹¹ *Id.* at 497.

¹² Schemo, *supra* note 9.

¹³ F. HOWARD NELSON ET AL., CHARTER SCHOOL ACHIEVEMENT ON THE 2003 NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS (Aug. 2004), available at <http://www.aft.org/pubs-reports/downloads/teachers/NAEPCharterSchoolReport.pdf> (on file with the North Carolina Journal of Law & Technology).

¹⁴ *Id.* at i.

the number of charter schools.¹⁵ The danger lies in the creation of additional charter schools by conversion; such schools may prepare students less well than traditional schools. Challenges to this report argue that the “structural inequities between [charter and traditional schools] leave charter schools at a permanent disadvantage. Given time and a level playing field . . . charter schools will prove to be an academic lifeline.”¹⁶

Successes and failures aside, North Carolina has allowed charter schools since 1996. North Carolina’s Charter Schools Act was ratified by the General Assembly on June 26, 1996,¹⁷ as part of “a statewide initiative for educational reform in North Carolina’s public schools.”¹⁸ Charter schools provide parents of North Carolina’s children a choice in their children’s education, paid for primarily by tax dollars.¹⁹ The Act allows for no more than 100 charter schools statewide, and no more than 5 charter schools per year to operate in any local school system.²⁰ In May 2004, supporters of charter schools in North Carolina urged the General Assembly to raise the cap on the number of schools from 100 to 110.²¹ The legislation passed the House but was sent to Committee in the Senate, where it has been reintroduced in the 2005–2006 session.²² Among other things, the Act sets out its

¹⁵ Schemo, *supra* note 9.

¹⁶ Floyd H. Flake, *Classes of Last Resort*, N.Y. TIMES, Aug. 19, 2004, available at <http://www.nytimes.com/2004/08/19/opinion/19flak.html> (on file with the North Carolina Journal of Law & Technology).

¹⁷ N.C. GEN. STAT. §§ 115C-238.29A–238.29K (2003).

¹⁸ N.C. Dep’t of Pub. Instruction, *Brief Background and History of Charter Education in North Carolina*, at http://www.ncpublicschools.org/charter_schools/background.html (last visited Mar. 8, 2005) (on file with the North Carolina Journal of Law & Technology).

¹⁹ *Id.*

²⁰ N.C. GEN. STAT. § 115C-238.29(D)(b) (2003).

²¹ H.R. 31, 146th Gen. Assem., Reg. Sess. (N.C. 2003); see Associated Press, *Bill Would Boost Charter Schools*, NEWS & OBSERVER (Raleigh), May 13, 2004, available at

<http://www.newsobserver.com/politics/politicians/legislature/story/1260772p-7377569c.html> (on file with the North Carolina Journal of Law & Technology).

²² H.R. 31, 147th Gen. Assem., Reg. Sess. (N.C. 2005), available at <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2003&BillID=H31&votesToView=all> (on file with the North Carolina Journal of Law & Technology).

purpose, explains the application process, sets some parameters for operation and instruction requirements, provides reasons and process for non-renewal, and addresses funding.²³

Following enactment of the Charter Schools Act, thirty-four charter schools opened for the 1997–1998 school year.²⁴ By the 2001–2002 school year, the state had received 271 charter applications, and there were ninety-nine approved charter schools with an estimated 16,000 enrolled students in the state.²⁵

Additionally, over the first six years, preliminary approval of a majority of application submissions shifted from local boards of education to the SBE.²⁶ As of 2002–2003, the number of charter schools remained at ninety-nine.²⁷ There are currently ninety-seven charter schools in the state.²⁸ These schools have generally been small, averaging 137 students in 2001.²⁹

B. Development of Cyber-charters

1. Growth of Cyber-charters in the United States

“With virtual schooling still an emerging trend in education, even those involved are split on whether cyberschools are an alternative for a few students or whether it’s [sic] the future of all schooling.”³⁰ As an offshoot of the charter school movement, cyber-charters (sometimes referred to as virtual charters) have opened across the United States. Between 1999 and 2003, approximately sixty cyber-charters serving over 16,000

²³ *Id.*

²⁴ N.C. Dep’t of Pub. Instruction, *supra* note 18.

²⁵ *Id.*

²⁶ *Id.*

²⁷ N.C. Dep’t of Pub. Instruction, *2002–2003 Directory of North Carolina Charter Schools*, at

http://www.ncpublicschools.org/charter_schools/directory.html (last visited Mar. 8, 2005) (on file with the North Carolina Journal of Law & Technology).

²⁸ Silberman, *supra* note 4.

²⁹ N.C. Dep’t of Pub. Instruction, *supra* note 27.

³⁰ Monica Mendoza, *Cyberschools Really Clicking: State’s Virtual Classrooms Report Rise In Enrollment*, THE ARIZ. REPUBLIC, Aug. 23, 2004, available at www.arizonarepublic.com (on file with the North Carolina Journal of Law & Technology).

students opened in fifteen states.³¹ This accounted for about two percent of the nation's charter school student population.³² Like "traditional" charter schools, cyber-charters are independently governed public schools.³³ Unlike traditional charter schools, cyber-charters operate outside the confines of "brick-and-mortar" institutions, instead providing the majority of instruction over the Internet³⁴ and through such mediums as software programs and distance learning.³⁵ Students who attend cyber-charters often "meet" with other students and teachers online and may gather in person only for particular activities.³⁶ Primarily, students do their work on a flexible schedule from home, and in contrast to traditional schools, students' homes are not necessarily located in a particular school district.³⁷

It is self-apparent that cyber-charters give rise to unique issues not present in traditional school or charter school settings.³⁸ Many cyber-charters opened under states' existing charter school legislation, often enacted before cyber-charters were even contemplated. According to one source, legislatures in states where cyber-charters are operating have begun "swift and strong action" to develop policies that regulate charter schools that are not classroom-based.³⁹ At least four states have enacted legislation

³¹Luis A. Huerta & Maria-Fernanda Gonzalez, *Cyber and Home School Charter Schools: How States are Defining New Forms of Public Schooling*, 1, available at http://ncspe.org/publications_files/Paper87.pdf (last visited Apr. 7, 2005) (on file with the North Carolina Journal of Law & Technology). According to one source, there is some type of "virtual school" in at least thirty-six states. See Wisc. Dep't of Pub. Instruction, *Virtual Schools Search by State*, at <http://www.dpi.state.wi.us/dlsis/vistate.html> (last visited Mar. 8, 2005) (on file with the North Carolina Journal of Law & Technology).

³² Huerta, *supra* note 31, at 1.

³³ Amy Berk Anderson, Educ. Comm'n of the States, *Policy Brief: What Is a Cyber Charter School?* (May 2003), available at <http://www.ecs.org/clearinghouse/44/13/4413.htm> (on file with the North Carolina Journal of Law & Technology).

³⁴ *Id.* at 1.

³⁵ Huerta, *supra* note 31, at 2.

³⁶ *Id.*

³⁷ See *id.* at 1.

³⁸ See *id.* at 4.

³⁹ *Id.*

that directly addresses online charter schools, and at least one state has prohibited the creation of cyber-charters.⁴⁰

In Arizona, an estimated 3,500 students will be enrolled in public cyber schools for the 2004–2005 school year.⁴¹ Arizona's law does not place a limit on the number of students who may enroll in these public schools, and there are "no school district boundaries" for such schools.⁴² Since 1998, the number of cyber schools in Arizona has increased from four to fourteen; seven of the schools were operated by the governing boards of individual charter schools, and seven were operated by the boards of "traditional school districts."⁴³ Cyber education in Arizona comes in a variety of forms that serve students in kindergarten through twelfth grade. Some students work entirely from home and communicate with teachers by phone or email. Others take some of their classes online and some in a traditional setting. Still others are in a school building daily where they do all learning online but have face-to-face interaction with their teachers.⁴⁴

2. Cyber-charter Controversy

Like most departures from traditional education, cyber-charters have spawned controversy, resulting in specific cyber-charter legislation in some states. The controversy in Pennsylvania provides a good example, as illustrated by legislative history and litigation in that state. Originally, Pennsylvania's cyber-charters were opened under the state's existing charter school legislation. In June 2002, the state adopted legislation that specifically governs cyber-charters in the state.⁴⁵ Prior to this legislation, various groups filed lawsuits to challenge the legality of the state's cyber-

⁴⁰ Anderson, *supra* note 33, at 2. The four states that have enacted legislation are California, Colorado, Ohio, and Pennsylvania. Tennessee has prohibited creation of cyber-charters. *Id.*

⁴¹ Mendoza, *supra* note 30. These schools, while all public, are not all charter schools. *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See, e.g., Huerta, *supra* note 31; see also PA. STAT. ANN. tit. 24, § 17-1741-A (2004).

charters.

A school district seeking to prevent operation of a cyber-charter filed one such suit in July 2001.⁴⁶ The Common Pleas Court of Butler County, Pennsylvania, granted an injunction against starting the school and ruled that cyber-charters were not contemplated by the legislature and thus not authorized by the existing legislation.⁴⁷ The court reasoned that a cyber school was tantamount to home schooling.⁴⁸

In another instance, when several Pennsylvania school districts refused to make the statutorily required payments to cyber-charters, the state department of education withheld portions of subsidy payments to those districts. In September 2001, the school districts jointly sued the state board of education in an attempt to recover the subsidy payments.⁴⁹ Several other school districts and a school board association initiated a comparable action under similar circumstances.⁵⁰ Another case involving a 2002 decision by the Commonwealth Court of Pennsylvania held that school districts and a school boards association did not have standing to challenge the legality of cyber-charters.⁵¹ In early 2002, actions were filed by nine school districts against a cyber-charter in an attempt to prohibit the school from enrolling students from those districts and obtaining funds from the districts.⁵² In December 2003, the Commonwealth Court of Pennsylvania held that non-chartering school districts do not have standing to challenge operation of cyber-charter.⁵³

In January 2002, a different type of lawsuit was filed. A high school student enrolled in a cyber-charter sought a temporary restraining order against her local school district for its refusal to

⁴⁶ Butler Area Sch. Dist. v. Einstein Acad., 60 Pa. D. & C.4th 207 (2001).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Boyertown Area Sch. Dist. v. Dep't of Educ., 797 A.2d 421 (Pa. Commw. Ct. 2002).

⁵⁰ Pa. Sch. Bds. Ass'n v. Zogby, 802 A.2d 6 (Pa. Commw. Ct. 2002) *aff'd per curiam*, 823 A.2d 146 (Pa. 2003).

⁵¹ *Id.*

⁵² Fairfield Area Sch. Dist. v. Nat'l Org. for Children, 837 A.2d 644 (Pa. Commw. Ct. 2003).

⁵³ *Id.*

allow her to participate in its interscholastic basketball program. In July 2004, the United States Third Circuit Court of Appeals held the district's refusal to allow a student enrolled in a cyber-charter to participate in interscholastic basketball did not violate freedom of association or due process, and found that the district's rules were rationally related to a legitimate government interest.⁵⁴

Subsequent to these lawsuits, Pennsylvania adopted legislation specific to cyber-charters.⁵⁵ The new legislation in Pennsylvania will be further discussed where it provides guidance in Part IV, as part of the analysis of North Carolina's current charter school legislation.

3. Online Learning in North Carolina

Currently, there are no cyber-charters in North Carolina. There is, however, significant "virtual" learning occurring in the state. In Cumberland County, North Carolina, a "virtual" public high school called Web Academy opened in 1997 to provide online courses for high school students from around the state.⁵⁶ It is located on the campus of Douglas Byrd High School in Fayetteville, North Carolina, and offers over eighty-five courses to students.⁵⁷ The school provides both full-time and part-time distance learning. In 1999, the SBE approved allocation of \$150,000 to Web Academy to "help develop and implement new Internet-based courses and models to address the needs of students,

⁵⁴ *Angstadt v. Midd-West Sch. Dist.*, 377 F.3d 338 (3d Cir. 2004).

⁵⁵ PA. STAT. ANN. tit. 24, § 17-1741-A (2004).

⁵⁶ See Jessica Barnov, *Perdue Says Web Academy Is 'Model'*, Feb. 27, 2002, available at http://www.ccswebacademy.net/Awards/Articles_Awards.htm (on file with the North Carolina Journal of Law & Technology).

⁵⁷ See CCS Web Academy, *Visit Us*, at <http://www.ccswebacademy.net/Maps/Maps.htm> (last visited Mar. 10, 2005) (on file with the North Carolina Journal of Law & Technology); CCS Web Academy, *Frequently Asked Questions*, at <http://www.ccswebacademy.net/FAQs.htm> (last visited Sept. 8, 2004) (on file with the North Carolina Journal of Law & Technology). According to the school's website, students living outside of Cumberland County may register for Web Academy by getting permission through their local school system, completing an application, and paying tuition for each course. *Id.*

especially students in need of remediation.”⁵⁸ At that time, the program had been in operation for two semesters and served 200 students, including students seeking early graduation, students in need of remediation, and dropouts.⁵⁹

In February 2002, the SBE held a technology issues session.⁶⁰ At that meeting, SBE members were told that in order to further online instruction generally, “policies, procedures, and funds [were] all needed.”⁶¹ At the time, 1,187 students were participating in distance learning via satellite, 390 of those in online courses funded by the Department of Public Instruction.⁶² The advantages of distance learning were discussed at this meeting, which included the “capability of providing low-wealth schools instructional staff to teach specific courses” and allowing schools “with low enrollment to offer a variety of courses” they may not otherwise be able to offer.⁶³ The SBE also noted that some issues surrounding distance learning were being studied: “equity to all children, providing access to equipment and the Internet at school, and providing after-school access to computers for those who do not have home computers.”⁶⁴ In addition, the SBE discussed costs of developing online courses, the need for technical support, and connectivity.⁶⁵

There have been applications to open cyber-charters in North Carolina. In January 2002, Charlotte-Mecklenburg Schools turned down an application for a cyber-charter called New

⁵⁸ N.C. State Bd. of Educ., *SBE Highlights* (May 5–6, 1999), available at <http://www.ncpublicschools.org/sbehighlights/1999/05highlights.html> (on file with the North Carolina Journal of Law & Technology).

⁵⁹ *Id.*

⁶⁰ N.C. State Bd. of Educ., *SBE Highlights* (Feb. 6–7, 2002), available at <http://www.ncpublicschools.org/sbehighlights/feb02highlights.html> (on file with the North Carolina Journal of Law & Technology).

⁶¹ *Id.*

⁶² *Id.*

⁶³ N.C. State Bd. of Educ., *Minutes of the State Board of Education, Chapel Hill, North Carolina*, 3 (Feb. 6–7, 2002), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology).

⁶⁴ *Id.*

⁶⁵ *Id.* at 3–4.

Connections Academy.⁶⁶ The rejection was apparently due to the number of “unanswered questions” and concerns about charter schools and their effectiveness.⁶⁷ Charlotte-Mecklenburg also expressed concern about budgeting for cyber schools. The assistant superintendent of the district said, “Virtual schools are going to have a role in education. . . . [W]e just need to figure out what that place is.”⁶⁸

Also in January 2002, the SBE discussed a cyber-charter application for another New Connections Academy proposed for Granville County, North Carolina.⁶⁹ The school planned to serve grades six through eleven in its first year, and grades five through twelve in subsequent years.⁷⁰ Of five schools chosen as “viable candidates to receive final approval” for charters, New Connections, the only cyber school in the applicant pool, ranked third in order of preference.⁷¹ At the meeting, the SBE discussed the inevitability of virtual schools, and whether North Carolina wanted to “lead or follow.”⁷²

At its meeting the following month, the same meeting where it held its technology issues session, the SBE rejected the application and approved a non-cyber-charter, which the SBE had initially ranked lower than New Connections.⁷³ Before the SBE voted, Superintendent Mike Ward indicated he valued virtual learning’s potential, but thought thorough study was needed “to capture the opportunities” of such learning.⁷⁴ Superintendent Ward did not want virtual learning to replace the face-to-face interaction of students and teachers, and suggested face-to-face interaction should only be substituted when the best possible

⁶⁶ *HR Newswatch*, *supra* note 5.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Minutes*, Jan. 9–10, 2002, *supra* note 5.

⁷⁰ Barry Smith, *State Votes On Virtual Schools*, SHELBY STAR, Feb. 7, 2002, available at http://www.shelbystar.com/news2002/_disc4/00000127.htm (on file with the North Carolina Journal of Law & Technology).

⁷¹ *Minutes*, Jan. 9–10, 2002, *supra* note 5.

⁷² *Id.*

⁷³ N.C. State Bd. of Educ., (*Highlights*, Feb. 6–7, 2002), *supra* note 60.

⁷⁴ N.C. State Bd. of Educ., (*Minutes*, Feb. 6–7, 2002), *supra* note 63, at 15.

learning could be provided in no other manner.⁷⁵ He suggested virtual schooling “has the potential to flip the philosophy of face-to-face teacher/student interaction as the optimal mode and virtual learning as the supplemental and alternative mode on its back.”⁷⁶ Ward stated that the New Connections application raised issues about the SBE’s obligations with respect to monitoring, compliance, oversight, and accountability.⁷⁷ He also expressed concern that such a charter would set a “precedent of state subsidies for home schooling” that would be difficult to reverse.⁷⁸ Superintendent Ward’s concluding statement to the SBE was, “I respectfully submit to you—not this way and not this time.”⁷⁹

Another SBE member expressed a desire to develop standards for cyber-charters before “plunging ahead.”⁸⁰ The North Carolina School Boards Association took the position that the charter should not be approved because it would be difficult to plan local budgets if local school systems did not know how many of their students would enroll in the virtual school.⁸¹ In addition, the Association expressed concern about loss of funding for local systems if previously home schooled students enrolled in cyber-charters and questioned how cyber-charters could ensure accountability and facilitate socialization with other children.⁸²

While the SBE agreed that the cyber-charter application “offered a great concept on virtual learning and that they fully supported virtual learning,” it determined that it was not the appropriate time or place for approval of the charter.⁸³ The SBE determined further study was necessary to resolve issues around this type of learning before a cyber-charter could be approved, and indicated concern that a cyber-charter could affect all local school districts because of the potential to enroll students from any district

⁷⁵ *Id.* at 14.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Smith, *supra* note 70.

⁸¹ *Id.*

⁸² *Id.*

⁸³ N.C. State Bd. of Educ., (*Minutes*, Feb. 6–7, 2002), *supra* note 63, at 15.

in the state.⁸⁴ This, the SBE reasoned, was not the way charters were “envisioned”; “the intent of the charter school movement was to create competition within existing geographic boundaries, and this proposal’s boundaries [were] not limited.”⁸⁵ The SBE decided to develop a task force to create a framework for virtual learning in the state that would “guarantee access and equity to every citizen.”⁸⁶

Significantly, legal counsel present at the meeting indicated that as long as applicants met qualifications, they could not be denied charters if open slots were available.⁸⁷ The SBE went on to deny a charter to New Connections, instead granting charters to three other non-cyber schools, meeting the 100-cap limit.⁸⁸ According to the SBE’s meeting “highlights,” the school was eligible to be reconsidered for a charter if space within the 100-cap limit became available before March 15, 2002.⁸⁹ Nonetheless, SBE members “confirmed their support for ‘virtual’ learning and their plans to pursue the issue.”⁹⁰ The following month, at the SBE’s March 2002 meeting, a charter school rescinded its charter and the open slot was given to the other remaining applicant, despite the SBE’s higher percentage ranking of New Connections.⁹¹ The SBE reiterated its “intent . . . to include public-private partnerships in the development of a statewide virtual school, to address the issues of equity and access, and to expand content above and beyond the confines of the Standard Course of Study.”⁹²

By its June 2002 meeting, the SBE’s new Digital Learning Task Force recommended a platform to guide digital learning in

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ N.C. State Bd. of Educ., *Minutes of the State Board of Education: Raleigh, North Carolina*, 16, 33 (Mar. 6–7, 2002), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology).

⁹² *Id.* at 33.

North Carolina.⁹³ The Task Force defined “digital learning” as “all electronically delivered education that can be accessed real time (synchronously) or any time (asynchronously) by all public school students and educators in an instructionally sound environment.”⁹⁴

The Task Force’s vision was that all public school students and teachers would have equal access to digital learning. It stressed that the learning should be based upon “developmentally appropriate, research-based practices, and led by highly trained teachers and facilitators in a safe, technologically sound environment.”⁹⁵ In addition, the Task Force suggested that digital learning would expand educational opportunities, encourage life-long learning, and prepare students “as global citizens.”

Furthermore, the Task Force thought the use of online learning would create business partnerships between schools, communities, and businesses.⁹⁶ The Task Force also stated its belief that the state should maintain a role in assessing online courses, that privacy and security safeguards for children must be in place, and that teachers must be trained in the media used for instruction.⁹⁷

The Task Force continued to meet and presented its findings and preliminary recommendations to the SBE in October 2002.⁹⁸ The Task Force reached consensus with regard to a plan for cyber learning: (1) “the SBE should remove barriers to distance/virtual learning and proceed toward a more active role in this form of instructional presentation and learning”; (2) a “collaborative effort” should be encouraged by the SBE among “current and future entities”; and (3) the SBE should “approach its oversight and standards setting role with virtual learning/schools in

⁹³ N.C. State Bd. of Educ., *Minutes of the State Board of Education: Raleigh, North Carolina*, 20–21 (June 5, 2002), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ N.C. State Bd. of Educ., *Minutes of the State Board of Education: Raleigh, North Carolina*, 20–21 (Oct. 2, 2002), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology).

essentially the same manner in which it approaches traditional schools.”⁹⁹

The Task Force also indicated there were issues yet to be decided. These included determination of the type of program(s) North Carolina would like to pursue, the types of assessments that would be used, whether a seat time or mastery model would be used, where funding would be found, what curriculum would be followed, and what teacher quality standards would be implemented.¹⁰⁰ The Task Force presented information about virtual learning throughout the United States, as well as costs of implementation.¹⁰¹ As to whether virtual instruction, traditional instruction, or a combination of the two was most effective, the Task Force concluded “the reality of it is that it is impossible to say which one is better,” and that “the social interaction between humans . . . determines if a distance education program fails or succeeds.”¹⁰²

In December 2002, the SBE unanimously approved the following recommendations: (1) that the state develop a virtual school by “aggregating a coalition of existing programs under a single school site”; (2) that high schools be initially targeted for virtual programs, with a plan to later add a middle school component; and (3) that certain principles must be used in determining how credit is awarded for online courses.¹⁰³

⁹⁹ *Id.*

¹⁰⁰ *Id.* “Seat time” is the amount of time students spend in class, and “mastery model” is based on student mastery of the material.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ N.C. State Bd. of Educ., *Minutes of the State Board of Education: Raleigh, North Carolina*, 10, 35 (Dec. 4 & 12, 2002), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology). The Board determined that [o]nce a vendor/course is initially evaluated by the Agency, the following principles must be used in determining how much credit is awarded for online courses: (A) The NC Standard Course of Study competency goals and objectives must be adopted, where available. Nationally validated standards for AP and IB must be used for those specific courses. (B) In the absence of a Standard Course of Study curriculum, the course must be designed such that a typical

In March 2003, the SBE discussed three possible funding models for virtual learning.¹⁰⁴ The first model suggested was an “Appropriated Model,” which is a “school-funded model by legislative appropriation” that allows all students to enroll at no cost to local school administrative units.¹⁰⁵ This model would require private or home school students to pay a fee.¹⁰⁶ The second model is “Tuition-Based Funding” and involves initial funding by legislative appropriation, where local school administrative units pay a fee per course for each student enrolled.¹⁰⁷ The third model is the “Allotment Adjustment Model,” which requires “appropriated funds or reallocation of existing funds for start-up costs and is funded based on student population consistent with current funding formulas.”¹⁰⁸

An interesting development coincided with the previously mentioned SBE meetings. In 2002, the North Carolina General Assembly created the “State Board of Education’s Business and Education Technology Alliance [(“BETA”)].”¹⁰⁹ The purpose of BETA is to ensure that “the effective use of technology is built into the North Carolina School System for the purpose of preparing a globally competitive workforce and citizenry for the 21st century.”¹¹⁰ BETA consists of twenty-seven members, and must:

student would take 135–150 hours to complete. The principal, in consultation with a teacher certified in that content area, is ultimately accountable for determining whether the course is of sufficient depth and breadth and meets the state and/or nationally developed criteria for awarding credit. (C) Where available, end-of-grade tests, end-of-course tests, and post assessments must be used as an indicator of student mastery. (D) Where statewide assessments are not available, the course must be DPI staff-and/or peer-evaluated before posting.

Id.

¹⁰⁴ N.C. State Bd. of Educ., *Minutes of the State Board of Education, Raleigh, North Carolina*, 18 (Mar. 5, 2003), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ N.C. GEN. STAT. § 115C-102.15 (2003).

¹¹⁰ *Id.* § 115C-102.15(b).

(1) advise the SBE on “the development of a vision for a technologically literate citizen in 2025”; (2) advise the SBE on “the development of a technology infrastructure, delivery, and support system that provides equity and access to all segments of the population in North Carolina”; (3) advise the SBE about how to develop professional development opportunities so that teachers will “successfully implement and use technology in public schools for all students”; (4) advise the SBE on how to develop a “Funding and Accountability system to ensure statewide access and equity”; (5) annually report to the SBE on the progress of BETA’s recommendations; and (6) annually report to a committee of the North Carolina General Assembly.¹¹¹ Pursuant to this statute, the members of BETA were appointed, and BETA developed recommendations it presented to the SBE in January 2005.¹¹² At its February 2005 meeting, the SBE unanimously approved the recommendations of BETA, which included a recommendation to create a virtual school.¹¹³

III. Overview of North Carolina’s Charter Schools Act

North Carolina’s Charter Schools Act was adopted in 1996 “to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently of existing schools.”¹¹⁴ The Act allowed for creation of a system of charter schools that would improve and increase learning opportunities for all students, placing special emphasis on expansion of experiences for at risk and academically

¹¹¹ *Id.* §§ 115C-102.15(f)(1)–(6).

¹¹² N.C. State Bd. of Educ., *Minutes of the State Board of Education, Carthage and Lumber Bridge, North Carolina*, 18 (Jan. 5–6, 2005), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology). More information about the Business and Education Technology Alliance is available at <http://www.betanc.com>.

¹¹³ N.C. State Bd. of Educ., *Minutes of the State Board of Education, Raleigh, North Carolina*, 18 (Feb. 2–3, 2005), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology). More information about the Business and Education Technology Alliance is available at <http://www.betanc.com>.

¹¹⁴ N.C. GEN. STAT. § 115C-238.29A (2003).

gifted students.¹¹⁵ In addition, the Act was intended to encourage the use of teaching methods that are different, innovative, and create new professional opportunities for teachers.¹¹⁶ Another goal of the Act was to provide expanded educational opportunity choices to parents and students.¹¹⁷ Finally, the Act would hold charter schools accountable for meeting measurable student achievement results, as well as provide a means of transition from rule-based to performance-based accountability systems.¹¹⁸

IV. Analysis of Cyber-charters under North Carolina's Current Statutes & Regulations

This Part (1) describes specific provisions of North Carolina's current charter school legislation, as well as other statutes and regulations that pertain to charter schools; (2) attempts to consider potential issues that may arise if North Carolina's statutes and regulations as currently written are applied to cyber-charters; and (3) attempts to highlight potential problems and offer potential solutions, some of which have been offered by legislation in Pennsylvania and other states.

A. Organizational Considerations

1. Application & Approval

Under the North Carolina statute, charter schools must be operated by private nonprofit corporations.¹¹⁹ "Any person, group of persons, or nonprofit corporation" may apply to establish a charter school.¹²⁰ At a minimum, applications must include, among other things, information about programs, achievement, admission, budgeting, employees, and facilities.¹²¹ Charters may

¹¹⁵ *Id.* §§ 115C-238.29A(1)–(2).

¹¹⁶ *Id.* §§ 115C-238.29A(3)–(4).

¹¹⁷ *Id.* § 115C-238.29A(5).

¹¹⁸ *Id.* § 115C-238.29A(6).

¹¹⁹ *Id.* § 115C-238.29E(b).

¹²⁰ *Id.* § 115C-238.29B(a).

¹²¹ *Id.* § 115C-238.29B(b). Specifically, this statute requires that the application include: (1) a program description; (2) achievement goals for students and how

be initially approved by the local board of education where the school hopes to be located, by the SBE, or by the board of trustees of a constituent institution of the University of North Carolina.¹²² The statute encourages preference for “applications that demonstrate the capability to provide comprehensive learning experiences to students . . . at risk of academic failure.”¹²³ The final approval of the application rests with the SBE.¹²⁴ In granting final approval, the SBE must “consider any information or comment[s] it receives from a local board” and must “consider the impact on the local school administrative unit’s ability to provide a sound basic education to its students.”¹²⁵ Final approval must be granted by the SBE if the application meets the requirements of the Charter Schools Act and the SBE and would achieve at least one of the Act’s purposes.¹²⁶

The charter school legislation does not allow more than five charters to be granted per year in any local administrative unit and places a statewide cap of 100 on the number of charter schools.¹²⁷ If there are more than five applications for any one local unit or more than 100 schools that meet approval standards, the SBE must give priority to “applications that are most likely to further State education policies and to strengthen the educational

achievement will be demonstrated; (3) the school’s governance structure; (4) the local school system in which the school will be located; (5) admission policies and procedures; (6) proposed budget and evidence of the financial plan’s soundness; (7) requirements and procedures for program and financial audits; (8) information about how the school will comply with the requirements of the Charter Schools Act; (9) a description of insurance coverage; (10) the term of the charter; (11) employee qualifications; (12) procedures for returning enrollees to a regular public school; (13) number of students to be served (must be no less than sixty-five unless there is a compelling reason); (14) minimum number of teachers to be employed (must be no less than three); (15) facility information; and (16) information about the school’s administrative services. *Id.*

¹²² *Id.* § 115C-238.29B(c). This statute requires that a constituent institution of the University of North Carolina may initially approve a charter if that institution “is involved in the planning, operation, or evaluation of the charter school.” *Id.*

¹²³ *Id.* § 115C-238.29C(b).

¹²⁴ *Id.* § 115C-238.29B(c).

¹²⁵ *Id.* § 115C-238.29B(d).

¹²⁶ *Id.* § 115C-238.29D(a).

¹²⁷ *Id.* § 115C-238.29D(b).

program offered in the local school administrative units in which they are located.”¹²⁸

Significantly, many for-profit corporations are “lining up to provide curricula and management and technical services” to cyber-charters.¹²⁹ In fact, some corporations have advanced start-up money to such schools.¹³⁰ There may be cause for concern regarding financial motives of for-profit corporations allowed to create cyber-charters.¹³¹ In contrast to the North Carolina statute, the Pennsylvania statute specifically provides that cyber-charters “may not be granted to a for-profit entity.”¹³² Though North Carolina’s current legislation indicates charter schools must be operated by private nonprofit corporations, explicit mention with respect to cyber-charters may be desirable, given the possible incentives and potential for fraud.

North Carolina’s approval scheme could work well for cyber-charters. North Carolina may, however, wish to require initial approval of all cyber-charters by the SBE to encourage both uniformity and the development of such schools. If this is done, local school systems should be given an opportunity to present information about the potential impact of the cyber-charter on the local school system.

Including cyber-charters within the statutory cap of 100 could also pose problems. The possibility certainly exists that if a cyber-charter application meets the state’s qualifications and there are less than 100 charter schools and no other applicants, the SBE will have to grant a charter to a cyber school. The state may want to exclude cyber-charters from the cap of 100 and provide a separate cap on the number of cyber-charters that may be granted in the state and in any local unit at any given time. In addition, it

¹²⁸ *Id.*

¹²⁹ Andrew Trotter, *Cyber Schools Carving Out Charter Niche*, EDUC. WK., at <http://secure.edweek.org/ew/newstory.cfm?slug=08cyber.h21> (Oct. 24, 2001) (on file with the North Carolina Journal of Law & Technology).

¹³⁰ *Id.*

¹³¹ Greg Toppo, Associated Press, *The New Class of Education*, OLEAN TIMES HERALD, July 21, 2002, available at http://sched.sbu.edu/faculty/atenglund/educ505/olean_times_herald_virtual_july_2002.htm (on file with the North Carolina Journal of Law & Technology).

¹³² PA. STAT. ANN. tit. 24, § 17-1703-A (2004).

may be wise for the state to retain the right not to approve any cyber-charters.

2. Liability & Insurance

Because the board of directors of a charter school may sue and be sued, charter schools are required by statute to obtain liability insurance as required by the SBE.¹³³ The SBE has determined that charter schools are required to have, at minimum, liability insurance coverage for (1) errors and omissions; (2) general liability; (3) boiler and machinery; (4) real and personal property; (5) fidelity bonds; (6) automobile liability; and (7) workers' compensation.¹³⁴ Civil liability for the acts or omissions of a charter school may not attach to the entity that provided the initial charter, the SBE, or the members or employees of either.¹³⁵

Cyber-charter liabilities may be somewhat different than "brick and mortar" schools. Examination of the specifics of each cyber-charter may reveal varying insurance requirements. While the amount of real property insurance coverage may be lessened due to the lack of physical space a cyber school occupies, additional insurance may be necessary for the school's technology requirements. It may not be reasonable to expect a cyber-charter to have liability insurance for "boiler and machinery." There also may be less need for expansive automobile liability insurance, as there may very well be no requirement that students be transported anywhere. It would be wise, therefore, to tailor insurance requirements to address the needs of cyber-charters.

3. Facilities

Cyber-charters will not necessarily require the same type of facilities as a "brick and mortar" school. Indeed, freedom from the

¹³³ N.C. GEN. STAT. § 115C-238.29F(c) (2003).

¹³⁴ N.C. ADMIN. CODE tit. 16, r. 6G.0500 (Mar. 1999); *see also* N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-U-004 (2002), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

¹³⁵ N.C. GEN. STAT. § 115C-238.29F(c)(2) (2003).

burden of constructing facilities for learning is probably why the number of cyber-charters is growing so rapidly.¹³⁶ It is quite possible, however, that a cyber-charter may need facilities to bring students together. For example, students may come together for particular learning experiences or athletic activities.

The North Carolina statute provides that charter schools may lease “any available building or land” from the local board where “the charter school will be located,” unless the local board demonstrates that such a lease is not economically or practically feasible or that the board does not have adequate space for its own enrollment needs.¹³⁷ If the geographic area of a cyber-charter is not clearly defined or if the cyber-charter is not assigned to a local board of education, issues could arise in determining which local board is obligated by statute to lease available space to the cyber-charter. North Carolina could change its statute to require a determination of which physical school district cyber-charters will be assigned. It may be that allowing the cyber-charter to make this determination will work. If, however, some districts are perceived as more advantageous in terms of access to facilities, multiple cyber-charters might pick the same district. This could cause a burden for local administrative units. North Carolina may want to maintain some control over cyber-charter assignments to physical districts in order to ensure the need for the facilities and that the burden is diversified over a wider geographic area.

Another consideration regarding facilities is ensuring that there is at least some central physical facility where records may be housed, where “snail mail” may be sent, and, if necessary, where process can be served. Pennsylvania requires cyber-charters to maintain an administrative office in the state, which will be considered the school’s principal place of business.¹³⁸ The administrative office is where all student records must be maintained.¹³⁹ North Carolina should consider the addition of a similar provision to its statute. This would also help clarify the “location” of the cyber-charter for facility-use purposes.

¹³⁶ Trotter, *supra* note 129.

¹³⁷ N.C. GEN. STAT. §115C-238.29E(e) (2003).

¹³⁸ PA. STAT. ANN. tit. 24, § 17-1743-A(h) (2004).

¹³⁹ *Id.*

4. Accountability/ Statewide Testing Program

Once a charter school has been approved, if initial approval came from the local board, the charter school is accountable to that local board. All other charter schools are accountable to the SBE but may agree to be accountable to the local board of education where the charter school is located.¹⁴⁰ Charter schools must assess students as required by the SBE.¹⁴¹ All eligible students are required to take state tests.¹⁴² During the first year of operation, if fewer than seventy-five percent of students enrolled at a charter school have end-of-grade or end-of-course test scores from the previous year, student performance results on state tests will not be reported during the first year.¹⁴³ By the next year, however, scores must be reported.¹⁴⁴

North Carolina may want to make all cyber-charters directly accountable to the SBE, at least initially, in order to provide centralized oversight. This oversight would allow the SBE to guide the development of a new type of school for the state and encourage uniformity. Though local boards certainly have experience supervising “brick and mortar” schools, it may be more plausible, at least initially, for the SBE to oversee what will likely be a small number of cyber-charters, until the state, as a whole, gains familiarity with this type of school.

Pennsylvania specifically requires its Department of Education to annually assess whether a cyber-charter is meeting the goals of its charter and to evaluate the school’s performance on the state’s standardized tests.¹⁴⁵ A “comprehensive review” is required prior to the grant of a renewal.¹⁴⁶ In addition, cyber-

¹⁴⁰ N.C. GEN. STAT. § 115C-238.29E(a) (2003).

¹⁴¹ *Id.* § 115C-238.29F(d)(3).

¹⁴² N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-U-001 (1997), available at <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

¹⁴³ *Id.* This policy also states that in the second year and all subsequent years of a charter school’s operation, it must follow the ABCs Accountability Model used in North Carolina’s public schools. *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ PA. STAT. ANN. tit. 24, § 17-1742-A (2004).

¹⁴⁶ *Id.*

charters must provide “ongoing access to all records, instructional materials, and student and staff records.”¹⁴⁷ Pennsylvania requires that local school districts provide cyber-charters with records for enrolled students.¹⁴⁸

Another consideration for North Carolina is how to provide cyber-charters with access to the statewide testing program, in terms of methods, facilities, and authenticity. Pennsylvania requires local school districts to provide cyber-charters with “reasonable access” to district facilities for administration of standardized tests.¹⁴⁹ In addition, a cyber-charter application must include information about (1) the manner in which academic progress will be assessed; (2) how commercially prepared standardized tests that will be used; and (3) how the school will “[e]nsure the authenticity of student work and adequate proctoring of examinations.”¹⁵⁰

North Carolina should also consider that unless it limits or prohibits enrollment by previously home-schooled students, the possibility exists that less than seventy-five percent of students in a cyber-charter’s first and subsequent years of operation would have end-of-grade or end-of-course test scores from the statewide testing program. As mentioned above, some previously home-schooled students may have some sort of nationally standardized test scores. Without tests scores from the statewide testing program, however, those scores would not be useful for score reporting and accountability purposes. Consideration must also be given to the policy that a school’s charter may be revoked if it is designated as low-performing.¹⁵¹ Certainly the state wants to maintain accountability, but again, if a significant percentage of students were previously home schooled, cyber-charters may immediately encounter revocation difficulty if those students have not followed the same curriculum as students who come to the cyber-charter from other public schools.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* § 17-1744-A(1). This includes “transcripts, test scores, and a copy of any individualized education program for that student.” *Id.*

¹⁴⁹ *Id.* § 17-1744-A(2).

¹⁵⁰ *Id.* § 17-1747-A.

¹⁵¹ *Id.*

North Carolina may also face accountability problems if cyber-charters are confused with home schools. North Carolina statute defines "home school" as "a nonpublic school in which one or more children of not more than two families or households receive academic instruction from parents or legal guardians, or a member of either household."¹⁵² Statutes require that home-schooled students in grades three, six, and nine must be given a nationally standardized test on an annual basis.¹⁵³ Though the statute does indicate that home schools are nonpublic, it is probably worthy of explicit mention that cyber-charters are public schools and require compliance with the standardized testing program, despite the possibility that a large portion, if not all, of the learning may occur in private residences.

5. Admission and Enrollment Requirements

By statute, any child who may enroll in public school is qualified for admission to a charter school.¹⁵⁴ No student may be required to enroll in a charter school.¹⁵⁵ A student's admission to a charter school is not to be determined by the school attendance area or the local school administrative unit in which the student resides.¹⁵⁶ Once a student is enrolled, the student is not required to reapply.¹⁵⁷ Charter schools must enroll any eligible student "who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building."¹⁵⁸ When that is the case, student admission is decided by lot.¹⁵⁹ A charter school may, however, refuse to admit any student "who has been expelled or suspended from a public school . . . until the period of suspension or expulsion has expired."¹⁶⁰ Beginning with the second year of operation, and each subsequent

¹⁵² N.C. GEN. STAT. § 115C-563(a) (2003).

¹⁵³ See *id.* § 115C-549, 115C-557.

¹⁵⁴ *Id.* § 115C-238.29F(g)(1).

¹⁵⁵ *Id.* § 115C-238.29F(g)(2).

¹⁵⁶ *Id.* §§ 115C-238.29F(g)(3)–(4).

¹⁵⁷ *Id.* § 115C-238.29F(g)(6).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* § 115C-238.29F(g)(7).

year, the SBE must allow a charter school to increase its enrollment by up to ten percent.¹⁶¹ If a charter school wishes to increase enrollment by more than ten percent, a request must be made to the SBE.¹⁶²

SBE policy requires that charter schools have “open admission procedures and policies” and provide racial and ethnic balance in student enrollment.¹⁶³ Within one year after beginning operation, the racial and ethnic composition of a charter school’s student population must reflect the composition of the school system where the charter school is located.¹⁶⁴ If the school was established to target a “specific population,” its composition must “reflect the percentage of the targeted population in the district.”¹⁶⁵ Charter schools that fall outside the “acceptable range” will be investigated by the Charter Schools Advisory Committee “in order to determine whether or not the charter school made a good faith effort for diversity during enrollment,” and to recommend appropriate course of action.¹⁶⁶

The Charter Schools Act proscribes discrimination “against any student on the basis of ethnicity, national origin, gender, or disability.”¹⁶⁷ Unless provided by law or the mission statement in the school’s charter, student admission may not be based on intellect, achievement, aptitude, athletic ability, disability, race,

¹⁶¹ *Id.* § 115C-238.29D(d).

¹⁶² N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-U-000 (1997), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

¹⁶³ N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-U-003 (1998), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

¹⁶⁴ *See* N.C. GEN. STAT. § 115C-238.29F(g)(5) (2003); N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-U-003 (1998), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology). Percentages must “fall within the range exhibited by regular, non-magnet, non-special schools in the district.” *Id.*

¹⁶⁵ N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-U-003 (1998), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

¹⁶⁶ *Id.*

¹⁶⁷ N.C. GEN. STAT. § 115C-238.29F(g)(5) (2003).

creed, gender, national origin, religion, or ancestry.¹⁶⁸ A charter school may give priority to the siblings of students enrolled in the charter school who were admitted the previous year and children of the charter school's principal, teachers, and teacher assistants.¹⁶⁹

North Carolina should take into consideration that restrictions on the "geographic reach" of cyber-charters would reduce the potential number of students.¹⁷⁰ A reduction in the potential number of students may also affect the diversity of the schools' student populations. It may also be difficult to monitor enrollment in a cyber-charter.¹⁷¹ Pennsylvania has offered one solution to this problem. The Pennsylvania statute requires parents and cyber-charters to notify the student's residential school district within fifteen days of a child's enrollment in the cyber-charter.¹⁷²

According to a press release from the North Carolinians for Home Education ("NCHE"), there are currently over 50,000 students in North Carolina who are home-schooled.¹⁷³ There is evidence that when cyber-charters are created, they enroll a large number of students who were previously home schooled.¹⁷⁴ An analysis of one for-profit education company, K12 Inc., "found that sixty percent of the academy's students were previously home-schooled, and fifteen percent came from private schools or their

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* There are some limitations on this:

In addition, and only for its first year of operation, the charter school may give enrollment priority to children of the initial members of the charter school's board of directors, so long as (i) these children are limited to no more than ten percent (10%) of the school's total enrollment or to twenty students, whichever is less, and (ii) the charter school is not a former public or private school.

Id.

¹⁷⁰ Trotter, *supra* note 129.

¹⁷¹ *Id.*

¹⁷² PA. STAT. ANN. tit. 24, § 17-1748-A (2004).

¹⁷³ Press Release, North Carolinians for Home Education, N.C. Homeschool Students Top 50,000 Statewide, at <http://nche.com/pr-5000.html> (last visited Mar. 8, 2004) (on file with the North Carolina Journal of Law & Technology).

¹⁷⁴ "Home school" is defined as "a nonpublic school in which one or more children of not more than two families or households receive academic instruction from parents or legal guardians, or a member of either household." N.C. GEN. STAT. § 115C-563 (2003).

schooling history was unavailable.”¹⁷⁵ Only twenty-five percent of the academy’s students came directly from public education. “Some critics say the online schools are nothing more than glitzy versions of home schooling and are thus not deserving of public money.”¹⁷⁶ It has been suggested that virtual charter schools use “public school dollars to fund private-style education.”¹⁷⁷ In an effort to address this issue, Pennsylvania only requires that cyber-charters report increases or decreases in enrollment of thirty percent or more.¹⁷⁸ North Carolina might need a similar approach for cyber-charters.

6. Transportation

Charter schools may provide transportation for enrolled students, and must not allow transportation to be “a barrier to any student who resides in the local school administrative unit in which the school is located” to attending the school.¹⁷⁹ Though it may not be needed on a regular basis, cyber-charters may require transportation for face-to-face meetings between teachers and students. North Carolina might need to contract with school districts, a transportation company, or determine to provide its own transportation for cyber-charters. In addition, transportation may be needed if cyber-charters enroll children from more than one district. As the student body of a cyber-charter spreads over a increasingly wide geographic area, transportation could become exponentially more costly and difficult to coordinate.

¹⁷⁵ ESchool News Online, *Grants to Bennett’s K12 Inc. Challenged*, at <http://www.eschoolnews.com/news/Pfshowstory.cfm?ArticleID=5220> (Aug. 16, 2004) (on file with the North Carolina Journal of Law & Technology).

¹⁷⁶ Trotter, *supra* note 129.

¹⁷⁷ Shira J. Boss, *Virtual Charters: Public Schooling, At Home*, THE CHRISTIAN SCI. MONITOR, Jan. 8, 2002, at 14 *available at* <http://www.csmonitor.com/2002/0108/p14s1-lepr.html> (on file with the North Carolina Journal of Law & Technology).

¹⁷⁸ PA. STAT. ANN. tit. 24, § 17-743-A(b) (2004).

¹⁷⁹ N.C. GEN. STAT. § 115C-238.29F(h) (2003).

7. Non-renewal/Revocation of Charters

North Carolina's Charter Schools Act allows initial charters to be given for a period no longer than ten years, and renewals may be for no more than ten years.¹⁸⁰ Charters may be revoked or denied renewal for any of the following reasons:

- (1) Failure to meet the requirements for student performance contained in the charter;
- (2) Failure to meet generally accepted standards of fiscal management;
- (3) Violations of law;
- (4) Material violation of any of the conditions, standards, or procedures set forth in the charter;
- (5) Two-thirds of the faculty and instructional support personnel at the school request that the charter be terminated or not renewed; or
- (6) Other good cause identified.¹⁸¹

At least initially, a grant of ten years may be excessive for a cyber-charter, especially given the rapid speed of changes in technology and the "unknowns" that may be encountered during the first years of a cyber-charter's existence. If North Carolina wants the ten-year period to apply to cyber-charters as well, it may want to consider supplementing or modifying the list of reasons a charter may be revoked or non-renewed.

8. Funding

By statute, the SBE must provide each charter school with the same amount of money per pupil from the amount allotted to other schools in the district as well as provide additional money for children with special needs and with limited English proficiency.¹⁸² The SBE must allow for annual adjustments to a charter school's allocations based on enrollment growth after its

¹⁸⁰ *Id.* § 115C-238.29D(d), *amended* by 2004-203 (H.B. 281).

¹⁸¹ *Id.* § 115C-238.29G(a).

¹⁸² *Id.* § 115C-238.29H(a); *see also* Francine Delany New Sch. for Children v. Asheville City Bd. of Educ., 563 S.E.2d 92 (N.C. App. 2002).

first year of operation.¹⁸³ The local district in which a child enrolled in a charter school resides must give the charter school the same per pupil allocation as each traditional school in the district is receiving.¹⁸⁴ Charter schools also receive allocations from the School Technology Fund on the basis of the school's enrollment numbers.¹⁸⁵ A North Carolina statute also encourages private citizens and organizations to fund and provide other assistance to open and/or operate charter schools.¹⁸⁶

In addition, North Carolina law provides that local boards of education may charge tuition to students of school age who "are not domiciliaries of the State" or "who are domiciliaries . . . but who do not reside within the school administrative unit or district."¹⁸⁷ Tuition charges may not exceed the amount of per pupil local funding.¹⁸⁸

The development of cyber-charters, as mentioned before, has the potential to draw a large number of previously home-schooled students into the public school system. Inevitably, such schools will also draw students away from traditional schools. The reallocation of funds from "brick and mortar" schools to cyber-charters is likely to be controversial, as the public school system in the state already stretches its limited resources thin. In addition,

¹⁸³ N.C. GEN. STAT. §115C-238.29H(a) (2003).

In the event a child with special needs leaves the charter school and enrolls in a public school during the first 60 days in the school year, the charter school shall return a pro rata amount of funds allocated for that child to the State Board, and the State Board shall reallocate those funds to the local school administrative unit in which the public school is located. In the event a child with special needs enrolls in a charter school during the first 60 days in the school year, the State Board shall allocate to the charter school the pro rata amount of additional funds for children with special needs.

Id.

¹⁸⁴ *Id.* § 115C-238.29H(b).

¹⁸⁵ *Id.* § 115C-457.3.

¹⁸⁶ *Id.* § 115C-238.29J(b).

¹⁸⁷ *Id.* § 115C-366.1. This statute also provides that tuition may be charged for non-domiciliary students who live on military bases and students over the age of twenty-one (school age). *Id.*

¹⁸⁸ *Id.*

cyber-charters may initially cost more to operate than brick and mortar schools, but cost less once they are established. If cyber-charters will cost more, it may be possible to require cyber-charters to find additional funding from outside resources. If cyber-charters cost less to operate than "brick and mortar schools," they arguably should receive less per pupil funding. These are issues with which the North Carolina General Assembly will have to wrestle. North Carolina should, at the very least, require the cyber-charters to provide detailed budgeting information.

Furthermore, North Carolina may benefit from allowing out-of-state students to enroll in cyber-charters in order to raise revenues to help support the schools. Such a provision could counterbalance the expenses of educating students who were formerly home-schooled. North Carolina should consider allowing charges that exceed the amount of per pupil total funding for cyber-charters, particularly if out-of-state students are allowed to enroll.

B. Student Considerations

There are a number of benefits to cyber-charters that may not be available in "brick and mortar" schools. Cyber-charters have the potential to serve students who were previously not well-served in public schools, including students who are home schooled, live in remote areas, have health or emotional problems, need a more flexible schedule to accommodate work, are incarcerated, or previously dropped out of school.¹⁸⁹ Students enrolled in cyber-charters have flexible schedules that allow them to complete their work at a time of day convenient to them.¹⁹⁰ These schools may also be able to offer broader curriculums and instruction that is better suited to the needs, abilities, and interests of particular students.¹⁹¹ In addition, cyber-charters often provide students with the technology necessary to participate in the school,

¹⁸⁹ Anderson, *supra* note 33, at 6; see also Mendoza, *supra* note 30; Fulton, *supra* note 2; Kathryn Kraft, Comment, *Cyber Charter Schools—An Analysis of Their Legality*, 56 SMU L. REV. 2327, 2342 (2003).

¹⁹⁰ Anderson, *supra* note 33, at 7.

¹⁹¹ *Id.*

which may ensure participation of students from lower-income families.¹⁹²

1. Instructional Program

At a minimum, a charter school's instructional programs must "meet the student performance standards adopted by the SBE and . . . contained in the charter."¹⁹³ Charter schools must also assess students as required for charter schools by the SBE.¹⁹⁴ Charter schools must comply with SBE policies for the education of children with special needs.¹⁹⁵ North Carolina also requires that charter schools' programs, admission policies, employment practices, and other operations be nonsectarian:¹⁹⁶ they may not be affiliated with nonpublic sectarian schools or religious institutions.¹⁹⁷ North Carolina's statutes require charter schools to provide instruction for no less than 180 days each year.¹⁹⁸

North Carolina should maintain the requirement that its instructional program meet standards required by the SBE. Obviously, the nonsectarian requirements should also remain in place for cyber-charters.

Additional benefits of cyber-charters include the opportunity to "tailor and pace a curriculum for a particular student."¹⁹⁹ It has been suggested that virtual schooling "tries to combine the strengths of home-schooling, such as individual attention, with the advantages of a structured and supervised curriculum."²⁰⁰ In addition, online courses allow students to take courses not locally offered, or those regularly scheduled courses they are unable to take for some reason.²⁰¹

Concerns with instructional programs of cyber-charters

¹⁹² *Id.*

¹⁹³ N.C. GEN. STAT. § 115C-238.29F(d)(2) (2003).

¹⁹⁴ *Id.* § 115C-238.29F(d)(3).

¹⁹⁵ *Id.* § 115C-238.29F(d)(4).

¹⁹⁶ *Id.* § 115C-238.29F(b).

¹⁹⁷ *Id.*

¹⁹⁸ § 115C-238.29F(d)(1).

¹⁹⁹ Boss, *supra* note 177.

²⁰⁰ *Id.*

²⁰¹ Fulton, *supra* note 2.

vary. These concerns include safety training for lab courses and less effective class discussions because students log on at different times.²⁰² Additional concerns are social isolation, which may be countered by organized outings and community extracurricular activities,²⁰³ and ensuring that students have the necessary computer skills to participate in an online curriculum. Policymakers must weigh such concerns against the benefits of cyber-charter education.

Pennsylvania requires that its cyber-charter applications include “[a] specific explanation of any cooperative learning opportunities, meetings with students, parents and guardians, field trips, or study sessions.”²⁰⁴ Pennsylvania also requires applications to include the school’s curriculum and the number of courses required for students.²⁰⁵ In addition, the application must explain how instruction will be delivered, how academic progress will be assessed, and how teachers will communicate with students and parents.²⁰⁶ California requires districts offering online courses to develop and implement a policy addressing the computer skills necessary for students to take the course.²⁰⁷

The requirement of a 180-day instructional year may be more difficult to apply or enforce than in traditional schools, especially given that cyber-charters are likely to allow students more flexibility to move through the curriculum at their own pace. For some students, it may require more than 180 days. For others, the materials that would be part of a standard instructional year might take half that time. North Carolina should give consideration to the importance of “seat time.”²⁰⁸ For instance, *keeping* the 180 day requirement might encourage some students to advance much further than they would in a traditional academic setting. Attention will have to be given to ensuring that the curriculum is broad enough and challenging enough to allow for

²⁰² Toppo, *supra* note 131.

²⁰³ Boss, *supra* note 177.

²⁰⁴ PA. STAT. ANN. tit. 24, § 17-1744-A (2004).

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ CAL. EDUC. CODE § 51705.3 (j)(10) (2004).

²⁰⁸ “Seat time” is the amount of time students spend “in class.”

students to progress as far as they are able.

2. Instructional Materials

North Carolina's charter school statutes do not address how instructional materials will be provided. Cyber-charters will inherently require that students have access to certain electronic media and devices (e.g. computers, monitors, printers, the Internet). Pennsylvania's cyber-charter statutes require cyber-charters to provide (1) all instructional materials, (2) all equipment, including a computer, monitor, and printer, and (3) "all technology and services necessary for the on-line delivery of the curriculum and instruction."²⁰⁹ In addition, the cyber-charter's application must include a description of the technical support that will be made available to students and their parents or guardians.²¹⁰ Given North Carolina's stated goal of equity to all children, the state may wish to consider adding a provision like Pennsylvania's.²¹¹ Though perhaps not initially, limiting technical support access to those students whose families can afford it may over time lead to the constructive exclusion of lower-income students.

In North Carolina, students and their parents or legal guardians can be held liable for "damage to school buildings, furnishings, and textbooks."²¹² Given the types of equipment necessary for cyber learning, including computers and software, North Carolina should be explicit about the kinds of damage to any state-provided equipment for which students enrolled in cyber-charters and their parents or guardians can be held liable. Consideration must be given to the fact that equipment will be located in the home and may very well be used by other members

²⁰⁹ PA. STAT. ANN. tit. 24, § 17-1743-A(e) (2004). For "technology and services," the cyber charter school may also reimburse. Pennsylvania is "not liable for any reimbursement owed to students, parents or guardians by a cyber charter school" for technology and services. *Id.*

²¹⁰ PA. STAT. ANN. tit. 24, § 17-1747-A(9) (2004).

²¹¹ See N.C. State Bd. of Educ., *Minutes of the State Board of Education, Chapel Hill, North Carolina*, 3 (Feb. 6-7, 2002), available at http://www.ncpublicschools.org/sbe_meetings/ (on file with the North Carolina Journal of Law & Technology).

²¹² N.C. GEN. STAT. § 115C-398 (2003).

of the household. The state may also want to consider damage preventative measures like providing surge protectors to students to prevent damage from power outages and providing software that protects against spyware and viruses.

3. Health & Safety

Charter schools are required by statute to “meet the same health and safety requirements” as those required of a local school administrative unit.²¹³ The North Carolina statute waives safety and sanitation requirements for schools that operate in private residences.²¹⁴ North Carolina public schools are required by statute to operate school food programs in compliance with the National School Lunch Program.²¹⁵ Policies and standards are in place for the National School Lunch Program.²¹⁶ North Carolina should consider that currently, many students in the state may get their only healthy meal(s) of the day at school.

In 2002, the SBE enacted a policy regarding physical education in public schools, with a plan to fully implement the policy by the 2006–2007 school year.²¹⁷ In order to address obesity, diabetes, cardiovascular disease, and other problems, the policy requires, among other things, that school districts require all students enrolled in pre-kindergarten, elementary school, and middle school to participate in physical activity.²¹⁸ Additionally, the policy requires that recess be provided for students and may not be taken away as a form of punishment.²¹⁹ According to the director of an online academy in Arizona, “being on the computer

²¹³ *Id.* § 115C-238.29F(a).

²¹⁴ *Id.* § 115C-564.

²¹⁵ *Id.* § 115C-264; *see also* 42 U.S.C. § 1751.

²¹⁶ N.C. ADMIN. CODE tit. 16, r. 6H.0104 (July 1986); *see also* N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-S-000 (1993), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

²¹⁷ N.C. State Bd. of Educ. Policy Manual, Policy ID number HSP-S-000 (2003), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

²¹⁸ *Id.*

²¹⁹ *Id.*

reading all day long is hard on the eyes, and it confines you The students want to go outside and read a book.”²²⁰

North Carolina may wish to require cyber-charters to ensure that students get physical activity, especially given that a large portion of the day of a cyber-charter student will be spent in front of a computer screen. The cyber-charter could schedule physical education activities for groups of students or could perhaps go so far as to require students to keep an exercise log. It may also be worthwhile to have cyber-charters build into the school day a time for students to go play outside as “recess” as well as take into consideration potential effects of computers on students’ eyes. It is worth noting that this would likely require parents to assume the risks and responsibilities of monitoring and directing physical activity.

North Carolina should also consider how to protect its students from harmful or inappropriate online activity and materials, including chat rooms, pornographic websites, or threatening messages from other students. Colorado’s charter school legislation expressly states that charter schools must follow the requirements of the Children’s Internet Protection Act.²²¹ North Carolina could also develop an Acceptable Use Policy that must be followed by teachers and students in cyber-charters.

Other health and safety considerations for North Carolina include how to provide access to school nurses, guidance counselors, psychologists, immunizations, and perhaps even kindergarten health assessments.²²² If teachers cannot “see” their students on a regular basis, they will be unable to detect visible health problems, or signs of child abuse or neglect, and get students the help they may need.

4. Supervision

As might be expected, the North Carolina Charter Schools Act does not have any provisions about how children are to be

²²⁰ Mendoza, *supra* note 30.

²²¹ COLO. REV. STAT. § 22-30.5-104(6)(a) (2004).

²²² Kindergarten health assessments are required by statute. N.C. GEN. STAT. § 130A-440 et seq. (2003).

supervised in school, as it is generally understood that children in public school are supervised. In contrast, cyber-charters may rely heavily on parents for supervision, particularly when the online education situates the child at home. While supervision is an important aspect of schooling for all students, it is perhaps most important for younger students. "[S]ome feel that online courses are best suited for high school students, or in some cases, with greater supervision, middle school students."²²³ California's Online Classroom Pilot Program only allows online instruction to be offered in high schools.²²⁴

Cyber-charters rely heavily on parents and "sometimes refer to parents as 'in-home instructors.'"²²⁵ Some groups have argued that it is improper to depend upon parents to provide much of the instruction.²²⁶ North Carolina's home school statutes require that "persons providing academic instruction in a home school shall hold at least a high school diploma or its equivalent."²²⁷ North Carolina should clarify whether parents of future cyber-charter students would be considered providers of instruction, and if so, whether they would be required to hold a diploma or its equivalent, as this could raise issues of access for some students that wish to enroll. If North Carolina decides to deem parents of cyber-charter students "instructors," the cyber-charter itself will arguably become much more akin to home-schooling. North Carolina should clearly delineate the role of parents, as well as consider how to provide access to cyber-charters for students who do not have a parent with the luxury of staying home with them during the day.

Another concern is that some parents may also have to care for other small children full-time and may not have enough time to

²²³ Fulton, *supra* note 2.

²²⁴ CAL. EDUC. CODE § 51705.3(h) (2003). Schools that are not high schools may, however, request and be granted a waiver. *Id.*

²²⁵ William R. Thomas, *Virtual Learning and Charter Schools: Issues and Potential Impact* 1 (Aug. 2002), available at <http://www.sreb.org/programs/EdTech/pubs/virtualllearningchargerschools.asp> (on file with the North Carolina Journal of Law & Technology).

²²⁶ Trotter, *supra* note 129.

²²⁷ N.C. GEN. STAT. § 115C-564 (2003).

instruct their school-aged children adequately.²²⁸ In addition, parents may need technical training in order to assist their children with virtual education.²²⁹ To alleviate this problem, California requires teachers of its online courses to be “online and accessible to the pupil on a daily basis to respond to pupil queries, assign tasks, and dispense information.”²³⁰ Such a provision may provide for some flexibility in terms of how available a parent has to be for their child during the day.

5. Discipline

The North Carolina Charter Schools Act does not provide for discipline. Discipline of students presents a unique set of issues for students in cyber-charters. The at-home setting may alleviate some types of discipline problems, such as physical fighting, but may increase the likelihood of online misbehavior. It would be unreasonable to suspend or expel a student from their own home, especially when cyber-charters may be an alternative learning setting for students who have been suspended or expelled. Discipline of cyber-charter students by teachers or administrators may be limited to removing privileges (e.g. a class trip), and may rely heavily on parents to administer discipline. North Carolina should consider whether it can, or should, hold parents to statutes that govern corporal punishment.²³¹

6. Attendance

State officials may have difficulty determining the number of hours students enrolled in cyber-charters are actually in school.²³² North Carolina statutes require that all children between the ages of seven and sixteen must “attend school continuously for a period equal to the time which the public school to which the

²²⁸ Boss, *supra* note 177.

²²⁹ *Id.*

²³⁰ CAL. EDUC. CODE § 51705.3(a) (2003).

²³¹ See N.C. GEN. STAT. § 115C-391 (2003).

²³² See Trotter, *supra* note 129.

child is assigned shall be in session.”²³³ The school’s principal (or designee) is required to notify the parent, guardian, or custodian of his child’s excessive absences.²³⁴ Ultimately, if an attendance problem persists, the statute requires that the school notify the department of social services and the district attorney in the county where the child resides.²³⁵

According to the North Carolina Administrative Code, a student must be present in school or at a place approved by an “appropriate school official” for an “authorized school activity.”²³⁶ “These activities include field trips, athletic contests, student conventions, music festivals or similar activities.”²³⁷ Local education agencies may adopt rules that allow teachers to consider absences in grade computation.²³⁸

Pennsylvania requires that cyber-charter applications include explanations of (1) the quantity of “on-line time” required for students; (2) how the school will define and monitor the school day of a student; and (3) truancy, absence, and withdrawal policies, including attendance monitoring methods.²³⁹ North Carolina will need to require cyber-charters to offer similar explanations to ensure students are “present” at school. In addition, the state may want to consider the possibility that “seat time” may not be the appropriate measure of attendance when a student is allowed to work at his or her own pace and is progressing appropriately through the curriculum. These are valid concerns since there are criminal penalties for parents whose children have excessive absences.

²³³ N.C. GEN. STAT. § 115C-378 (2003).

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ N.C. ADMIN. CODE tit. 16, r. 6E.0101 (June 2004); *see also* N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-L-001 (1996), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

²³⁷ *Id.*

²³⁸ N.C. ADMIN. CODE tit. 16, r. 6E.0103 (June 2004); *see also* N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-L-003 (1992), *available at* <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

²³⁹ PA. STAT. ANN. tit. 24, § 17-1747-A (2004).

7. Athletics & Other Extracurricular Activities

Pennsylvania's charter school legislation provides that school districts may not prohibit a charter school student from participating in any of the district's extracurricular activities as long as the student fulfills the requirements for participation and the charter school does not provide the same activity.²⁴⁰ North Carolina should adopt a similar policy, and may even wish to go so far as to encourage cyber-charter students to participate in extracurricular activities with other schools in their districts.

C. Employee Considerations

1. Hiring and Certification

Under North Carolina's Charter School Act, a charter school's board of directors must hire and contract with its own teachers.²⁴¹ Charter school teachers are not considered employees of the local school administrative unit.²⁴² Seventy-five percent of teachers in grades kindergarten through five, and fifty percent of teachers in grades six through twelve, must be certified.²⁴³ All math, science, social studies, and language arts teachers in grades six through twelve must be college graduates.²⁴⁴ No employee of a local school administrative unit may be required to work for a charter school.²⁴⁵ If such a teacher makes a written request for leave of absence to do so, however, the local unit must grant the leave for the length of time requested by the teacher.²⁴⁶

²⁴⁰ *Id.* § 17-1719-A (14) (2004).

²⁴¹ N.C. GEN. STAT. § 115C-238.29F(e)(1) (2003).

²⁴² *Id.* Charter school employees are, however, deemed employees of the local unit for purposes of providing state benefits. *See id.* § 115C-238.29F(e)(4).

²⁴³ *Id.* § 115C-238.29F(e)(1).

²⁴⁴ *Id.* § 115C-238.29F(e)(1), *amended by* Session Law 2004-203 (H.B. 281).

²⁴⁵ *Id.* § 115C-238.29F(e)(2).

²⁴⁶ *Id.* § 115C-238.29F(e)(3).

For the initial year of a charter school's operation, the local school administrative unit may require that the request for a leave or extension of leave be made up to 45 days before the teacher would otherwise report for duty. For subsequent

Cyber-charters offer flexibility and choice for teachers just as they do for students. They offer positions for those teachers, who, for health or other reasons, were unable to teach in traditional schools.²⁴⁷ These benefits for teachers may be countered by the potential for cyber-charters to require fewer teachers to operate instructional programs.²⁴⁸ Another issue is determining who is responsible for teacher and course evaluation.²⁴⁹

2. Role of Teachers

There is no guarantee that teachers who are effective in traditional classrooms are prepared to effectively teach students in a virtual environment.²⁵⁰ This necessitates training in how to teach students online and in use of technology.²⁵¹ In addition to acquiring the skills necessary to teach online, it is necessary that teachers have the skills to teach the subject matter. California requires teachers in its online classroom programs to hold “the appropriate subject matter credential.”²⁵² North Carolina should adopt statutes or policies requiring teacher training and certification in the management of online learning, as well as require that teachers be certified in the subject matter they teach. If North Carolina decides to allow non-certified teachers to instruct students in the online environment, it should ensure that the standards for doing so are at least as rigorous as allowing such lateral entry teachers in “brick and mortar” schools. Online educators could potentially be more difficult to supervise or monitor. In addition, such educators may be responsible for many more students than those in the “brick and mortar” schools. North Carolina should consider a requirement that cyber-charters only employ certified teachers as a precautionary measure.

years, the . . . unit may require that the request . . . be made up to 90 days before . . .

Id.

²⁴⁷ Anderson, *supra* note 33.

²⁴⁸ Trotter, *supra* note 129.

²⁴⁹ See Fulton, *supra* note 2.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² CAL. EDUC. CODE § 51705.3(d) (2003).

3. Criminal History Checks

SBE policy requires the SBE to conduct criminal history checks of (1) charter school personnel responsible for the school's fiscal affairs, and (2) any other charter school personnel or director when "necessary to protect the financial integrity of the school or when necessary to protect the health and safety of students or employees."²⁵³ If an individual refuses to submit to fingerprinting, the SBE may (1) refuse to grant the school's charter; (2) recommend the individual be denied employment; or (3) revoke the school's charter.²⁵⁴ The charter school must pay for the criminal history checks.²⁵⁵ These issues are equally applicable to cyber schools.

V. Conclusion

North Carolina should consider either rewriting its current charter school legislation or writing separate legislation for cyber-charters before a situation arises in which it does not have the choice to turn down a cyber-charter. The state should consider the possible issues that may arise and determine which areas require regulation by statute and which should be delegated to the SBE for regulation. There are many additional considerations not addressed by this Comment.²⁵⁶ Nonetheless, careful consideration of as many issues as possible in making amendments to the existing legislation or in creating new legislation will help to ensure that North Carolina plays an important role in guiding the development of virtual learning in the state as it attempts to provide a "sound basic education" for each of its students.²⁵⁷

²⁵³ N.C. State Bd. of Educ. Policy Manual, Policy ID number EEO-U-002 (1997), available at <http://sbepolicy.dpi.state.nc.us/> (on file with the North Carolina Journal of Law & Technology).

²⁵⁴ *Id.*

²⁵⁵ *Id.*; see also N.C. GEN. STAT. § 115C-238.29K(b) (2003).

²⁵⁶ Other things to consider might include meeting the needs of exceptional and limited English proficient children, as well as things like fire and tornado safety, whether school can be "held" on Sunday, use of substitute teachers, and public records requirements.

²⁵⁷ *Leandro v. State*, 488 S.E.2d 249, 254 (N.C. 1997).