

No. _____

IN THE
Supreme Court of the United States

OKLAHOMA STATEWIDE CHARTER SCHOOL BOARD;
ROBERT FRANKLIN, Chairman of the Oklahoma
Statewide Virtual Charter School Board for the First
Congressional District, et al.,
Petitioners,

v.

GENTNER DRUMMOND, Attorney General for the
State of Oklahoma, ex rel. STATE OF OKLAHOMA,
Respondent.

*On Petition for Writ of Certiorari to the
Supreme Court of Oklahoma*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court has “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson as next friend of O. C. v. Makin*, 596 U.S. 767, 778 (2022). Three times, the Court has applied that principle to strike down “state efforts to withhold otherwise available public benefits from religious organizations.” *Id.* at 778–79 (citing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020)).

Contrary to those precedents, the Oklahoma Supreme Court held that a state can exclude privately owned and operated religious charter schools from its charter-school program by enforcing state-law bans on “sectarian” and religiously affiliated charter schools. The court also held that a charter school engages in state action for constitutional purposes when it contracts with the state to provide publicly funded education. These rulings implicate an entrenched circuit split and present two questions for review:

1. Whether the academic and pedagogical choices of a privately owned and run school constitute state action simply because it contracts with the state to offer a free educational option for interested students.

2. Whether a state violates the Free Exercise Clause by excluding privately run religious schools from the state’s charter-school program solely because the schools are religious, or whether a state can justify such an exclusion by invoking anti-establishment interests that go further than the Establishment Clause requires.

PARTIES TO THE PROCEEDING

Petitioners are the Oklahoma Statewide Charter School Board and Brian T. Shellem, Angie Thomas, Kathleen White, Damon Gardenhire, Becky Gooch, Jared Buswell, Ben Lepak, Ryan Walters, and Dr. Kitty Campbell, all in their official capacities as members of the Oklahoma Statewide Charter School Board.¹

Intervenor below, St. Isidore of Seville Catholic Virtual School, is Petitioner in a separately filed petition in this case.

Respondent is Gentner Drummond, in his official capacity as Attorney General for the State of Oklahoma.

LIST OF ALL PROCEEDINGS

Oklahoma Supreme Court, No. 121,694, *Drummond v. Oklahoma Statewide Charter School Board*, judgment entered June 25, 2024.

¹ After the Oklahoma Supreme Court's decision, the Oklahoma Statewide Charter School Board was substituted for the Oklahoma Statewide Virtual Charter School Board in the court below. That substitution was made necessary by a statutory change, effective July 1, 2024, in which the Statewide Virtual Charter School Board was replaced with the Statewide Charter School Board. Okla. Stat. tit. 70, § 3-132.1(I) (2024).

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DECISIONS BELOW

The Oklahoma Supreme Court's decision assuming original jurisdiction and granting the requested writ of mandamus and declaratory relief has not yet been released for publication in the permanent law reports, but it is available at 2024 OK 53 and 2024 WL 3155937, and it has been reprinted at App.1a–43a.

STATEMENT OF JURISDICTION

The Oklahoma Supreme Court issued the judgment being appealed on June 25, 2024. This Court has jurisdiction under 28 U.S.C. 1257(a).

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

The First Amendment to the United States Constitution provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” U.S. Const. amend I.

Relevant portions of the Oklahoma Constitution and the Oklahoma Charter Schools Act appear at App.44a–137a.

INTRODUCTION

This Court has repeatedly struck down states’ attempts to exclude religious schools, parents, and students from publicly available benefits based solely on their religion. *Trinity Lutheran*, 582 U.S. at 466–67; *Espinoza*, 591 U.S. at 487–88; *Carson*, 596 U.S. at 789. After each ruling, some states sought alternative bases to exclude religious schools. After *Trinity Lutheran*, Montana argued it could exclude based on those schools’ religious *use* of state funds. After *Espinoza*, Maine said it could exclude because religious schools don’t offer the “rough equivalent” of a public-school education. *Carson*, 596 U.S. at 777. Now, post-*Carson*, Respondent, the Oklahoma Attorney General, says his State can exclude religious charter schools because state law labels them “public school[s] established by contract”—and that label somehow transforms a privately owned and operated school’s religious education into state action by a state entity.

The Oklahoma Supreme Court accepted that argument, holding that “a charter school is a public school,” so this Court’s “Free Exercise Trilogy cases do not apply to the governmental action in this case.” App.27a, 29a. Oklahoma can now exclude “sectarian” charter schools—even a privately run, statewide virtual charter school open to all students and funded based on parents’ choices to enroll their students.

That ruling violates this Court’s recent cases. And the underlying state-action ruling implicates a circuit split even Respondent agrees this Court should resolve. App’x to Resp.’s Br. in Resp. (“RA”) at RA021, *Drummond v. Okla. Statewide Virtual Charter School Board*, No. 121,694 (Nov. 21, 2023). The Court should grant the petition, resolve the split, and reverse.

STATEMENT OF THE CASE

I. Legal background

A. The Oklahoma Charter Schools Act allows private organizations to create charter schools, unless those organizations are religious.

The Oklahoma Charter Schools Act authorizes most “private organization[s]” to establish charter schools by contracting with a sponsor. Okla. Stat. tit. 70, § 3-134(C) (2023).¹ But not all private organizations are eligible—religious entities need not apply: “A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution.” § 3-136(A)(2). And the charter school itself must be “nonsectarian in its programs, admission policies, employment practices, and all other operations.” *Ibid.*

The Act seeks to “[e]ncourage the use of different and innovative teaching methods,” “[p]rovide additional academic choices for parents and students,” and “[e]stablish new forms of accountability for schools.” § 3-131. To achieve these goals, the Act exempts charter schools “from all statutes and rules relating to schools, boards of education, and school districts,” except in limited circumstances provided in the Act. § 3-136(A)(5).²

¹ Unless noted, citations to the Charter Schools Act, 70 O.S. 3-130–69, refer to the version of the Act in effect when this case was filed. The Act was amended in 2023, effective July 1, 2024, resulting in a slight reorganization of some provisions. But the relevant substance remains largely the same.

² After the amendments, this provision is at § 3-136(A)(1) (2024).

That exemption means charter schools do not need to follow the State’s core curriculum requirements, and they “may offer a curriculum which emphasizes a specific learning philosophy or style or certain subject areas.” § 3-136(A)(3). Nor must charter schools follow the State’s Teacher and Leader Effectiveness standards, nor hire teachers with “a valid Oklahoma teaching certificate.” Okla. State Dep’t of Educ., *Oklahoma Charter Schools Program* (Apr. 25, 2022), perma.cc/4T8X-MEJH; accord App’x to Pet.’s Appl. (“PA”) at PA435–36, *Drummond v. Oklahoma Statewide Virtual Charter School Board*, No. 121,694 (Oct. 20, 2023).

Oklahoma charter schools have their own governing bodies that are “responsible for [their] policies and operational decisions.” Okla. Stat. tit. 70, § 3-136(A)(8).³ And they hire their own personnel and adopt “personnel policies, personnel qualifications, and [a] method of school governance.” § 3-136(B).⁴

The Act requires charter schools to “comply with all federal regulations and state and local rules and statutes relating to health, safety, civil rights and insurance.” § 3-136(A)(1). And charter schools must be “as equally free and open to all students as traditional public schools.” § 3-135(A)(9).⁵ Thus, they may “not charge tuition or fees.” § 3-136(A)(10).⁶

³ An expanded version of this is now at § 3-136(A)(7) (2024).

⁴ This provision is now at § 3-136(C) (2024).

⁵ This provision is now at § 3-136(A)(9) (2024).

⁶ This provision is now at § 3-136(A)(9) (2024).

B. State funding under the Act is based on parents' choices to enroll students.

All State funding that a charter school receives under the Act depends directly on enrollment. RA003 ¶¶ 8, 9. Accord § 3-142(A),(C) (2024). As the Act explains, a charter school “receive[s] the State Aid allocation ... and any other state-appropriated revenue *generated by its students* for the applicable year.” § 3-142(A) (emphasis added).⁷

For virtual charter schools, State Aid comes in two forms: Foundation Aid and Salary Incentive Aid. RA002 ¶ 5. “The full amount of Foundation Aid and Salary Incentive Aid that a virtual charter school receives is based on pupil count, using an average daily membership (‘ADM’) method of counting pupils.” *Id.* at ¶ 6. That method “begins in the charter school’s first year” with the school’s “actual enrollment of students as of August 1.” *Ibid.* (quoting § 3-142). And the number “is subject to adjustment” based on changes in enrollment. *Ibid.*

“Because the number of enrolled students in a school is a requisite component in the calculation of Weighted ADM, the receipt of any State Aid depends upon the enrollment of students.” RA003 ¶ 8. “With no students, State Aid would be zero.” *Ibid.*

⁷ This language was unchanged by the recent amendments.

C. The Charter School Board authorizes and sponsors statewide charter schools.

In 2012, the Oklahoma Legislature created the Statewide Virtual Charter School Board, giving it “the sole authority to authorize and sponsor statewide virtual charter schools.” Okla. Stat. tit. 70, § 3-145.1(A).⁸ The Act authorizes the Board to “[e]stablish a procedure for accepting, approving and disapproving statewide virtual charter school applications.” § 3-145.3(2).⁹ If the Board approves an application, the Board and applicant negotiate and execute “a contract for sponsorship.” Okla. Admin. Code 777:10-3-3(a)(8). That contract “incorporate[s] the provisions of the [school’s] charter.” § 3-135(A). And the charter itself includes “a description of the personnel policies, personnel qualifications, and method of school governance, and the specific role and duties of the sponsor of the charter school.” § 3-136(B).

The sponsorship contract also addresses “[a]dmission policies and procedures,” the school’s “[m]anagement and administration,” and “how the charter school will comply with the charter require-

⁸ Effective July 1, 2024, the Statewide Virtual Charter School Board was replaced with the Statewide Charter School Board. Okla. Stat. tit. 70, § 3-132.1(I) (2024). The new Board assumed all powers, duties, and responsibilities of the Statewide Virtual Charter School Board, including “the sole authority to sponsor statewide virtual charter schools,” plus the authority to oversee certain non-virtual charter schools. *Ibid.* References to “the Board” or “the Charter School Board” in this petition refer to the entity in place at the relevant time.

⁹ Similarly, the new Board is authorized to “[a]pprove quality charter applications that meet identified educational needs and promote a diversity of educational choices.” § 3-134(I)(3) (2024).

ments.” § 3-135(A). And while the Board “provide[s] ongoing oversight of the charter schools,” Okla. Admin. Code 777:10-3-4(b), each school’s governing board is responsible for the school’s “policies and operational decisions,” Okla. Stat. tit. 70, § 3-136(A)(8); accord § 3-145.3(F).

An approved contract for a statewide virtual charter school has an initial term of five years, and the Board has the option of renewing it. § 3-137(A).¹⁰

II. Factual background

A. St. Isidore is privately organized to serve as a Catholic virtual charter school.

In early 2023, the Archdiocese of Oklahoma City and the Diocese of Tulsa—two private religious entities—formed St. Isidore of Seville Virtual Charter School, Inc., an Oklahoma not-for-profit corporation, to be a Catholic virtual charter school. PA310. The school planned to offer “a learning opportunity for students who want and desire a quality Catholic education, but for reasons of accessibility to a brick-and-mortar location or due to cost cannot currently make it a reality.” PA094. The school has two private members: the Archbishop of the Archdiocese of Oklahoma City and the Bishop of the Diocese of Tulsa. PA314.

St. Isidore’s mission statement is to “educate the entire child ... through a curriculum that will reach students at an individual level, with an interactive learning environment that is rooted in virtue, rigor and innovation.” PA078. And the school has always been up-front about its intent to operate “as a

¹⁰ This is still true under the current version. § 3-137(A) (2024).

Catholic school.” PA092. St. Isidore would “participate[] in the evangelizing mission of the Church,” and it would be an “environment in which Christian education is carried out.” *Ibid.* (citing Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* ¶ 11 (1997)).

St. Isidore also has its own Certificate of Incorporation, PA310, and its own privately appointed board of directors, PA057. Under the terms of its contract with the Charter School Board, St. Isidore would have its own facilities, bank accounts, and equipment. PA004, 005, 012 (Cont. §§ 4.3, 5.2, 7.17). It would also be responsible for its own curriculum and policies. PA008, 016 (Cont. §§ 6.3, 8.10, 8.11); accord Okla. Stat. tit. 70, §§ 3-136(A)(3), 3-136(B). And St. Isidore could raise its own funds, enter into contracts, and hire and contract with its own employees. PA005, 008, 011, 016–17 (Cont. §§ 5.3, 6.4, 7.11, 8.11.2, 8.13); §§ 3-135(B), 3-136(D).

St. Isidore’s private board would “manag[e] and direct[]” the school’s “business and affairs,” PA057, 314, exercise “oversight authority,” PA008 (Cont. § 6.4), and create the school’s “policies and operational decisions,” PA006 (Cont. § 6.1).

St. Isidore promises to welcome “any and all students,” including “those of different faiths or no faith.” PA113. And “no student [would] be denied admission... on the basis of race, color, national origin, sex, sexual orientation, gender identity, gender expression, disability, age, proficiency in the English language, religious preference or lack thereof, income, aptitude, or academic ability.” PA015 (Cont. § 8.8).

The school projected an initial enrollment of 500 students, half of whom would be economically disadvantaged. RA004 ¶ 13. And it projected its State Aid would be \$2,684,704.78 for its first year of operation. *Ibid.* Shortly after incorporation, St. Isidore submitted its application asking the Board to sponsor it as a statewide virtual charter school.

B. The Charter School Board approves St. Isidore’s application.

In June 2023, the Charter School Board voted to approve St. Isidore’s application. The Board determined that, but for the school’s religious character and affiliation with a religious institution, St. Isidore was qualified to become a statewide virtual charter school. And as one member of the Board explained, enforcing the Charter School Act’s nonsectarian requirement to disqualify St. Isidore because of its religious character and affiliation would violate the Free Exercise Clause, which all the Board members had taken an oath to uphold. RA031–32.

The Board based its decision on an opinion that Oklahoma’s former Attorney General, John M. O’Connor, had officially provided to the Board in December 2022. RA006–20. That opinion advised that “[t]he State cannot enlist private organizations to promote a diversity of educational choices, and then decide that any and every kind of religion is the wrong kind of diversity.” RA019 (cleaned up). “This is not how the First Amendment works.” *Ibid.*

After Respondent took office, though, he withdrew that opinion and informed the Board that he opposed St. Isidore’s approval. RA021–22. Respondent “recognize[d] that the law is currently unsettled

as to whether charter schools are state actors.” RA021. And he was “hopeful that the U.S. Supreme Court [would] definitively rule on this unsettled issue.” *Ibid.* (citing *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104 (4th Cir. 2022), *petition for cert. filed*, Sept. 14, 2022 (No. 22-238)).

“Without binding precedent definitively addressing whether charter schools are state actors,” Respondent was not “comfortable” advising the Board to violate the Oklahoma Constitution’s directive that the State establish a “system of public schools ... *free from sectarian control.*” RA022 (quoting OKLA. CONST. art. I, § 5). Nor was he “comfortable” advising the Board “to violate the Legislature’s directive that ‘[a] charter school shall be *nonsectarian* in its programs, admission policies, employment practices, and all other operations.’” *Ibid.* (quoting Okla. Stat. tit. 70, § 3-136(A)(2)).

Respondent “point[ed] out that the approval” of St. Isidore’s application would “create a slippery slope.” *Ibid.* “While many Oklahomans undoubtedly support charter schools sponsored by various Christian faiths, the precedent created” by St. Isidore’s approval would “compel approval of similar applications by all faiths.” *Ibid.* And presuming anti-religious sentiment, Respondent “doubt[ed] most Oklahomans would want their tax dollars to fund a religious school whose tenets [were] diametrically opposed to their own faith.” *Ibid.* “Unfortunately, the approval of a charter school by one faith [would] compel the approval of charter schools by all faiths, even those most Oklahomans would consider reprehensible and unworthy of public funding.” *Ibid.*

Siding with the former Attorney General's position over Respondent's, the Board and St. Isidore executed a charter contract setting out the Board's sponsorship terms. PA021–22. The five-year contract was set to begin July 1, 2024. PA004 (Cont. § 3.2).

C. Respondent sues the Charter School Board in the Oklahoma Supreme Court.

Days later, Respondent filed a mandamus action against the Board in the Oklahoma Supreme Court, asking it to assume original jurisdiction, direct the Board to cancel its contract with St. Isidore, and declare that the contract violated the federal Establishment Clause, the Oklahoma Charter Schools Act, and the Oklahoma Constitution. Pet.'s Appl. to Assume Original Juris. at 1–2, *Drummond v. Okla. Statewide Virtual Charter Sch. Bd.*, No. 121,694 (Oct. 20, 2023). St. Isidore intervened to defend the Board's action.

Doubling down on his opinion letter, Respondent warned that “if the Catholic Church were permitted to have a public virtual charter school, a reckoning [would] follow.” Pet.'s Br. in Supp. of Appl. to Assume Original Juris. at 1, *Drummond v. Okla. Statewide Virtual Charter Sch. Bd.*, No. 121,694 (Oct. 20, 2023) (“Appl. Br.”). The State would receive “requests to directly fund all petitioning sectarian groups.” *Ibid.* And the State would be forced to allow “extreme sects of the Muslim faith to establish a taxpayer funded public charter school teaching Sharia Law.” *Ibid.* According to Respondent, the Board's approval of St. Isidore's application would “pave the way for a proliferation of the direct public funding of religious schools whose tenets are diametrically opposed by most Oklahomans.” *Ibid.*

On the merits, Respondent argued that Oklahoma “clearly bans the Board’s action of sponsoring a sectarian organization.” *Id.* at 7. The Charter Schools Act prohibits a sponsor from authorizing “a charter school or program that is affiliated with a nonpublic sectarian school or religious institution.” *Ibid.* (quoting Okla. Stat. tit. 70, § 3-136(A)(2)). Article I, Section 5 of the Oklahoma Constitution “unambiguously requires the provision of ‘a system of public schools ... [that] shall be open to all the children of the state and free from sectarian control.’” *Id.* at 8 (quoting OKLA. CONST. art. I, § 5). And Article II, Section 5 prohibits the use of public money for the “use, benefit, or support” of any “sectarian institution as such.” *Ibid.* (quoting OKLA. CONST. art. II, § 5).

Quoting a two-justice opinion of the Oklahoma Supreme Court, Respondent argued that the framers of Oklahoma’s constitution provided for the “complete separation of church and state by going further than the federal constitution.” *Id.* at 9 (quoting *Prescott v. Okla. Capitol Pres. Comm’n*, 373 P.3d 1032, 1037 (Okla. 2015) (Taylor, J., concurring in denial of petition for rehearing)). And Respondent insisted that the Board members had violated their oaths by approving St. Isidore’s application, thus forming a “union of church and state” that the Oklahoma Supreme Court should prohibit. *Id.* at 10.

III. Decision below

The Oklahoma Supreme Court assumed original jurisdiction and issued the writ of mandamus, ordering the Board to rescind the contract.¹¹ The court held that St. Isidore—a privately owned and operated entity—was a government entity and state actor. App.15a–24a. So excluding St. Isidore based on its “sectarian” status and affiliation with a “religious institution” did not violate the Free Exercise Clause. App.27a–28a. And “[e]ven if St. Isidore could assert free exercise rights, those rights would not override the legal prohibition under the Establishment Clause.” App.29a. As a result, the court said the Board’s contract with St. Isidore violated the federal Establishment Clause, the Oklahoma Charter Schools Act, and the Oklahoma Constitution. *Ibid.*

1. On the state-law question, the court held that St. Isidore’s contract with the Board violated the Oklahoma Constitution’s prohibition on “using public money for the benefit or support of any religious institution.” App.10a–14a (citing OKLA. CONST. art. II, § 5). Quoting the same two-Justice concurrence Respondent referenced, the court wrote that the framers of Oklahoma’s constitution “recognized the necessity of a complete separation of church and state and sought to prevent the ills that would befall a state if they failed to provide for this complete separation.” App.11a–12a (quoting *Prescott*, 373 P.3d at 1038 (Taylor, J., concurring in denial of rehearing)). The

¹¹ The Board complied and rescinded the St. Isidore contract. The Board intends to reinstate that contract if this Court reverses. See *United States v. Sanchez-Gomez*, 584 U.S. 381, 386 n.* (2018) (reviewing a case in which the petitioner rescinded the challenged policy following a panel decision ruling against it).

“expenditure of state funds for St. Isidore’s operations,” the court explained, would “constitute[] the use of state funds for the benefit and support of the Catholic church.” App.13a. So the contract “violate[d] the plain terms of Article 2, Section 5.” *Ibid.*

For the same reasons, the court held that the contract violated Article 1, Section 5’s mandate that provisions be made for “a system of public schools[] which shall be... free from sectarian control,” App.14a (quoting OKLA. CONST. art. I, § 5), and the Charter Schools Act’s prohibition on “sponsoring a charter school program that is affiliated with a nonpublic sectarian school or religious institution” and its requirement “that all charter schools be nonsectarian in their programs, admission policies, and other operations,” *ibid.* (citing Okla. Stat. tit. 70, § 3-136(A)(2)). “There is no question that St. Isidore is a sectarian institution and will be sectarian in its programs and operations.” App.15a. And that was enough for St. Isidore’s contract to violate the Charter Schools Act and the Oklahoma Constitution. *Ibid.*

2. Though St. Isidore is privately owned and operated, the court held that it is a “governmental entity” and “state actor.” App.19a. Looking first to state statutes, the court observed that the legislature labeled Oklahoma charter schools as “public school[s],” which are defined by statute as “free schools supported by public taxation.” App.17a (quoting Okla. Stat. tit. 70, § 1-106). Oklahoma also imposes on charter schools “many of the same privileges, responsibilities, and legal requirements that govern traditional public schools.” App.19a. Given this statutory framework, the Court summarily concluded that charter schools are governmental entities and state actors. *Ibid.*

The court alternatively held that if state statutory labels were not enough, St. Isidore would “still” be a state actor “under at least two” of the five state-action tests this Court has applied “over the years.” App.20a.

First, the court concluded that “charter schools are entwined with the State” because “[g]overnmental entities” sponsor them, monitor and oversee their operations, and “decide whether to renew or revoke [their] charter[s].” App.21a. And second, the court declared that while “[t]he provision of education may not be a traditionally exclusive public function,” “the Oklahoma Constitutional provision for *free public* education is exclusively a public function.” *Ibid.*

The court dismissed this Court’s decision in a similar case: *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982). There, this Court held that a privately owned and operated school was *not* a state actor despite extensive government funding and regulation. *Id.* at 842. That’s because, in educating troubled youths, the school did not perform a public function “traditionally the *exclusive* province of the state.” *Ibid.* (cleaned up). To avoid this precedent, the court below fell back on the state statutory label, noting that “charter schools are public schools created through governmental action, not private like in *Rendell-Baker*.” App.22a.

Instead of following *Rendell-Baker*, the Oklahoma Supreme Court relied on the Fourth Circuit’s holding that North Carolina charter schools are state actors. *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2657 (2023). App.22a. That decision was “instructive,” the court said, because North Carolina’s “statutory framework” was similar in that “North Carolina also [had] designated its charter schools as public.” App.22a–23a.

3. The court then held that, because St. Isidore is “a governmental entity and a state actor,” its contract violated the Establishment Clause. App.26a–27a. It had planned to “incorporate Catholic teachings into every aspect of the school” and to “require students to spend time in religious instruction and activities” while receiving “direct support” from the State, “all in violation of the Establishment Clause.” App.26a.

4. The court next held that excluding St. Isidore from a publicly available program open only to non-religious entities does not implicate the Free Exercise Clause. The court believed this Court’s decisions in *Trinity Lutheran*, *Espinoza*, and *Carson* do “not apply to the governmental action in this case” because, “[u]nlike the private entities in [those] cases, St. Isidore was created in furtherance of the State’s objective of providing free public education.” App.27a–28a. “Even if St. Isidore could assert free exercise rights,” the court declared, the State’s obligation to comply with the Establishment Clause “is a compelling governmental interest that satisfies strict scrutiny.” *Ibid.*

5. Dissenting, Justice Kuehn would have held that (1) St. Isidore did “not become a ‘state actor’ merely by contracting with the State to provide a choice in educational opportunities,” (2) “allowing St. Isidore to operate a virtual charter school... would not be establishing, aiding, or favoring any particular religious organization,” and (3) “[e]xcluding private entities from contracting for functions, based solely on religious affiliation, would violate the Free Exercise Clause of the First Amendment.” App.32a (Kuehn, J., dissenting). She predicted that “the Majority’s decision is destined for the same fate as the Montana Supreme Court’s opinion in *Espinoza*.” App.41a.

REASONS FOR GRANTING THE WRIT

This petition raises two critically important questions warranting review. In holding that the academic and pedagogical choices of St. Isidore—a privately owned and operated school—constitute state action, the decision below exacerbated a circuit conflict and flouted this Court’s state-action precedents, including *Rendell-Baker*.

The court below then compounded its error by relying on this flawed state-action holding to justify applying Oklahoma’s discriminatory charter-school statute, the State’s two “nonsectarian” constitutional provisions, and the federal Establishment Clause to exclude St. Isidore from a publicly available benefit solely because it is religious—contrary to *Trinity Lutheran*, *Espinoza*, and *Carson*.

As a result, lower courts are intractably divided on the state-action issue, educational choice and diversity are being suppressed, and religious entities like St. Isidore and religious parents are being penalized for seeking to exercise their religion. This Court’s prompt intervention is needed to resolve the state-action split, ensure lower-court fidelity to this Court’s precedents, and restore essential constitutional protections.

I. The Oklahoma Supreme Court’s state-action holding deepened an existing circuit split and flouted this Court’s precedents.

A. The decision below exacerbates a circuit conflict concerning privately owned and operated schools and state action.

Lower courts are divided over whether the academic and pedagogical choices of a privately owned and operated school become state action simply because the school contracts with the state to offer a free educational option for interested students. Respondent admits this conflict is pervasive and requires the Court to “definitively rule on this unsettled issue.” RA021. Three of the four circuits to squarely consider the question have gotten it right: The Ninth, First, and Third Circuits have all held that the academic and pedagogical choices of a privately owned and operated school do not constitute state action simply because the school contracts with the state to provide a free educational option to interested students. The Fourth Circuit recently became the outlier when it held the opposite, and the Oklahoma Supreme Court has now joined it. This Court’s review is necessary to resolve the entrenched conflict.

In holding that St. Isidore would be engaged in state action, the Oklahoma Supreme Court expressly adopted the flawed reasoning of the en banc Fourth Circuit in *Peltier v. Charter Day School, Inc.*, 37 F.4th 104 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2657 (2023). App.22a–24a. There, the Fourth Circuit considered whether a privately owned and operated charter school could be sued under 42 U.S.C. 1983 for adopting a dress-code policy that allegedly violated the Equal Protection Clause.

Charter schools in North Carolina contract with the State to provide free educational options to interested students pursuant to charters that set forth various performance metrics and obligations. Like Oklahoma, North Carolina law characterizes charter schools as “public.” N.C. Gen. Stat. § 115C-218.15(a). But they are largely self-governed and free from many of the typical restrictions imposed on state-run public schools. *Peltier*, 37 F.4th at 138 (Quattlebaum, J., concurring in part and dissenting in part). This is because their purpose is “to encourage innovation and competition within state school systems” to “‘improve student learning’... and ‘provide parents and students with expanded choices.’” *Id.* at 150 (Wilkinson, J., dissenting) (quoting N.C. Gen. Stat. § 115C-218(a)(1),(5)).

Despite this autonomy, the Fourth Circuit held that Charter Day School’s dress-code policy was state action. Like the Oklahoma Supreme Court, the Fourth Circuit relied heavily on the state statute labeling charter schools “public.” *Id.* at 117–18. The court even tailored its public-function analysis in terms of this statutory designation, concluding that Charter Day School’s operation of “a school that is part of the North Carolina public school system” was a “function traditionally and exclusively reserved to the state.” *Id.* at 119 (citing *Rendell-Baker*, 457 U.S. at 842). Six judges dissented. *Id.* at 137–60.

In addition to relying on *Peltier*, the court below suggested its holding was supported by a series of unpublished, unreasoned, and inapposite cases from the Tenth, Ninth, and Third Circuits. App.24a n.11 (citing *Coleman v. Utah State Charter Sch. Bd.*, 673 F. App’x 822, 830 (10th Cir. 2016) (“[m]eetings between government officials and those who oversee

a charter school, especially concerning the application and enforcement of the regulations that bind the two groups together, retain the fundamental character of intra-governmental meetings”); *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188 (10th Cir. 2010) (repeating parties’ uncontested assumption that a charter school is a governmental entity without any analysis on the issue); *Milonas v. Williams*, 691 F.2d 931, 935, 939–40 (10th Cir. 1982) (residential school’s disciplinary procedures were state action because the school served as a “correctional and detention facility” for troubled youth on behalf of and at the direction of the state); *Nampa Classical Acad. v. Goesling*, 447 F. App’x 776, 777–78 (9th Cir. 2011) (ignoring binding contrary circuit precedent); *Fam. Civ. Liberties Union v. Dep’t of Child. & Fams.*, 837 F. App’x 864, 869 (3d Cir. 2020) (unreasoned opinion concerning a child-custody dispute in which a charter school does not appear to have contested its presumed status as a municipal entity)).

Conversely, the majority of circuits to consider this question have found no state action in the same or similar circumstances. Indeed, the Ninth, Third, and First Circuits have issued published decisions that conflict directly with both the decision here and *Peltier*.

In *Caviness v. Horizon Community Learning Center, Inc.*, 590 F.3d 806 (9th Cir. 2010), the Ninth Circuit addressed the same fact pattern as in *Peltier* and here: “a private nonprofit corporation running a charter school that is defined as a ‘public school’ by state law.” *Id.* at 812. Holding that the school was not a state actor for constitutional purposes, the court rejected that a state’s statutory labeling of a privately owned and operated entity as “public” could be

sufficient to prove state action. *Id.* at 813. The court also dispatched the argument that “publicly funded education,” as opposed to simply “education,” is the exclusive prerogative of the state, noting that *Rendell-Baker* directly foreclosed such a conclusion. *Id.* at 815 (“[A]s in *Rendell-Baker*, th[e] ‘legislative policy choice [to publicly fund the education at issue] in no way makes these services the exclusive province of the State.’” (quoting 457 U.S. at 842)). Finally, the Ninth Circuit held that the state’s extensive regulation of charter-school personnel matters, including its statutory designation of such schools as “a political subdivision of the state for purposes of employee retirement eligibility,” was insufficient to transform a privately owned and operated school’s personnel decisions into state action. *Id.* at 810, 816–18.

The First Circuit reached the same conclusion in *Logiodice v. Trustees of Maine Central Institute*, 296 F.3d 22 (1st Cir. 2002). There, Maine fully funded a private school’s costs for educating all students in a rural district because the school served as the only regional option for secondary education. Concluding that the private school had not engaged in state action, the court explained that education was not the exclusive province of the government and that the plaintiff could not recast “the category as ... providing a publicly funded education available to all students generally.” *Id.* at 27. Denouncing this attempt to gerrymander the public-function analysis, the court concluded “[t]here is no indication that the Supreme Court had this kind of tailoring by adjectives in mind when it spoke of functions ‘exclusively’ provided by government.” *Ibid.*

Likewise, the Third Circuit declined to extend the state-action doctrine to encompass the pedagogical choices of a privately owned and operated school that contracted with Massachusetts to provide free education. In *Robert S. v. Stetson School, Inc.*, 256 F.3d 159 (3d Cir. 2001) (Alito, J.), the court evaluated a § 1983 suit against a school specializing in educating juvenile sex offenders, including those placed at the school by state and local governments. The State almost entirely funded the educational costs of such students. When considering whether the school “performed a function that has traditionally been the exclusive province of the state,” the court noted that many private schools have historically provided the same educational services. *Id.* at 165–66. The court also rejected the argument that such services are an exclusive state function simply because the state is required by law to provide them, citing this Court’s rejection of that argument in *Rendell-Baker*. *Id.* at 166.

Recognizing this sharp and pervasive lower-court conflict, Respondent has expressed his desire that the Court “definitely rule on this unsettled issue.” RA021. The split has also been recognized by the six *Peltier* dissenters. 37 F.4th at 142 (Quattlebaum, J., concurring in part and dissenting in part). This Court’s intervention is overdue. The Court should grant the petition and resolve the split.

B. The decision below contravenes this Court’s precedents.

By holding that St. Isidore’s academic and pedagogical choices are state action, the Oklahoma Supreme Court’s decision contradicts this Court’s precedents. From its near-total reliance on state statutory labels to its gerrymandered public-function analysis, the opinion is riddled with missteps that effectively nullify this Court’s decisions.

1. First, the opinion hangs its analytical hat on an Oklahoma statute labeling charter schools “public.” App.17a–19a. In apparent agreement with Respondent’s position that this makes the constitutional analysis “easy,” Appl. Br. at 11 (citing § 3-132(D)), the court says this label rendered St. Isidore a governmental entity and state actor after engaging in nothing more than a six-paragraph tour of state statutory law that does not address either point. App.17a–19a. As an afterthought, the opinion drops a footnote citing—without explanation or analysis—two federal decisions that have no application here. App.19a n.10 (citing *Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179 (1988) (holding the NCAA did not engage in state action when recommending a state university basketball coach’s dismissal); *United States v. Ackerman*, 831 F.3d 1292 (10th Cir. 2016) (holding the National Center for Missing and Exploited Children was a governmental entity because of the government’s “‘day-to-day’ statutory control over its operations” and the center’s “unique law enforcement powers”)).

The opinion’s only engagement with this Court’s relevant precedents is framed as an *alternative* basis for its state-action holding. Compare App.17a–19a

(explaining that, under the state statutory label, St. Isidore “is a governmental entity and state actor”), with App.20a–24a (giving alternative reasons why, even without the statutory label, the Charter School Board’s argument “still fails” to disprove state action under this Court’s precedents).

But whether an organization has engaged in state action is a question of *federal constitutional* law, not *state statutory* labels. This Court has repeatedly held that a state statute labeling an entity “public” does not control its state-actor status for constitutional purposes. *E.g.*, *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350 & n.7 (1974) (privately owned and operated electric provider was not a state actor despite its statutory designation as a “public utility” (quoting Pa. Stat. Ann., Tit. 66, § 1102(17) (1959 and Supp. 1974–75)); *Polk Cnty. v. Dodson*, 454 U.S. 312, 325 (1981) (“public” defender was not a state actor); see also *Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 392–93 (1995) (“congressional label” did not control whether Amtrak was a governmental entity). If it did control, state legislatures could extend the reach of the Establishment Clause and negate the free-exercise rights of private entities with the mere stroke of a pen.

Moreover, the “public school” label here cannot bear the constitutional load the court below places on it. The relevant statute calls a charter school a “public school established by contract”—a phrase that contemplates the private delivery of publicly funded education. Okla. Stat. tit. 70, § 3-132.2(C)(1). Oklahoma also defines a “public school[.]” as “free” and “supported by public taxation.” Okla. Stat. tit. 70, § 1-106. In other words, labeling a school “public” is just another way to say, “the state funds it.”

This Court has repeatedly held that substantial—even total—state funding is insufficient to establish state action. *E.g.*, *Rendell-Baker*, 457 U.S. at 841 (“Acts of such private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts.”); *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 815 (2019) (regulations requiring contractors to provide “free” and “first-come, first-served” services to the public “do not render [a private corporation] a state actor”); *Polk Cnty.*, 454 U.S. at 319, 325 (public defender’s representation of an indigent defendant was not state action even though the state paid the attorney for her services).

2. Likewise, “state regulation, even if extensive and detailed, [does] not make [an entity’s] actions state action.” *Rendell-Baker*, 457 U.S. at 841 (cleaned up). Yet in its entwinement analysis, the opinion below focused on the State’s oversight of St. Isidore, noting the government’s ability to monitor the school for “legal compliance[] and decide whether to renew or revoke” St. Isidore’s contract. App.21a. Such “entwinement” exists with *every* government contractor. And, “as the Court has long held, the fact that the government ... contracts with ... a private entity does not convert the private entity into a state actor.” *Manhattan Cmty.*, 587 U.S. at 814.

Instead, “extensive regulation” supports a state-action finding only if that regulation “compel[s]” the challenged conduct. *Rendell-Baker*, 457 U.S. at 841–42; accord *Manhattan Cmty.*, 587 U.S. at 809. For example, *Rendell-Baker* held that, despite “extensive regulation of the school generally,” the “decisions to discharge the petitioners were not compelled or even influenced by any state regulation.” 457 U.S. at 841.

Here, Respondent says St. Isidore’s academic and pedagogical choices—its decision to provide a Catholic education—contravenes the Establishment Clause and state-law prohibitions against funding religious organizations. But St. Isidore’s decision was “not compelled or even influenced by any state regulation.” *Ibid.* By design, Oklahoma’s charter schools are vested with autonomy to make their own academic and pedagogical choices, experiment with “different and innovative teaching methods,” “[i]ncrease learning opportunities for students,” and “[p]rovide additional academic choices for parents and students.” Okla. Stat. tit. 70, § 3-131(A)(2)–(4). If anything, the State is attempting to force St. Isidore to *cease* engaging in the challenged conduct through regulation. See § 3-136(A)(2).

3. The lower court’s circular public-function analysis likewise contradicts precedent. Recognizing that education is not a traditionally exclusive public function, the opinion narrowed the lens of its analysis, asserting that the relevant function is “*free public* education.” App.21a. The opinion then simply announced that such education “is exclusively a public function.” *Ibid.*

This Court’s precedent precludes such question-begging. *Rendell-Baker* recognized that “the education of maladjusted high school students is a public function.” 457 U.S. at 842. Yet the Court still held that a school providing such education was *not* a state actor; the function was not “the exclusive province of the state.” *Ibid.* The Court dismissed the argument that state law required the state to “provide [educational] services for such students at public expense”: this “legislative policy choice in no way makes these services the exclusive province of the State.” *Ibid.*

So too here. The narrow public-function category of state action covers only inherently governmental tasks, like “running elections and operating a company town.” *Manhattan Cmty.*, 587 U.S. at 809. Publicly funded education is not such a function. Indeed, while public education in Oklahoma is “free” and “supported by public taxation,” Okla. Stat. tit. 70, § 1-106, no one disputes that such education is provided by many non-state entities.

Notably, the State’s website explains that “private schools” and “faith-based PreK programs” provide education funded by public taxation, often at no cost to students. Okla. State Dep’t of Educ., *School Choice* (updated July 22, 2024) (summarizing Oklahoma’s voucher program, which allows tax dollars to “pay for tuition at a private school,” and explaining that “Oklahoma government sends taxpayer funds to many private entities in order to provide better services to the public—including ... funds for faith-based PreK programs, and more”).¹²

So regardless of how a court tailors the public-function analysis, it cannot say that the function performed by Oklahoma charter schools is “the exclusive province of the State.” Holding otherwise contravenes this Court’s precedents and elevates state statutory labels over the Constitution, which is precisely what happened here. *Rendell-Baker*, 457 U.S. at 842; see also *Manhattan Cmty.*, 587 U.S. at 809. This Court should grant certiorari, affirm its precedents, and restore the “robust sphere of individual liberty” guaranteed by the proper application of the state-action doctrine. *Id.* at 808.

¹² <https://perma.cc/4DVL-NC74>.

II. The Oklahoma Supreme Court’s Free Exercise and Establishment Clause rulings also contradict this Court’s recent precedents.

The Oklahoma Supreme Court’s conclusion that *Trinity Lutheran*, *Espinoza*, and *Carson* “do not apply to the governmental action in this case” fails along with the state-action premise on which it rests. App.27a. St. Isidore is not a state actor, so the lower court’s talismanic invocation of the phrase “governmental action” does not distinguish this Court’s cases. *Ibid.* And neither do the court’s other bases for distinguishing them.

The Free Exercise Clause “protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.” *Carson*, 596 U.S. at 778 (cleaned up). So this Court has “repeatedly held that a State violates the ... Clause when it excludes religious observers from otherwise available public benefits.” *Ibid.* (collecting cases).

In recent years, this Court has “applied these principles in the context of [now three] state efforts to withhold otherwise available public benefits from religious organizations.” *Ibid.*

First, in *Trinity Lutheran*, the Court struck down Missouri’s attempt to deny publicly available grants for playground resurfacing materials “to any applicant owned or controlled by a church, sect, or other religious entity.” 582 U.S. at 455. That “express discrimination against religious exercise” triggered strict scrutiny because it “refus[ed] to allow the Church—solely because it is a church—to compete with secular organizations for a grant.” *Id.* at 463. And the policy could not survive strict scrutiny because the State’s “preference for skating as far as

possible from religious establishment concerns” was not a “compelling” interest. *Id.* at 466. Excluding a church “from a public benefit for which it is otherwise qualified, solely because it is a church, is odious to our Constitution.” *Id.* at 467.

Second, in *Espinoza*, the Court held that the Montana Constitution’s “no-aid” provision violated the Free Exercise Clause when applied to bar religious schools and parents “from public benefits solely because of [their] religious character.” 591 U.S. at 476. The Montana Supreme Court concluded that the provision served the State’s “interest in separating church and State more fiercely than the Federal Constitution.” *Id.* at 484 (cleaned up). But this Court rejected that asserted interest, holding it could not qualify as compelling “in the face of the [State’s] infringement of free exercise.” *Id.* at 484–85.

Third, three Terms ago in *Carson*, this Court held that a “nonsectarian” requirement in Maine’s tuition-assistance program violated the Free Exercise Clause. 596 U.S. at 772–773, 781. There, parents in certain school districts could “designate the secondary school they would like their child to attend—public or private—and the school district [would] transmit[] payments to that school to help defray the costs of tuition.” *Id.* at 772. But any school receiving tuition assistance had to be “nonsectarian.” *Id.* at 774 (quoting Me. Rev. Stat. Ann., Tit. 20–A, § 2951(2)).

In holding that provision violated the Free Exercise Clause, this Court explained that a “neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.” *Id.* at 781 (citing *Zelman*

v. *Simmons-Harris*, 536 U.S. 639, 652–53 (2002)). So Maine’s decision to exclude religious schools from its tuition-assistance program was an attempt to enforce a “stricter separation of church and state than the Federal Constitution requires.” *Ibid.* And that was not a compelling interest. *Ibid.*

These three decisions establish that Respondent’s attempt to exclude religious entities and families—solely because they are religious—from the State’s charter-school program “must be subjected to the strictest scrutiny.” *Id.* at 780 (cleaned up). And the asserted interest in forging a “complete separation of church and state by going further than the federal constitution” is not compelling. Appl. Br. at 9 (quoting *Prescott*, 373 P.3d at 1037 (Taylor, J., concurring in denial of petition for rehearing)).

Stripped of its state-action panacea, the lower court’s attempt to distinguish this Court’s cases comes up empty.

First, the opinion waved away *Trinity Lutheran* because “the government funding [there] was for a non-religious use.” App.28a. But *Carson* rendered that purported distinction irrelevant. 596 U.S. at 788.

Second, the opinion brushed aside *Espinoza* because “the individual receiving the state scholarship determined its allocation.” App.28a. But Oklahoma’s funding of charter schools is based on enrollment. See Statement I.B., *supra*; see also RA003 ¶¶ 8, 9; Okla. Stat. tit. 70, § 3-142(A). So individual decisions trigger state funding—just like in *Carson*. 596 U.S. at 772.

Third, the opinion distinguished *Carson* because the religious schools in Maine were private schools, whereas charter schools in Oklahoma are labeled “public.” App.28a. But again, such labels are not controlling. And because Oklahoma charter schools are private actors, this supposed distinction disappears.

Like Maine in *Carson*, Oklahoma’s choice to expand educational options through its Charter Schools Act does not involve operating more “schools of its own.” 596 U.S. at 785. Instead, it has encouraged private entities to operate schools, and it has provided those schools funding based on parents’ individual enrollment decisions—so long as the schools parents choose are not religious. And Oklahoma’s “administration of that benefit is subject to the free exercise principles governing any such public benefit program—including the prohibition on denying the benefit based on a recipient’s religious exercise.” *Ibid.*

At its core, this lawsuit is Respondent’s attempt to wield Oklahoma’s “little Blaine Amendments”¹³ to deny funding to a “sectarian” Catholic school lest the State be forced to “fund all petitioning sectarian groups,” including “extreme sects of the Muslim faith” and other minority faiths Respondent thought “most Oklahomans would consider reprehensible and unworthy of public funding.” Appl. Br. at 1; RA022.

Such open hostility toward religion—like the underlying state laws it is meant to implement—is “odious to our Constitution” and cannot be allowed to stand. *Carson*, 596 U.S. at 779 (cleaned up).

¹³ *Espinoza*, 591 U.S. at 499 (Alito, J., concurring) (explaining how states’ no-aid provisions originated from the failed Blaine amendment championed by the Ku Klux Klan in 1875).

III. This case raises critically important issues and presents a strong vehicle for resolving them.

Both questions presented raise immensely important constitutional issues. Their resolution will significantly impact Americans' freedoms and our nation's educational system. This case also presents a clean vehicle in which to address them.

A. The questions presented are extremely important.

The decision below poses a grave threat to fundamental freedoms. First, it requires St. Isidore to “disavow its religious character” before it can operate a charter school, thus “impos[ing] a penalty on the free exercise of religion.” *Trinity Lutheran*, 582 U.S. at 462–63. This harms religious schools and religious parents who wish to send their children to schools that align with their values. *Espinoza*, 591 U.S. at 476. Those with progressive values may send their children to progressive charter schools on the state's dime. Those who subscribe to the principles of Montessori education may send their children to Montessori charter schools for free. But religious parents may not avail themselves of this same benefit because the would-be charter school they desire is religious. The Free Exercise Clause firmly rebukes such anti-religious discrimination. *Id.* at 476.

Second, the lower court's expansion of “government entity” status and the state-action doctrine allows government encroachment on individual liberty in conflict with the Fourteenth Amendment's fundamental purpose. “By enforcing that constitutional boundary between the governmental and the

private, the state-action doctrine protects a robust sphere of individual liberty.” *Manhattan Cmty.*, 587 U.S. at 808. Yet the expansive position adopted by the court below—pioneered by the Fourth Circuit in *Peltier*—makes it “hard to discern, much less define, the limits of what constitutes ‘state action.’” *Peltier*, 37 F.4th at 137 (Quattlebaum, J., concurring in part and dissenting in part).

This Court’s intervention is needed to restore both the fundamental constitutional boundary set by the state-action requirement and the free-exercise rights of countless Americans in Oklahoma, the Fourth Circuit, and other jurisdictions using those precedents to discriminate based on religion.

2. If allowed to stand, the decision below will stifle education by “drap[ing] a pall of orthodoxy over charter schools and shift[ing] educational choice and diversity into reverse.” *Id.* at 150 (Wilkinson, J., dissenting).

Charter schools play a vital role in our nation’s educational system, offering improved education for students and expanded choices for parents. Charter schools are free from typical bureaucratic restraints that strangle innovation, hinder flexibility, and stifle diversity in traditional public schools. Exempt from the extensive regulation imposed on local school boards, charter schools can experiment with diverse pedagogical approaches to better serve a wider range of students by offering an education that is tailored to specific needs, values, and learning styles.

More than 3.6 million students across 45 states and the District of Columbia benefit from the innovation and expanded choices that charter schools offer. Nat’l Ctr. for Educ. Statistics, *Public Charter*

School Enrollment (May 2022).¹⁴ Many of these students come from low-income families that can neither afford to pay private-school tuition nor bear the economic burdens of homeschooling. *Ibid.* (noting that roughly 31 percent of charter-school students “attended high-poverty schools [in 2021], which was higher than the 21 percent of traditional public school students who attended high-poverty schools”). Many of these parents would be robbed of any real choice in their children’s education if it weren’t for publicly funded charter schools. Cf. *Pierce v. Soc’y of the Sisters*, 268 U.S. 510, 534–35 (1925) (upholding constitutional right of parents “to direct the upbringing and education of children under their control”); *Zelman*, 536 U.S. at 680 n.5 (reiterating importance of parents’ right “to choose how and in what manner to educate their children”) (Thomas, J., concurring). Charter schools enable “parents of modest means to do what more affluent parents can do: send their children to a school of their choice.” *Espinoza*, 591 U.S. at 508 (Alito, J., concurring).

The decision below poses an existential threat to the charter-school project. By holding that a state statutory label can transform privately owned and operated charter schools into state actors, the Oklahoma Supreme Court and Fourth Circuit have vastly expanded these private entities’ duties and liabilities. These decisions destabilize the widely popular and quickly growing charter-school movement, which, *because* of its popularity—is no stranger to opposition. *Peltier*, 37 F.4th at 151 (“The very idea of a different model of schooling has drawn the ire of the public education establishment”) (Wilkinson, J., dissenting).

¹⁴ <https://perma.cc/5QPJ-UAE9>.

Those who oppose charter schools or disagree with particular charter schools' philosophies and values may now haul them into court to face a host of § 1983 challenges. "Regardless of the constitutional merits of such challenges, the costs of litigation may well accomplish [these] opponents' lamentable goal of rendering such innovative and diverse programs an experiment that died aborning." *Id.* at 156 (Wilkinson, J., dissenting).

B. This case is a strong vehicle for resolving these important issues.

There are no obstacles to this Court's review here, and both questions presented are outcome-determinative. The relevant facts are undisputed, and the state court of last resort fully vetted both issues in majority and dissenting opinions. On the state-action issue, nearly a third of the federal circuits and a state supreme court have weighed in, producing nine thoughtful opinions. Further percolation is unnecessary. Since this Court's decision to pass on the petition in *Peltier*, 143 S. Ct. 2657, the lower-court divisions have deepened and will continue to do so.

Importantly, there are no jurisdictional impediments to this Court's review. The opinion below purported to rely on adequate and independent state grounds: Articles 1, Section 5 of the Oklahoma Constitution and Article 2, Section 5 of the same—Oklahoma's two "little Blaine Amendments."¹⁵ See App.25a (citing *Michigan v. Long*, 463 U.S. 1032, 1041 (1983)).

¹⁵ *Espinoza*, 591 U.S. at 498–99 (Alito, J., concurring).

But state laws that violate the federal constitution are not “adequate” grounds for a ruling. And as explained above in section II, applying both these state constitutional provisions in this case violates the Free Exercise Clause.

In *Peltier*, the state-action issue was apparently not outcome-determinative because state law and the school’s charter required that its policies (including the challenged dress-code policy) and disciplinary practices comply with state and federal constitutional provisions, including the Equal Protection Clause. Because the school’s policy could be challenged under the Equal Protection Clause regardless of whether it constituted state action, the resolution of the state-action issue had little practical effect in that case.

In contrast here, no provision in state law or the parties’ contract makes this Court’s resolution of the state-action or free-exercise issues unnecessary to determine the outcome of this case. The Court should grant review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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OCTOBER 2024

APPENDIX

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GENTNER DRUMMOND,)
 Attorney General for the)
 State of Oklahoma, *ex rel.*)
 STATE OF OKLAHOMA,)
 Petitioner,)
 v.)
 OKLAHOMA STATEWIDE)
 VIRTUAL CHARTER)
 SCHOOL BOARD; ROBERT)
 FRANKLIN, Chairman of the)
 Oklahoma Statewide Virtual)
 Charter School Board for the)
 First Congressional District;)
 WILLIAM PEARSON,)
 Member of the Oklahoma)
 Statewide Virtual Charter)
 School Board for the Second)
 Congressional District;)
 NELLIE TAYLOE)
 SANDERS, Member of the)
 Oklahoma Statewide Virtual)
 Charter School Board for the)
 Third Congressional District;)
 BRIAN BOBECK, Member of)
 the Oklahoma Statewide)
 Virtual Charter School Board)
 for the Fourth Congressional)
 District; SCOTT STRAWN,)

FILED
 SUPREME COURT
 STATE OF OKLAHOMA
 JUN 25 2024
 JOHN D. HADDEN
 CLERK

No. 121,694

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Member of the Oklahoma)
Statewide Virtual Charter)
School Board for the Fifth)
Congressional District,)
Respondents,)
and)
ST. ISIDORE OF SEVILLE)
CATHOLIC VIRTUAL)
SCHOOL,)
Intervenor.)

**APPLICATION TO ASSUME ORIGINAL
JURISDICTION FOR WRIT OF MANDAMUS
AND DECLARATORY RELIEF**

¶0 Petitioner brought this action seeking a writ of mandamus and declaratory relief that Respondents' contract with a religious charter school violates state and federal law and is unconstitutional. Original jurisdiction is assumed, and we grant the extraordinary and declaratory relief sought by Petitioner.

**ORIGINAL JURISDICTION ASSUMED;
WRIT OF MANDAMUS AND DECLARATORY
RELIEF GRANTED.**

Attorney General Gentner Drummond, Solicitor General Garry M. Gaskins, II, Assistant Solicitor General William Flanagan, Deputy General Counsel Brad Clark, and Assistant Solicitor General Kyle Pepler, Office of Attorney General, State of Oklahoma, Oklahoma City, Oklahoma, for Petitioner.

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Ryan A. Haynie, Oklahoma Council of Public Affairs, Oklahoma City, Oklahoma, for *Amicus Curia* Oklahoma Council of Public Affairs.

Winchester, J.

¶1 Petitioner Gentner Drummond, Attorney General for the State of Oklahoma, *ex rel.* State of Oklahoma (“State”) seeks a writ of mandamus directing Respondents Oklahoma Statewide Virtual Charter School Board, Robert Franklin, William

Pearson, Nellie Tayloe Sanders, Brian Bobek, and Scott Strawn (collectively “Charter School Board”) to rescind the Charter School Board’s contract with Intervenor St. Isidore of Seville Catholic Virtual School (“St. Isidore”) on grounds that the contract (“St. Isidore Contract”) violates state and federal law. The State also seeks a declaratory judgment that the St. Isidore Contract is unconstitutional. The Court held oral argument on April 2, 2024.

¶2 Original jurisdiction is assumed. Okla. Const. art. 7, § 4. The Court invokes its *publici juris* doctrine to assume original jurisdiction in this matter as the State has presented the Court with an issue of public interest that warrants an immediate judicial determination. *Indep. Sch. Dist. #52 of Okla. Cty. v. Hofmeister*, 2020 OK 56, ¶ 60, 473 P.3d 475, 500. We grant the extraordinary and declaratory relief sought by the State. *Ethics Comm’n of State of Okla. v. Cullison*, 1993 OK 37, ¶ 4, 850 P.2d 1069, 1072.

FACTS AND PROCEDURAL HISTORY

¶3 The Oklahoma Legislature has a constitutional duty to establish a system of free public schools. Okla. Const. art. 13, § 1. In 1999, the Legislature enacted the Oklahoma Charter Schools Act (“Act”), 70 O.S. Supp. 2023, §§ 3-130 *et seq.*, to help carry out this duty. Under the Act, a charter school is a public school, sponsored by an entity such as a school district, technology center, regional institution of higher education, federally recognized tribe, or the State Board of Education. 70 O.S. Supp. 2022, § 3-132. Charter schools use innovative methods and forms of accountability, provide academic choices for students and parents, and offer different professional

opportunities for teachers and administrators. 70 O.S. 2021, § 3-131. However, the Act requires that all charter schools be nonsectarian in their programs, admission policies, and other operations. 70 O.S. Supp. 2022, § 3-132.

¶4 The Archdiocese of Oklahoma City and the Diocese of Tulsa applied to the Charter School Board to establish St. Isidore, a religious virtual charter school. St. Isidore does not dispute that it is a religious institution. Its purpose is “[t]o create, establish, and operate” the school as a Catholic school. Specifically, it plans to derive “its original characteristics and its structure as a genuine instrument of the church” and participate “in the evangelizing mission of the church.”¹ And

[r]ooted in the Catholic understanding of the human person and her or his relationship with God and neighbor, [St. Isidore] fully embraces the teachings of the Catholic Church’s Magisterium, and [St. Isidore] fully incorporates these into every aspect of the School, including but not limited to its curriculum and co-curricular activities.²

St. Isidore has two members, the Archbishop of the Archdiocese of Oklahoma City and the Bishop of the Diocese of Tulsa. A Board of Directors (between 5 and 15 members) will direct and manage the school; not more than two non-Catholics may serve on the board.

¶5 The Charter School Board is the state body with the sole authority to form virtual charter schools

¹ Pet’r’s. App. I, Ex. B, p. 92.

² Pet’r’s. App. I, Ex. B, p. 276.

under the Act. 70 O.S.2021, § 3-145.1.³ On June 5, 2023, the Charter School Board voted 3-2 to approve St. Isidore’s revised application to become an Oklahoma virtual charter school. On October 9, 2023, the Charter School Board voted again 3-2 to approve St. Isidore’s contract for sponsorship. St. Isidore was created with the Charter School Board as its government sponsor. On October 16, 2023, the parties executed the St. Isidore Contract. The St. Isidore Contract commences on July 1, 2024.

¶6 A Virtual Charter School Authorization and Oversight Manual provides the model template for a virtual charter school contract. However, the Charter School Board can negotiate contract terms that add to or vary from the model contract, if the terms comply with “applicable state, federal, local, and/or tribal law.” Okla. Admin. Code § 777:10-3-3(g).

¶7 The St. Isidore Contract varies significantly from the model contract. The St. Isidore Contract recognizes that certain rights, exemptions, or entitlements apply to St. Isidore as a religious organization under state and federal law, including the “ministerial exception” and aspects of the “church autonomy doctrine.”⁴ The St. Isidore Contract does not contain the model contract section titled “Prohibition of religious affiliation,” which provides that, except as permitted by applicable law, a charter school “shall be nonsectarian in its programs.” Instead, the St. Isidore Contract states that St.

³ On July 1, 2024, the Statewide Charter School Board will assume the duties of the Charter School Board. 70 O.S. Supp. 2023, § 3-132.1.

⁴ Pet’r’s. App. I, Ex. A, p. 3.

Isidore has the right to freely exercise its religious beliefs and practices consistent with its religious protections.⁵ Under the model contract, a charter school must warrant “that it is not affiliated with a nonpublic sectarian school or religious institution.” In the St. Isidore Contract, St. Isidore warrants that it is affiliated with a nonpublic sectarian school or religious institution.⁶

¶8 Due to the nature of the St. Isidore Contract, the State seeks a writ of mandamus directing the Charter School Board to rescind the St. Isidore Contract. The question before this Court is whether the St. Isidore Contract violates state and federal law and is unconstitutional. We hold that the St. Isidore Contract violates the Oklahoma Constitution, the Act, and the federal Establishment Clause. St. Isidore is a public charter school. The Act does not allow a charter school to be sectarian in its programs, admissions policies, employment practices, and operations. The Act’s mandate is in line with the Oklahoma Constitution and the Establishment Clause, which both prohibit the State from using public money for the establishment of a religious institution. St. Isidore’s educational philosophy is to establish and operate the school as a Catholic school. Under both state and federal law, the State is not authorized to establish or fund St. Isidore.

⁵ Pet’r’s. App. I, Ex. A, p. 13.

⁶ Pet’r’s. App. I, Ex. A, p. 20.

DISCUSSION

I. OKLAHOMA’S CONSTITUTION AND THE ACT PROHIBIT THE ST. ISIDORE CONTRACT.

A. Article 2, Section 5 of the Oklahoma Constitution prohibits the State from using public money for the benefit or support of any religious institution.

¶9 We first look to the Oklahoma Constitution. Article 2, Section 5 states:

No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

Okla. Const. art. 2, § 5. The objective of construing the Oklahoma Constitution is to give effect to the framers’ intent, as well as the people adopting it. *Shaw v. Grumbine*, 1929 OK 116, ¶ 30, 278 P. 311, 315 (quoting *Lake Cty. v. Rollins*, 130 U.S. 662 (1889)).

¶10 Our Court discussed the framers’ intent in drafting Article 2, Section 5 in *Prescott v. Oklahoma Capitol Preservation Commission*, 2015 OK 54, 373 P.3d 1032, wherein we held that the placement of a Ten Commandments monument on the grounds of the Oklahoma State Capitol violated Article 2, Section 5. The Court concluded that although the State did not spend public funds to acquire the monument, the

monument operated “for the use, benefit or support of a sect or system of religion.” *Id.* ¶ 7, 373 P.3d at 1034. The Court held:

The plain intent of Article 2, Section 5 is to ban State Government, its officials, and its subdivisions from using public money or property for the benefit of any religious purpose. Use of the words “no,” “ever,” and “any” reflects the broad and expansive reach of the ban.

Id. ¶ 4, 373 P.3d at 1033. Justice Taylor, concurring, went into greater detail regarding the framers’ intent, citing Albert H. Ellis, the Second Vice President of the Constitutional Convention. Mr. Ellis explained that Article 2, Section 5:

[N]ot only guards the citizens right to be free from taxation for the support of the church, but protects the rights of all denominations, however few the number of their respective adherents, by with-holding any incentive that might prompt any ecclesiastical body to participate in political struggles and by reason of their numbers exert an undue influence and become beneficiaries at the expense of the public and a menace to weaker denominations and ultimately destructive of rel[i]gious liberty.

Id. ¶ 5, 373 P.3d at 1037 (Taylor, J., concurring in denial of reh’g) (citations omitted). The concurrence also noted that the framers were religious men who started their proceedings during the Convention with prayers. However, “they recognized the necessity of a

complete separation of church and state and sought to prevent the ills that would befall a state if they failed to provide for this complete separation in the Oklahoma Constitution.” *Id.* ¶ 6, 373 P.3d at 1038.⁷

¶11 As contended by the *Amici Curiae* in this case, the *Prescott* Court also wrestled with whether Article 2, Section 5 is a Blaine Amendment. Justice Gurich noted in her concurrence:

[I]n spite of the court filings in this case, which conclude that [Article 2, Section 5] of the Oklahoma Constitution is a Blaine Amendment, nothing in the recorded history of the Oklahoma Constitutional Convention, this Court’s case law, or any other historical evidence supports this conclusion. In fact, all evidence is to the contrary.

Id. ¶ 16, 373 P.3d at 1050 (Gurich, J., concurring in denial of reh’g). After discussing the long history of the Blaine Amendment in detail, she concluded:

Characterizing [Article 2, Section 5] of the Oklahoma Constitution as a Blaine Amendment completely ignores the intent of the founders of the Oklahoma Constitution who purposely sought to ensure future generations of Oklahomans would be free to practice religious freedom without fear of governmental intervention.

⁷ After *Prescott*, Oklahoma voters in 2016, through State Question 790, were granted the opportunity to repeal Article 2, Section 5 of the Oklahoma Constitution. The voters declined to do so.

Id. ¶ 24, 373 P.3d at 1052.⁸

¶12 The framers’ intent is clear: the State is prohibited from using public money for the “use, benefit or support of a sect or system of religion.” Although a public charter school, St. Isidore is an instrument of the Catholic church, operated by the Catholic church, and will further the evangelizing mission of the Catholic church in its educational programs. The expenditure of state funds for St. Isidore’s operations constitutes the use of state funds for the benefit and support of the Catholic church. It also constitutes the use of state funds for “the use, benefit, or support of ... a sectarian institution.” The St. Isidore Contract violates the plain terms of Article 2, Section 5 of the Oklahoma Constitution. Enforcing the St. Isidore Contract would create a slippery slope and what the framers’ warned against—the destruction of Oklahomans’ freedom to practice religion without fear of governmental intervention.

⁸ Other Justices also concluded that Article 2, Section 5 is not a Blaine Amendment. Justice Taylor noted that in his very complete discussion of Article 2, Section 5, Mr. Ellis never mentioned the Blaine Amendment and explained how any reliance on Article 2, Section 5 as a Blaine Amendment is misplaced. *Prescott*, 2015 OK 54, ¶¶ 5, 17-20, 373 P.3d at 1037, 1040-41 (Taylor, J., concurring in denial of reh’g). Justice Edmondson noted that the origin of Article 2, Section 5 was with Thomas Jefferson and the example set by the People of Virginia and not the 1876 Blaine Amendment. *Id.* ¶ 1, 373 P.3d at 1036 (Edmondson, J., concurring in denial of reh’g). Justice Combs, dissenting from the Court, stated that he “would agree with the other Justices of this Court that [Article 2, Section 5] is not Oklahoma’s version of a Blaine Amendment. The breadth and scope of [Article 2, Section 5] differ significantly from the failed Blaine Amendment.” *Id.* ¶ 12, 373 P.3d at 1057 (Combs, V.C.J., dissenting to denial of reh’g).

See Gurney v. Ferguson, 1941 OK 397, ¶ 16, 122 P.2d 1002, 1005 (warning of an “at least partial control of [sectarian] schools by successive legislative enactment” and noting “[f]rom partial control to an effort at complete control might well be the expected development”).

B. Article 1, Section 5 of the Oklahoma Constitution and the Act mandate that public charter schools are nonsectarian.

¶13 The Oklahoma Constitution also delegates to the Legislature the constitutional duty to establish and maintain a system of free public schools. Okla. Const. art. 13, § 1. As part of its duty, the Constitution mandates:

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control[.]

Okla. Const. art. 1, § 5.

¶14 The Legislature enacted the Act to help carry out this constitutional duty. Under the Act, a charter school is a *public school*, sponsored by a governmental entity. 70 O.S. Supp. 2022, § 3-132(D). In line with the constitutional mandate, the Act requires that all charter schools be nonsectarian in their programs, admission policies, and other operations. 70 O.S.2021, § 3-136(A)(2). The Act prohibits the Charter School Board from sponsoring a charter school program that is affiliated with a nonpublic sectarian school or religious institution. *Id.* Our Court has defined “sectarian institution” as a “school or institution of learning which is owned and controlled by a church

and which is avowedly maintained and conducted so that the children of parents of that particular faith would be taught in that school the religious tenets of the church.” *Gurney*, 1941 OK 397, ¶ 7, 122 P.2d at 1003.

¶15 There is no question that St. Isidore is a sectarian institution and will be sectarian in its programs and operations. As set forth above, the Charter School Board had to alter various terms of the model contract to draft the St. Isidore Contract, allowing it to operate as a religious charter school. However, in changing the various terms of the model contract, the St. Isidore Contract violates the plain language of the Act and the Oklahoma Constitution.

II. AS A PUBLIC CHARTER SCHOOL, ST. ISIDORE IS A GOVERNMENTAL ENTITY AND A STATE ACTOR.

¶16 The Charter School Board and St. Isidore contend that the Oklahoma Constitution provision requiring that Oklahoma’s system of public schools be free from sectarian control does not apply to St. Isidore because St. Isidore is a private corporation and not a public school. They further argue that despite its sectarian nature, the St. Isidore Contract does not violate the Oklahoma Constitution or the Act because St. Isidore is merely a private actor contracting with the State to perform a substantial benefit for the State. The Charter School Board and St. Isidore rely primarily on two Oklahoma cases to support their contention: *Murrow Indian Orphans Home v. Childers*, 1946 OK 187, 171 P.2d 600, and *Oliver v. Hofmeister*, 2016 OK 15, 368 P.3d 1270.

¶17 These cases are distinguishable from the facts before us. In *Murrow*, the Court held that state funds paid to a sectarian institution in exchange for the housing and care of orphans discharged the State's duty to provide for needy children and did not violate Article 2, Section 5 of the Oklahoma Constitution. 1946 OK 187, ¶ 9, 171 P.2d at 603. However, the Court specifically noted that the institution had sectarian character as an organization and in its management but denied that it indoctrinated its dependent children. Instead, the children were allowed complete freedom of worship, and the orphanage did not mandate attendance at its church services. *Id.* ¶ 2, 171 P.2d at 601. We determined, “[i]t is not the exposure to religious influence that is to be avoided; it is the adoption of sectarian principles or the monetary support of one or several or all sects that the [S]tate must not do.” *Id.* ¶ 7, 171 P.2d at 602.

¶18 In *Oliver*, the Court found that a state-funded scholarship program allowing parents of students with disabilities to apply for a scholarship for their children to attend private school did not violate Article 2, Section 5. 2016 OK 15, ¶ 27, 368 P.3d at 1277. Under the legislation at issue, the State would offset tuition at participating private schools through scholarships to eligible students. The State paid the scholarship funds directly to the parent and participation was purely voluntary. Any private school-sectarian or non-sectarian was eligible to participate in the program. The Court held the scholarship program did not “directly fund religious activities” in violation of Article 2, Section 5. *Id.* ¶ 21, 368 P.3d at 1276. The program did not disperse funds directly to any private sectarian school until a parent

of an eligible student made a private, independent selection. Any benefit to a participating sectarian school arose solely from the choice of the parent, not from any decree from the State. *Id.* ¶ 26, 368 P.3d at 1277.

¶19 Here, there is no question that the State will provide monetary support to teach a Catholic curriculum, and students at St. Isidore will be required to participate in the religious curriculum, both of which the *Murrow Court* disallowed. The funding will go directly to St. Isidore, dissimilar from giving scholarship funds to parents as in *Oliver*. The State will be *directly* funding a religious school and encouraging students to attend it.

¶20 Even more importantly, the present case does not involve a religious entity unaffiliated with the State providing the State with a substantial benefit. Instead, these cases are inapplicable because St. Isidore, a public charter school, is a governmental entity and state actor.

A. St. Isidore is a governmental entity under the Act.

¶21 The Act expressly states that a “charter school” means a “public school” established by contract with a school district or other governmental entity. *See* 70 O.S. Supp. 2022, § 3-132(D). The Oklahoma School Code defines “public school” as “all free schools supported by public taxation.” 70 O.S.2021, § 1-106.⁹

⁹ The St. Isidore Contract also used a similar definition of “Public School.” It states a “school that is free and supported by funds appropriated by the Legislature[.]” Pet’r’s. App. I, Ex. A, p. 3.

Charter schools must “be equally free and open to all students as traditional public schools.” *Id.* § 3-135(A)(9). They must not “charge tuition or fees.” *Id.* § 3-136(A)(10). Oklahoma charter schools fall within the definition of a public school.

¶22 Charter schools are also “subject to the same academic standards and expectations as existing public schools.” *Id.* §§ 3-135(A)(11), 3-136(A)(10). Charter schools must comply with the same rules that govern public schools on school-year length, bus transportation, student testing, student suspension, and financial reporting and auditing. *Id.* §§ 3-135(C), 3-136(A)(4), (6), (11), (12), and (18), 3-141(A), 3-145.3(E). A charter school must also comply with all “laws relating to the education of children with disabilities in the same manner as a school district.” *Id.* § 3-136(A)(7).

¶23 Charter schools receive state “funding in accordance with statutory requirements and guidelines for existing public schools.” *Id.* § 3-135(A)(12). The employees of charter schools are eligible for the same State retirement benefits that Oklahoma provides teachers at other public schools and the insurance programs available to the employees of the charter schools’ governmental sponsors. *Id.* §§ 3-136(A)(14), (15).

¶24 The Charter School Board is subject to the same conflict of interest and continuing education requirements as a local school board. *Id.* §§ 3-136(A)(6), 3-145.3(D)–(F). The Charter School Board exercises significant ongoing oversight and evaluation of all sponsored virtual charter schools through data collection, site visits, audits, attendance at the

school’s governing board meetings, performance reports, and external school reviews. The Charter School Board has the power to place the school on probation if it finds deficiencies and ultimately close the school if it fails to resolve its deficiencies. *See* 70 O.S. Supp. 2023, § 3-132.2(A).

¶25 Charter schools, like other governmental entities, must “comply with the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.” 70 O.S. 2021, § 3-136(A)(16). Each public charter school operates as its own “local education agency” and is covered under the Oklahoma Governmental Tort Claims Act as its own “school district.” *Id.* §§ 3-136(A)(13), 3-142(C), 3-145.3(C).

¶26 The Legislature created Oklahoma charter schools, and Oklahoma law treats them as public schools and governmental bodies. They have many of the same privileges, responsibilities, and legal requirements that govern traditional public schools. They are creatures of state law and may only operate under the authority granted to them by their charters with the State. St. Isidore will be acting as a surrogate of the State in providing free public education as any other state-sponsored charter school. Therefore, St. Isidore, a public charter school, is a governmental entity and state actor.¹⁰

¹⁰ *See, e.g., Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 192 (1988) (state universities); *United States v. Ackerman*, 831 F.3d 1292, 1295–1300 (10th Cir. 2016) (National Center for Missing and Exploited Children).

B. St. Isidore is a state actor under the U.S. Supreme Court state actor tests.

¶27 The Charter School Board and St. Isidore claim that St. Isidore is not a state actor by the legislative designation of public school. Their argument still fails because a private actor may nonetheless be deemed a state actor whenever there is a close nexus between the State and the challenged action that private behavior may be treated as that of the State. *See Jackson v. Metro. Edison Co.*, 419 U.S. 345, 351 (1974); *see also Scott v. Okla. Secondary Sch. Activities Ass’n*, 2013 OK 84, ¶ 28, 313 P.3d 891, 900 (holding a private not-for-profit organization was a state actor when it behaved like a state agency).

¶28 The U.S. Supreme Court has applied five “state actor” tests over the years, i.e., the “significant encouragement” test, the “willful participant in joint activity” test, the government “control” test, the “entwinement” test, and the “public function” test. *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 298 (2001); *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982); *see also VDARE Found. v. City of Colorado Springs*, 11 F.4th 1151, 1160 (10th Cir. 2021), *cert. denied*, 142 S. Ct. 1208 (Feb. 28, 2022). “If one of the tests indicates a party is a state actor, that alone is sufficient to find the party a state actor.” *Anaya v. Crossroads Managed Care Sys., Inc.*, 195 F.3d 584, 596 (10th Cir. 1999).

¶29 St. Isidore is a state actor under at least two tests—the entwinement and public function tests. First, under the entwinement test, the U.S. Supreme Court has stated that “a nominally private entity [i]s a state actor ... when it is ‘entwined with

governmental policies,’ or when the government is ‘entwined in [its] management or control.’” *Brentwood Acad.*, 531 U.S. at 296 (quoting *Evans v. Newton*, 382 U.S. 296, 299 (1966)). As set forth above, Oklahoma charter schools are entwined with the State. Governmental entities serve as sponsors for the charter schools. As its sponsor, the Charter School Board will provide oversight of the operation for St. Isidore, monitor its performance and legal compliance, and decide whether to renew or revoke St. Isidore’s charter. As a state-created entity, charter schools also receive many of the same legal protections and benefits as their government sponsor. The State’s entwinement expands to the internal operations and affairs of the charter schools.

¶30 Second, under the “public function” test, it is sufficient to show that “the private entity performs a traditional, exclusive public function.” *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019). The provision of education may not be a traditionally exclusive public function, but the Oklahoma Constitutional provision for *free public* education is exclusively a public function. Even more, a private entity is a state actor when the government has outsourced one of its constitutional obligations to the entity. *Id.* at 810 n.1.

¶31 The Charter School Board and St. Isidore rely primarily on *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982), to support that Oklahoma charter schools are not state actors. The U.S. Supreme Court in *Rendell-Baker* held that a *private* school for troubled youths was not a state actor for purposes of employment-related claims. The state regulated the school and provided substantial governmental

funding. The school obtained most of its students through referrals from public schools. *Id.* at 832–35, 843. However, the key difference between *Rendell-Baker* and this case is Oklahoma charter schools are public schools created through governmental action, not private like in *Rendell-Baker*.

¶32 A recent Fourth Circuit Court of Appeals case, *Peltier v. Charter Day School, Inc.*, 37 F.4th 104 (4th Cir. 2022), *cert. denied*, 1143 S. Ct. 2657 (June 26, 2023), is instructive. The *en banc* Fourth Circuit concluded that a charter school operator was a state actor for purposes of the students’ equal protection claim, challenging a dress code requirement that females wear skirts. The students in *Peltier* argued that the charter school qualified as a state actor because the operation of schools, designated by North Carolina law as public, performed an exclusively public function. And by statute, the state had delegated its duty, in part, to charter school operators to fulfill the state’s constitutional duty to provide free, universal schools. *Id.* at 116.

¶33 Relying on *Rendall-Baker*, the charter school argued that it was merely a private entity fulfilling a contract with the state like the Charter School Board and St. Isidore contend in this case. The school argued that the state did not require a student to attend any specific charter school, and the state had not delegated to charter schools the responsibility to educate North Carolina students. *Id.*

¶34 The statutory framework of North Carolina is much like Oklahoma’s Act, and charter schools may only operate under the authority granted to them by their charters with the state. Within its statutes,

North Carolina also designated its charter schools as public. The *Peltier* Court noted that rejecting the state’s designation of such schools as public institutions would infringe on North Carolina’s sovereign prerogative, undermining fundamental principles of federalism. *Id.* at 121.

¶35 Applying the “public function” test, the *Peltier* Court concluded that the charter school operated in furtherance of the state’s constitutional obligation to provide free, universal education to its residents. The court rejected the argument that charter schools were an “alternative method” of education—such as private schools or home schooling—because that position ignored the universal and free nature of the public school system. In operating a school that is part of the North Carolina public school system, the charter school performed a function traditionally and exclusively reserved to the state. *Id.* at 119.

¶36 Importantly, the *Peltier* court also distinguished *Rendell-Baker* by noting that in material contrast to the personnel decisions at issue in *Rendell-Baker*.

[The charter school] implemented its dress code, including the skirts requirement, as a central component of the public school’s educational philosophy By [the charter school’s] own admission, the skirts requirement directly impacts the school’s core educational function and, thus, directly impacts the constitutional responsibility that North Carolina has delegated to [the charter school].

Id. at 120.

¶37 As in *Peltier*, Oklahoma fulfilled its constitutional duty, in part, with the passage of the Act, which sets the procedure for the creation and funding of public charter schools. Oklahoma exercised its sovereign prerogative to treat these state-created and state-funded schools as public institutions that perform the traditionally exclusive government function of operating the State’s free public schools. St. Isidore will implement a religious curriculum and activities that directly impact the school’s core education function, and thus, the constitutional responsibility that Oklahoma delegated to the charter schools. Just as in *Peltier*, St. Isidore is a public charter school and a state actor.¹¹

¹¹ The Tenth Circuit Court of Appeals has also treated charter schools as state actors. *See Coleman v. Utah State Charter Sch. Bd.*, 673 F. App’x 822, 830 (10th Cir. 2016) (noting “charter schools are public schools using public funds to educate school children”); *Brammer-Hoelter v. Twin Peaks Charter Acad.*, 602 F.3d 1175, 1188 (10th Cir. 2010) (holding a charter school was a governmental entity); *Milonas v. Williams*, 691 F.2d 931, 940 (10th Cir. 1982) (holding state funding, contracts with state, and extensive state regulation were some of the facts that demonstrated sufficiently close nexus between state and operators of school). Other federal courts across the country, including the Third and Ninth Circuits, have treated charter schools as governmental entities or state actors. *See, e.g., Family Civil Liberties Union v. Dep’t of Children & Families*, 837 F. App’x 864, 896 (3d Cir. 2020); *Nampa Classical Acad. v. Goesling*, 447 F. App’x 776, 777–78 (9th Cir. 2011); *Jones v. Sabis Educ. Sys., Inc.*, 52 F. Supp. 2d 868, 876, 879 (N.D.111. 1999); *Daugherty v. Vanguard Charter Sch. Acad.*, 116 F. Supp. 2d 897, 906 (W.D. Mich. 2000); *United States v. Minn. Transitions Charter Schs.*, 50 F. Supp. 3d 1106, 1120 (D. Minn. 2014); *Patrick v. Success Acad. Charter Schs.*, 354 F. Supp. 3d 185, 209 n.24 (E.D.N.Y. 2018); *Riester v. Riverside Cmty. Sch.*, 257 F. Supp. 2d 968, 972–73 (S.D. Ohio 2002); *Pocono Mountain Charter*

III. THE ESTABLISHMENT CLAUSE PROHIBITS THE ST. ISIDORE CONTRACT.

¶38 We next look at the U.S. Constitution. While we have already found the St. Isidore Contract to violate two provisions of the Oklahoma Constitution, which affords bona fide, separate, adequate, and independent grounds upon which today's opinion is rested, the St. Isidore Contract also violates the federal Establishment Clause. *See Michigan v. Long*, 463 U.S. 1032, 1041 (1983).

¶39 Under the Establishment Clause of the First Amendment, made binding upon the States through the Fourteenth Amendment, Oklahoma cannot pass laws “which aid one religion, aid all religions, or prefer one religion over another.” *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947). The Establishment Clause prohibits government spending in direct support of any religious activities or institutions. *Id.* The Establishment Clause also prohibits the government from participating in the same religious exercise that the law protects when performed by a private party. *See Locke v. Davey*, 540 U.S. 712, 718 (2004) (recognizing that there is “play in the joints” between what the Establishment Clause permits, and the Free Exercise Clause compels). Thus, an Establishment Clause case hinges on whether religious activity involves a “state actor” or constitutes “state action.”

¶40 The Establishment Clause cases from the U.S. Supreme Court have not dealt with the creation of a religious public school. Rather, the cases have

Sch. v. Pocono Mountain Sch. Dist., 908 F. Supp. 2d 597, 604–05 (M.D. Pa. 2012).

revolved around religious acts in public schools. In *Kennedy v. Bremerton School District*, 597 U.S. 507, 541–42 (2022), the U.S. Supreme Court discussed comparable situations that violated the Establishment Clause, specifically: *Zorach v. Clauson*, 343 U.S. 306 (1952), where the Court held that requiring or persuading students to spend time in religious instruction was a violation; *Lee v. Weisman*, 505 U.S. 577 (1992), where the Court held that reciting prayers as part of an official graduation ceremony because the school practically compelled attendance and participation was a violation; and *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000), where the Court held that broadcasting prayer over the public address system and activities where students were required or expected to participate was a violation. These cases demonstrate the Establishment Clause prohibits public schools (state actors) from requiring or expecting students to participate in religious activities.

¶41 Because it is a governmental entity and a state actor, St. Isidore cannot ignore the mandates of the Establishment Clause, yet a central component of St. Isidore’s educational philosophy is to establish and operate the school as a Catholic school. St. Isidore will fully incorporate Catholic teachings into every aspect of the school, including its curriculum and co-curricular activities. It will require students to spend time in religious instruction and activities, as well as permit state spending in direct support of the religious curriculum and activities within St. Isidore—all in violation of the Establishment Clause. We hold that the St. Isidore Contract establishing a religious

public charter school violates the Establishment Clause.

IV. THE FREE EXERCISE CLAUSE IS NOT IMPLICATED IN THIS CASE.

¶42 The Charter School Board and St. Isidore contend that the Free Exercise Clause of the First Amendment prohibits a state from denying St. Isidore its right to operate as a charter school solely because it is religious. In support, they point to recent U.S. Supreme Court decisions that held that once a state makes a public benefit available to its citizens, the state cannot exclude a religious entity’s eligibility solely because of its religious affiliation. If a state does so, it violates the Free Exercise Clause. *See Carson v. Makin*, 596 U.S. 767 (2022) (holding the “nonsectarian” requirement of Maine’s tuition assistance program for private secondary schools violated the Free Exercise Clause); *Espinoza v. Mont. Dep’t of Rev.*, 591 U.S. 464 (2020) (concluding the state scholarship program for students attending private schools was permissible under the Free Exercise Clause); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017) (holding the denial of grants to religiously affiliated applicants for purchase of rubber playground surfaces violated the Free Exercise Clause) (collectively “the Free Exercise Trilogy”).

¶43 The Free Exercise Trilogy cases do not apply to the governmental action in this case. St. Isidore is a state-created school that does not exist independently of the State. Unlike the private entities in the Free Exercise Trilogy cases, St. Isidore was created in furtherance of the State’s objective of providing free

public education. The *Carson* Court specifically distinguished that the private schools at issue “were not public schools,” noting all the differences between private schools and public schools. 596 U.S. at 783–85. St. Isidore further contracted with the State to receive complete and direct financial support for a public charter school—funding mandated by the Act. In *Carson*, the Court noted that the state did not cover the full cost of the private secondary schools. *Id.* at 771. In *Espinoza*, the individual receiving the state scholarship determined its allocation, not the state. 591 U.S. at 474. In *Trinity Lutheran*, the government funding was for a non-religious use, playground resurfacing. 582 U.S. at 464–65. Finally, St. Isidore is not a religious private school or organization seeking to be treated equally with other private entities relative to a tax credit, grant, or tuition assistance.

¶44 The differences between the Free Exercise Trilogy cases and this case are at the core of what this case entails—what St. Isidore requests from this Court is beyond the fair treatment of a private religious institution in receiving a generally available benefit, implicating the Free Exercise Clause. It is about the State’s creation and funding of a new religious institution violating the Establishment Clause.¹²

¹² The Charter School Board and St. Isidore contend that the mandate that a charter school is nonsectarian violates the Oklahoma Religious Freedom Act (“ORFA”), 51 O.S. Supp. 2023, §§ 251 *et seq.* They rely on a recent amendment to ORFA, which states that “[i]t shall be deemed a substantial burden to exclude any person or entity from participation in or receipt of governmental funds, benefits, programs, or exemptions based solely on the religious character or affiliation of the person or entity.” 51 O.S. Supp. 2023, § 253(D). St. Isidore claims that the ORFA implicitly overrode section 3-132 of the Act as the “most

Even if St. Isidore could assert free exercise rights, those rights would not override the legal prohibition under the Establishment Clause. Compliance with the Establishment Clause in this case is a compelling governmental interest that satisfies strict scrutiny under other provisions of the First Amendment. *See, e.g., Widmar v. Vincent*, 454 U.S. 263, 270–71 (1981).

CONCLUSION

¶45 Under Oklahoma law, a charter school is a public school. As such, a charter school must be nonsectarian. However, St. Isidore will evangelize the Catholic faith as part of its school curriculum while sponsored by the State. This State’s establishment of a religious charter school violates Oklahoma statutes, the Oklahoma Constitution, and the Establishment Clause. St. Isidore cannot justify its creation by invoking Free Exercise rights as a religious entity. St.

recently enacted law.” We disagree. The Legislature amended the Act after the most recent amendment to ORFA. *See* Laws 2023, SB 404, c. 189, § 2, eff. November 1, 2023, *available at* <http://www.oklegislature.gov/BillInfo.aspx?Bill=sb%20404&Session=2300>; Laws 2023, SB 516, c. 323, § 5, eff. July 1, 2024, *available at* <http://www.oklegislature.gov/BillInfo.aspx?Bill=sb516&Session=2300>. We have held that “[w]here statutes conflict in part, the one last passed, which is the later declaration of the Legislature, should prevail, superseding and modifying the former statute only to the extent of such conflict.” *City of Sand Springs v. Dep’t of Pub. Welfare*, 1980 OK 36, ¶ 28, 608 P.2d 1139, 1151. The section regarding the prohibition on sectarian schools remained in the amended Act, and the Act controls over the ORFA. Thus, the ORFA did not override the Act’s requirement that charter schools be nonsectarian. Even more, St. Isidore is a governmental entity and state actor, not a private entity. The ORFA is not implicated in this case for the same reasons the Free Exercise Clause is not implicated.

Isidore came into existence through its charter with the State and will function as a component of the State's public school system. This case turns on the State's contracted-for religious teachings and activities through a new public charter school, not the State's exclusion of a religious entity. The Court grants the extraordinary and declaratory relief sought by the State. The St. Isidore Contract violates state and federal law and is unconstitutional. By writ of mandamus, we direct the Charter School Board to rescind its contract with St. Isidore. Any petition for rehearing regarding this matter shall be filed within ten (10) days of the date of this opinion.

**ORIGINAL JURISDICTION ASSUMED;
WRIT OF MANDAMUS AND
DECLARATORY RELIEF GRANTED.**

Kauger, Winchester, Edmondson, Combs, Gurich, and Darby, JJ., concur.

Rowe, V.C.J. (**by separate writing**), concurs in part and dissents in part.

Kuehn, J. (**by separate writing**), dissents.

Kane, C.J., recused.

31a

2024 OK 53

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GENTNER DRUMMOND,
Attorney General for the
State of Oklahoma, *ex rel.*
STATE OF OKLAHOMA,
Petitioner,

v.

OKLAHOMA STATEWIDE
VIRTUAL CHARTER
SCHOOL BOARD; ROBERT
FRANKLIN, Chairman of the
Oklahoma Statewide Virtual
Charter School Board for the
First Congressional District;
WILLIAM PEARSON,
Member of the Oklahoma
Statewide Virtual Charter
School Board for the Second
Congressional District;
NELLIE TAYLOE
SANDERS, Member of the
Oklahoma Statewide Virtual
Charter School Board for the
Third Congressional District;
BRIAN BOBECK, Member of
the Oklahoma Statewide
Virtual Charter School Board
for the Fourth Congressional
District; SCOTT STRAWN,

FILED
SUPREME COURT
STATE OF OKLAHOMA
JUN 25 2024
JOHN D. HADDEN
CLERK

No. 121,694

FOR
OFFICIAL
PUBLICATION

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Member of the Oklahoma)
 Statewide Virtual Charter)
 School Board for the Fifth)
 Congressional District,)
 Respondents,)
 and)
 ST. ISIDORE OF SEVILLE)
 CATHOLIC VIRTUAL)
 SCHOOL,)
 Intervenor.)
)
)

KUEHN, J., DISSENTING:

¶1 I dissent to the Majority’s opinion. St. Isidore would not become a “state actor” merely by contracting with the State to provide a choice in educational opportunities. By allowing St. Isidore to operate a virtual charter school, the State would not be establishing, aiding, or favoring any particular religious organization. To the contrary: Excluding private entities from contracting for functions, based solely on religious affiliation, would violate the Free Exercise Clause of the First Amendment to the United States Constitution.

A. Allowing religious organizations to contract with the State to provide educational services violates neither the “no aid” provision of the Oklahoma

**Constitution, nor the Establishment
Clause of the First Amendment.**

¶2 “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” U.S. Const. Amend. I. Article 2, Section 5 of the Oklahoma Constitution, commonly referred to as the “no aid” provision, *see Oliver v. Hofmeister*, 368 P.3d 1270, 2016 OK 15, ¶ 3, bars public assets from being “appropriated, applied, donated, or used, directly or indirectly,” for the “use, benefit, or support of” any religious organization, institution, or position. The Majority erroneously concludes that allowing sectarian organizations to operate charter schools violates these provisions.

¶3 Petitioner concedes his argument is *not* based on the fact that St. Isidore would receive public funds. His argument is that St. Isidore would be an arm of the government, simply because it is designated as a “public school” in the Act. But the reasoning that he, and the Majority, use to support that argument is circular. It goes something like this: (1) the State constitutionally must provide non-sectarian public education to all children; (2) publicly funded schools are, by definition, arms of the State; (3) under the Charter Schools Act, charter schools are defined as “public schools”; therefore, (4) charter schools are state actors and, as such, must be non-sectarian.

¶4 This argument is flawed. The Oklahoma Constitution requires the State to create a system of public schools, “free from sectarian control” and available to all children in the State. Okla. Const. Art. 1, § 5. It does not bar the State from contracting for

education services with sectarian organizations, so long as a state-funded, secular education remains available statewide. St. Isidore would not be replacing any secular school, only adding to the options available, which is the heart of the Charter Schools Act. Simply put, requiring the state to fund non-sectarian education is not the same as allowing some funds to flow to sectarian education programs.

¶5 What about the “no aid” command in Article 2, Section 5 of our Constitution? As this Court has held many times, the “no aid” clause is not violated by contracts for services. The State contracts with private entities all the time for the performance of countless functions, from building roads to renewing motor-vehicle license tags. In contexts very similar to this one—involving public funds and religious organizations—this Court has held that public-private contracts are not invalid simply because a religious entity might receive some tangential benefit. In *Oliver*, 2016 OK 15, we rejected a “no aid” challenge to a school-voucher scholarship program. In *Burkhardt v. City of Enid*, 1989 OK 45, 771 P.2d 608, we rejected a challenge to the use of public funds for a purchase and lease-back arrangement involving a sectarian university. And in *Murrow Indian Orphans Home v. Childers*, 1946 OK 187, 171 P.2d 600, we approved the use of public funds to contract with the Baptist Church to operate an orphanage. The guiding principle in these cases is this: “[A]s long as the services being provided ‘involve the element of substantial return to the state and do not amount to a gift, donation, or appropriation to the institution having no relevancy to the affairs of the state, there is no constitutional provision offended.’” *Oliver*, 2016

OK 15, ¶ 19 (quoting *Morrow*, 1946 OK 187 at ¶ 9).¹ In short, contracts for services—including educational services—do not violate the “no aid” provision of our Constitution.

¶6 For the same reasons, St. Isidore’s operation of a charter school would not violate the Establishment Clause. There is no Establishment Clause issue if the action in question is not “state action.” Petitioner’s argument—and the Majority’s analysis—depend on labeling all charter schools as “public schools,” which is equivalent to “state actors.” Again, this places form over substance.

¶7 A private entity, such as a religious organization, may be deemed a state actor if it performs a function traditionally considered the *exclusive* realm of the state. *Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352 (1974). But the Majority concedes that education is not a “traditionally exclusive public function.” Majority at ¶ 30. It may be the State’s prerogative to create a new, hybrid class of educational institutions called “charter schools,” but that is not the same as claiming that *education itself*

¹ Even if Petitioner *did* focus on the fact that State funds would go directly to St. Isidore, that argument would be meritless. The funds are not a donation, but compensation for services rendered. Whether payment goes to the student/parent, or the school directly, is of no practical difference under this scheme; if a student does not enroll, the school does not receive funds related to that additional student.

has traditionally been the exclusive prerogative of the State.²

¶8 Nor can charter schools be considered state actors simply because the State regulates them. It hardly needs to be said that regulation alone does not transform a private entity into a public one. *Jackson, id.* at 350. Even an “extensive and detailed” regulatory scheme does not automatically transform an entity into a state actor. *Id.* The Charter Schools Act can place relevant requirements on prospective charter-school operators without thereby turning them into arms of the state. Ironically, one of the aims of the Act is to place *fewer* regulations on charter schools compared to traditional schools.³ It is undisputed that, aside from its religious affiliation, St. Isidore meets the requirements for operating a charter school.

¶9 Petitioner claims the Legislature made the analysis “easy” by labeling charter schools as public schools. 70 O.S. § 3-132(D). To the contrary, the analysis is easy because the realities belie such labeling. Regardless of how the State chooses to label charter schools, the Charter Schools Act is clearly an invitation for *private* entities to *contract* to provide educational choices. “[T]he definition of

² Instead, the Majority tries to reframe the relevant ‘function’ as something like, ‘a state-wide system of publicly-funded education,’ which of course by definition is a state function.

³ Charter schools are exempt from statutes and rules relating to schools, boards of education, and school districts. 70 O.S. § 3-136(A)(5). They are not required to hire teachers with state teaching certificates. <https://sde.ok.gov/faqs/oklahoma-charter-schools-program>.

a particular program can always be manipulated to subsume the challenged condition,” and allowing the State to “recast” a condition on funding in this manner would result in “the First Amendment ... reduced to a simple semantic exercise.” *Carson v. Makin*, 142 S. Ct. 1987, 1999 (2022) (citations omitted). A similar instance of semantic legerdemain was attempted in *Espinoza v. Montana Dept. of Revenue*, 591 U.S. 464, 487 (2020), discussed below.

¶10 Contracting to provide educational alternatives is not the same as a wholesale outsourcing of a government function.⁴ The virtual charter school St. Isidore seeks to undertake would simply be a choice for students and parents. It would not be the only virtual charter school. It would not be the only charter school. But most important, it

⁴ Petitioner’s brief ends with an analogy that demonstrates the flaw in his argument:

[I]f the State decided to allocate public funds for private entities to beef up security, the State would of course be precluded from preventing the Catholic Church and other sectarian organizations from receiving those funds. However, if the State decided to start authorizing private entities to take over operations of the Oklahoma Highway Patrol, it would violate the Establishment Clause for the State to authorize a “Catholic Church Highway Patrol.”

The logical flaw is that, unlike law enforcement, enrollment in a charter school is fundamentally a choice for parents to make. St. Isidore would not be “taking over” any function that is traditionally the exclusive realm of the State. It would exist alongside state-mandated secular options.

would not supplant any state- mandated sectarian public school.

¶11 By choice, the State created a new type of educational entity - the charter school. By design, the very purpose of the Charter Schools Act is to allow *private* entities to experiment with innovative curricula and teaching methods, and to give students and parents “additional academic choices.” 70 O.S. § 3-131(A). The State is not required to partner with private entities to provide common education. But if it does, it cannot close the door to an otherwise qualified entity simply because it is sectarian. *Espinoza*, 591 U.S. at 487; *see also Everson v. Board of Ed. of Ewing*, 330 U.S. 1, 16 (1947) (a State cannot exclude individuals “because of their faith, or lack of it, from receiving the benefits of public welfare legislation”). Contracting with private entities to provide such educational choices does not violate Article 2, § 5 of the Oklahoma Constitution.

B. Insofar as it denies religious organizations the chance to operate charter schools, the Charter Schools Act violates the Free Exercise Clause of the First Amendment.

¶12 The latter part of the First Amendment, known as the “Free Exercise Clause,” protects those who practice religion from laws that “impose special disabilities on the basis of ... religious status.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017). Specifically, laws that disqualify otherwise eligible recipients from a public benefit, based solely on their religious character, impose “a penalty on the free exercise of religion that

triggers the most exacting scrutiny.” *Id.* To pass constitutional muster under the so-called “strict scrutiny” test, the State must advance a compelling interest that justifies the action in question. The State’s interests must be of the “highest order,” and the means used must be narrowly tailored in pursuit of those interests. *Trinity, id.* at 2024.

¶13 *Espinoza v. Montana Dept. of Revenue*, decided quite recently, involved a very similar tension between the Free Exercise Clause and a “no aid” provision in the Montana Constitution. The issue in *Espinoza* was whether students who received a state-funded scholarship to be used at private schools could use those funds at sectarian schools. Shortly after creation of the scholarship program, the Montana Department of Revenue promulgated a rule that, for purposes of the program, purported to redefine “qualified education provider” to exclude sectarian schools. The Department explained that the rule was necessary to reconcile the scholarship program with the “no aid” provision of the state’s constitution. *Espinoza*, 591 U.S. at 467–470.

¶14 When parents sued for the right to apply scholarship funds to attend a sectarian school, the Montana Supreme Court approved of the exclusion as consistent with the state constitutional command to give “no aid” to sectarian schools via public funds. The United States Supreme Court reversed. The question presented was “whether the Free Exercise Clause precluded the Montana Supreme Court from applying Montana’s no-aid provision to bar religious schools from the scholarship program.” 591 U.S. at 474. Because the scholarship program discriminated on

the basis of religion, it was subjected to the strictest scrutiny. *Id.* at 484. The Court found unconvincing the Department of Revenue’s claim that such an interpretation of the “no aid” provision actually promoted religious liberty. And as for the argument that diverting public funds to sectarian schools served to rob public schools of funds, the Court simply noted that any such effect was a direct consequence of the scholarship program as a whole - not to the fact that sectarian schools could take part. *Id.* at 485–86.

¶15 Similarly, the only compelling interest advanced by Petitioner in the instant case, to justify barring a religious organization from operating a charter school, is the “no aid” provision in our own Constitution. But as demonstrated above — under the long-standing line of authority from *Murrow*, to *Burkhardt*, to *Oliver* — that provision is not violated here. Contracting with a private entity that has religious affiliations, by itself, does not establish a State religion, nor does it favor one religion over another. Allowing St. Isidore to operate a charter school does not give it any preference over any other qualified entity, sectarian or otherwise.

¶16 I find nothing in the State or Federal Constitutions barring sectarian organizations, such as St. Isidore, from applying to operate charter schools. To the extent Section 3-136(A)(2) of the Charter Schools Act bars such organizations from even applying to operate a charter school, I would find it inconsistent with the Free Exercise

Clause of the First Amendment.⁵ By reaching the opposite conclusion, the Majority’s decision is destined for the same fate as the Montana Supreme Court’s opinion in *Espinoza*.

⁵ The Act’s requirement that charter schools be nonsectarian (70 O.S. § 3-136(A)(2)) also violates the Oklahoma Religious Freedom Act (ORFA), which mandates that the State shall not “substantially burden a person’s free exercise of religion” - even if the law or rule in question is one of general applicability. 51 O.S. § 253(A). As amended in November 2023, this statute specifies that the State may not exclude any entity from participating in a government program “based solely on [its] religious character or affiliation.” 51 O.S. § 253(D). Aside from the fact that the Act’s “nonsectarian” requirement violates the Free Exercise Clause, it is also a dead letter under Oklahoma law, as the ORFA is the more recent expression of legislative intent. *City of Sand Springs v. Dep’t. of Pub. Welfare*, 1980 OK 36, ¶ 28, 608 P.2d 1139, 1151.

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2024 OK 53

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

GENTNER DRUMMOND,)
 Attorney General for the)
 State of Oklahoma, *ex rel.*)
 STATE OF OKLAHOMA,)
 Petitioner,)
 v.)
 OKLAHOMA STATEWIDE)
 VIRTUAL CHARTER)
 SCHOOL BOARD; ROBERT)
 FRANKLIN, Chairman of the)
 Oklahoma Statewide Virtual)
 Charter School Board for the)
 First Congressional District;)
 WILLIAM PEARSON,)
 Member of the Oklahoma)
 Statewide Virtual Charter)
 School Board for the Second)
 Congressional District;)
 NELLIE TAYLOE)
 SANDERS, Member of the)
 Oklahoma Statewide Virtual)
 Charter School Board for the)
 Third Congressional District;)
 BRIAN BOBECK, Member of)
 the Oklahoma Statewide)
 Virtual Charter School Board)
 for the Fourth Congressional)
 District; SCOTT STRAWN,)

FILED
 SUPREME COURT
 STATE OF OKLAHOMA
 JUN 25 2024
 JOHN D. HADDEN
 CLERK

No. 121,694

FOR OFFICIAL PUBLICATION

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Member of the Oklahoma)
Statewide Virtual Charter)
School Board for the Fifth)
Congressional District,)
Respondents,)
and)
ST. ISIDORE OF SEVILLE)
CATHOLIC VIRTUAL)
SCHOOL,)
Intervenor.)
)
)

**ROWE, V.C.J., CONCURRING IN PART AND
DISSENTING IN PART:**

¶1 I concur with the Majority that Article 1, Section 5 of the Oklahoma Constitution mandates that public charter schools are nonsectarian.

¶2 I dissent to the remainder of the Majority's opinion.

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**Oklahoma Constitution
Article I, Section 5**

Public schools

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the state and free from sectarian control; and said schools shall always be conducted in English: Provided, that nothing herein shall preclude the teaching of other languages in said public schools.

**Oklahoma Constitution
Article II, Section 5**

Public money or property—Use for sectarian purposes

No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

70 Okla. Stat. § 3-131

Purpose

A. The purpose of the Oklahoma Charter Schools Act is to:

1. Improve student learning;
2. Increase learning opportunities for students;
3. Encourage the use of different and innovative teaching methods;
4. Provide additional academic choices for parents and students;
5. Require the measurement of student learning and create different and innovative forms of measuring student learning;
6. Establish new forms of accountability for schools; and
7. Create new professional opportunities for teachers and administrators including the opportunity to be responsible for the learning program at the school site.

B. The purpose of the Oklahoma Charter Schools Act is not to provide a means by which to keep open a school that may otherwise be closed. Applicants applying for a charter for a school which is to be otherwise closed shall be required to prove that conversion to a charter school fulfills the purposes of the act independent of closing the school. Nothing in this section shall be interpreted to preclude a school designated as a “high challenge school” from becoming a charter school.

70 Okla. Stat. § 3-132.

**Application of act--Charter schools--Limitation
on establishment of new schools**

Effective: May 5, 2022 to June 30, 2024

A. The Oklahoma Charter Schools Act shall apply only to charter schools formed and operated under the provisions of the act.¹ Charter schools shall be sponsored only as follows:

1. By any school district located in the State of Oklahoma, provided such charter school shall only be located within the geographical boundaries of the sponsoring district and subject to the restrictions of Section 3-145.6 of this title;

2. By a technology center school district if the charter school is located in a school district served by the technology center school district in which all or part of the school district is located in a county having more than five hundred thousand (500,000) population according to the latest Federal Decennial Census;

3. By a technology center school district if the charter school is located in a school district served by the technology center school district and the school district has a school site that has been identified as in need of improvement by the State Board of Education pursuant to the Elementary and Secondary Education Act of 1965, as amended or reauthorized;

4. By an accredited comprehensive or regional institution that is a member of The Oklahoma State System of Higher Education or a community college if

¹ Title 70, § 3-130 et seq.

the charter school is located in a school district in which all or part of the school district is located in a county having more than five hundred thousand (500,000) population according to the latest Federal Decennial Census;

5. By a comprehensive or regional institution that is a member of The Oklahoma State System of Higher Education if the charter school is located in a school district that has a school site that has been identified as in need of improvement by the State Board of Education pursuant to the Elementary and Secondary Education Act of 1965, as amended or reauthorized. In addition, the institution shall have a teacher education program accredited by the Oklahoma Commission for Teacher Preparation and have a branch campus or constituent agency physically located within the school district in which the charter school is located in the State of Oklahoma;

6. By a federally recognized Indian tribe, operating a high school under the authority of the Bureau of Indian Affairs as of November 1, 2010, if the charter school is for the purpose of demonstrating native language immersion instruction, and is located within its former reservation or treaty area boundaries. For purposes of this paragraph, native language immersion instruction shall require that educational instruction and other activities conducted at the school site are primarily conducted in the native language;

7. By the State Board of Education when the applicant of the charter school is the Office of Juvenile Affairs or the applicant has a contract with the Office of Juvenile Affairs and the charter school is for the

purpose of providing education services to youth in the custody or supervision of the state. Not more than two charter schools shall be sponsored by the Board as provided for in this paragraph during the period of time beginning July 1, 2010, through July 1, 2016;

8. By a federally recognized Indian tribe only when the charter school is located within the former reservation or treaty area boundaries of the tribe on property held in trust by the Bureau of Indian Affairs of the United States Department of the Interior for the benefit of the tribe; or

9. By the State Board of Education when the applicant has first been denied a charter by the local school district in which it seeks to operate. In counties with fewer than five hundred thousand (500,000) population, according to the latest Federal Decennial Census, the State Board of Education shall not sponsor more than five charter schools per year each year for the first five (5) years after the effective date of this act, with not more than one charter school sponsored in a single school district per year. In order to authorize a charter school under this section, the State Board of Education shall find evidence of all of the following:

- a. a thorough and high-quality charter school application from the applicant based on the authorizing standards in subsection B of Section 3-134 of this title,
- b. a clear demonstration of community support for the charter school, and
- c. the grounds and basis of objection by the school district for denying the operation of the charter

are not supported by the greater weight of evidence and the strength of the application.

B. An eligible non-school-district sponsor shall give priority to opening charter schools that serve at-risk student populations or students from low-performing traditional public schools.

C. An eligible non-school-district sponsor shall give priority to applicants that have demonstrated a record of operating at least one school or similar program that demonstrates academic success and organizational viability and serves student populations similar to those the proposed charter school seeks to serve. In assessing the potential for quality replication of a charter school, a sponsor shall consider the following factors before approving a new site or school:

1. Evidence of a strong and reliable record of academic success based primarily on student performance data, as well as other viable indicators, including financial and operational success;
2. A sound, detailed, and well-supported growth plan;
3. Evidence of the ability to transfer successful practices to a potentially different context that includes reproducing critical cultural, organizational and instructional characteristics;
4. Any management organization involved in a potential replication is fully vetted, and the academic, financial and operational records of the schools it operates are found to be satisfactory;
5. Evidence the program seeking to be replicated has the capacity to do so successfully without diminishing or putting at risk its current operations; and

6. A financial structure that ensures that funds attributable to each charter school within a network and required by law to be utilized by a school remain with and are used to benefit that school.

D. For purposes of the Oklahoma Charter Schools Act, “charter school” means a public school established by contract with a board of education of a school district, an area vocational-technical school district, a higher education institution, a federally recognized Indian tribe, or the State Board of Education pursuant to the Oklahoma Charter Schools Act to provide learning that will improve student achievement and as defined in the Elementary and Secondary Education Act of 1965, 20 U.S.C. 8065.

E.1. For the purposes of the Oklahoma Charter Schools Act, “conversion school” means a school created by converting all or any part of a traditional public school in order to access any or all flexibilities afforded to a charter school.

2. Prior to the board of education of a school district converting all or any part of a traditional public school to a conversion school, the board shall prepare a conversion plan. The conversion plan shall include documentation that demonstrates and complies with paragraphs 1, 2, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 34 and 35 of subsection B of Section 3-134 of this title. The conversion plan and all documents shall be in writing and shall be available to the public pursuant to the requirements of the Oklahoma Open Records Act. All votes by the board of education of a school district to approve a conversion plan shall be held in an open public session. If the board of education of a school district

votes to approve a conversion plan, the board shall notify the State Board of Education within sixty (60) days after the vote. The notification shall include a copy of the minutes for the board meeting at which the conversion plan was approved.

3. A conversion school shall comply with all the same accountability measures as are required of a charter school as defined in subsection D of this section. The provisions of Sections 3-140 and 3-142 of this title shall not apply to a conversion school. Conversion schools shall comply with the same laws and State Board of Education rules relating to student enrollment which apply to traditional public schools. Conversion schools shall be funded by the board of education of the school district as a school site within the school district and funding shall not be affected by the conversion of the school.

4. The board of education of a school district may vote to revert a conversion school back to a traditional public school at any time; provided, the change shall only occur during a break between school years.

5. Unless otherwise provided for in this subsection, a conversion school shall retain the characteristics of a traditional public school.

F. A charter school may consist of a new school site, new school sites or all or any portion of an existing school site. An entire school district may not become a charter school site.

70 Okla. Stat. § 3-132

**Application of act--Charter schools--Limitation
on establishment of new schools**

Effective: July 1, 2024

A. The Oklahoma Charter Schools Act shall apply only to charter schools formed and operated under the provisions of the act.¹ Charter schools shall be sponsored only as follows:

1. By any school district located in this state, provided such charter school shall only be located within the geographical boundaries of the sponsoring district and subject to the restrictions of Section 3-145.6 of this title;

2. By an accredited comprehensive, regional, or two-year institution that is a member of The Oklahoma State System of Higher Education or by a private institution of higher learning located within this state that is accredited pursuant to Section 4103 of this title;

3. By a federally recognized Indian tribe, operating a high school under the authority of the Bureau of Indian Affairs as of November 1, 2010, if the charter school is for the purpose of demonstrating native language immersion instruction, and is located within its former reservation or treaty area boundaries. For purposes of this paragraph, native language immersion instruction shall require that educational instruction and other activities conducted at the school site are primarily conducted in the native language;

¹ Title 70, § 3-130 et seq.

4. Until June 30, 2023, by the State Board of Education and beginning July 1, 2024, by the Statewide Charter School Board when the applicant of the charter school is the Office of Juvenile Affairs or the applicant has a contract with the Office of Juvenile Affairs and the charter school is for the purpose of providing education services to youth in the custody or supervision of the state;

5. By a federally recognized Indian tribe only when the charter school is located within the former reservation or treaty area boundaries of the tribe on property held in trust by the Bureau of Indian Affairs of the United States Department of the Interior for the benefit of the tribe; or

6. By the Statewide Charter School Board. In counties with a population of fewer than five hundred thousand (500,000), according to the latest Federal Decennial Census, the Statewide Charter School Board shall not sponsor more than five new charter schools each year. Existing charter schools sponsored by the Statewide Charter School Board shall not apply to the limits prescribed by this paragraph.

B. An eligible non-school-district sponsor shall give priority to opening charter schools that serve at-risk student populations or students from low-performing traditional public schools.

C. An eligible non-school-district sponsor shall give priority to applicants that have demonstrated a record of operating at least one school or similar program that demonstrates academic success and organizational viability and serves student populations similar to those the proposed charter school seeks to serve. In assessing the potential for

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quality replication of a charter school, a sponsor shall consider the following factors before approving a new site or school:

1. Evidence of a strong and reliable record of academic success based primarily on student performance data, as well as other viable indicators including financial and operational success;
2. A sound, detailed, and well-supported growth plan;
3. Evidence of the ability to transfer successful practices to a potentially different context that includes reproducing critical cultural, organizational, and instructional characteristics;
4. Any management organization involved in a potential replication is fully vetted, and the academic, financial, and operational records of the schools it operates are found to be satisfactory;
5. Evidence the program seeking to be replicated has the capacity to do so successfully without diminishing or putting at risk its current operations; and
6. A financial structure that ensures that funds attributable to each charter school within a network and required by law to be utilized by a school remain with and are used to benefit that school.

70 Okla. Stat. § 3-132.1

**Creation of Statewide Charter School Board--
Termination of Statewide Virtual Charter
School Board--Transfer to Statewide Charter
School Board**

Effective: September 1, 2023

A. There is hereby created the Statewide Charter School Board. Beginning July 1, 2024, the Board shall have the sole authority to sponsor statewide virtual charter schools in this state and may sponsor charter schools in this state. The Board shall be composed of nine (9) voting members as follows:

1. Three members appointed by the Governor;
2. Two members appointed by the President Pro Tempore of the Senate;
3. Two members appointed by the Speaker of the House of Representatives;
4. The Superintendent of Public Instruction or his or her designee; and
5. The State Auditor and Inspector or his or her designee.

B. Initial appointments shall be made by October 31, 2023. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one member for one (1) year and one member for two (2) years. The Governor shall appoint one member for one (1) year and two members for two (2) years. Members shall serve until their successors are duly appointed for a term of three (3) years. Appointments shall be made by and take effect on July 31 of the year in which the appointment is made.

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Annually by December 30 the Board shall elect from its membership a chair and vice chair.

C. A member may be removed from the Board by the appointing authority for cause which shall include but not be limited to:

1. Being found guilty by a court of competent jurisdiction of a felony or any offense involving moral turpitude;
2. Being found guilty of malfeasance, misfeasance, or nonfeasance in relation to Board duties;
3. Being found mentally incompetent by a court of competent jurisdiction; or
4. Failing to attend three successive meetings of the Board without just cause, as determined by the Board.

D. Vacancies shall be filled by the appointing authority.

E. No member of the Senate or House of Representatives may be appointed to the Board while serving as a member of the Legislature or for two (2) full years following the expiration of the term of office.

F. Members of the Statewide Charter School Board shall not receive compensation but shall be reimbursed for necessary travel expenses pursuant to the provisions of the State Travel Reimbursement Act.

G. The Statewide Charter School Board shall meet at the call of the chair. The first meeting of the Board

shall be held no later than sixty (60) days after the effective date of this act.¹

H. Five members of the Board shall constitute a quorum, and an affirmative vote of at least five members shall be required for the Board to take any final action.

I. Beginning July 1, 2024, statewide virtual charter schools shall be sponsored only by the Statewide Charter School Board created pursuant to this section. Effective July 1, 2024, the Statewide Virtual Charter School Board shall be abolished and the Statewide Charter School Board shall succeed to any contractual rights and responsibilities and settlement agreements incurred by the Statewide Virtual Charter School Board in a virtual charter school sponsorship contract executed prior to July 1, 2024.

1. All powers, duties, responsibilities, policies, personnel, property, equipment, supplies, records, assets, funds, current and future liabilities, encumbrances, obligations, and indebtedness of the Statewide Virtual Charter School Board or associated with a virtual charter school sponsorship contract entered into by the Statewide Virtual Charter School Board prior to July 1, 2024, shall be transferred to the Statewide Charter School Board. No items shall be expended or used for any purpose other than the performance of duties and responsibilities as directed and required in this act. Appropriate conveyances and other documents shall be executed to effectuate the transfer of property associated with a sponsorship contract. The Statewide Charter School Board may contract for additional legal and administrative

¹ O.S.L. 2023, c. 323, § 1, eff. Sept. 1, 2023.

services as necessary to effectuate the transfers provided in this subsection.

2. The Director of the Office of Management and Enterprise Services shall coordinate the transfer of funds, allotments, purchase orders, and outstanding financial obligations and encumbrances relating to the regulation of virtual charter schools as transferred pursuant to the provisions of this act.

3. Upon succession of sponsorship contracts, the Statewide Charter School Board shall assume sponsorship of the virtual charter schools for the remainder of the term of the contracts. Prior to the end of the current term of the contract, the Statewide Charter School Board shall allow a virtual charter school to apply for renewal of the sponsorship contract in accordance with the renewal procedures established pursuant to Section 3-137 of Title 70 of the Oklahoma Statutes.

4. Effective July 1, 2024, all administrative rules promulgated by the Statewide Virtual Charter School Board relating to the implementation and enforcement of the Oklahoma Charter Schools Act shall be enforceable by the Statewide Charter School Board. The rules shall continue in force and effect and the Statewide Charter School Board shall have authority to amend, repeal, recodify, or make additions to the rules pursuant to the Administrative Procedures Act.²

J. Effective July 1, 2024, the Statewide Charter School Board shall succeed to any contractual rights and responsibilities and settlement agreements

² Title 75, § 250 et seq.

incurred by the State Board of Education in a charter school sponsorship contract executed prior to July 1, 2024. All property, equipment, supplies, records, assets, funds, current and future liabilities, encumbrances, obligations, and indebtedness associated with a charter school sponsorship contract entered into by the State Board of Education prior to July 1, 2024, shall be transferred to the Statewide Charter School Board. Appropriate conveyances and other documents shall be executed to effectuate the transfer of property associated with a sponsorship contract. Upon succession of sponsorship contracts, the Statewide Charter School Board shall assume sponsorship of the charter schools for the remainder of the term of the contracts. Prior to the end of the current term of the contract, the Statewide Charter School Board shall allow a charter school to apply for renewal of the sponsorship contract in accordance with the renewal procedures established pursuant to Section 3-137 of Title 70 of the Oklahoma Statutes.

K. Beginning July 1, 2024, at the end of the current term of a charter school sponsorship contract with a school district, an accredited comprehensive or regional institution that is a member of The Oklahoma State System of Higher Education, a community college, or a federally recognized Indian tribe, a charter school may apply for contract renewal with the Statewide Charter School Board for sponsorship.

70 Okla. Stat. § 3-132.2

**Powers and responsibilities of Board--
Accreditation and compliance--Conversion
schools--Supplemental online courses**

Effective: September 1, 2023

A. Beginning July 1, 2024, and subject to the requirements of the Oklahoma Charter Schools Act, the Statewide Charter School Board shall:

1. Provide supervision, services, and oversight of the operations of statewide virtual charter schools in this state and charter schools for which the Statewide Charter School Board is the sponsor, recommend legislation pertaining to charter schools to the Legislature, and promulgate rules and policies that the Board deems necessary to accomplish the purposes prescribed in this section;
2. Ensure compliance with state laws and training requirements for all charter schools, virtual charter schools, and sponsors;
3. Establish a procedure for accepting, approving, and disapproving charter school and statewide virtual charter school applications and a process for renewal or revocation of approved charter contracts which meet the procedures set forth in the Oklahoma Charter Schools Act;
4. Hire an Executive Director and other staff for its operation;
5. Prepare a budget for expenditures necessary for the proper maintenance of the Board and accomplishment of its purpose;

6. Comply with the requirements of the Oklahoma Open Meeting Act and Oklahoma Open Records Act; and

7. Give priority to opening charter schools and virtual charter schools that serve at-risk student populations or students from low-performing traditional public schools.

B. The State Board of Education shall be responsible for accreditation of charter schools and virtual charter schools and ensure compliance with special education laws and federal laws and programs administered by the State Board of Education.

C.1. For purposes of the Oklahoma Charter Schools Act, “charter school” means:

a. prior to July 1, 2024, a public school established by contract with a school district board of education, a technology center school district, a higher education institution, a federally recognized Indian tribe, or the State Board of Education, and

b. on July 1, 2024, and after, a public school established by contract with a school district board of education, a higher education institution, an institution of higher learning accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes, a federally recognized Indian tribe, or the Statewide Charter School Board,

to provide learning that will improve student achievement and as defined in the Elementary and Secondary Education Act of 1965, as reauthorized by

P.L. No. 114-95, also known as the Every Student Succeeds Act.1

2. A charter school may consist of a new school site, new school sites, or all or any portion of an existing school site. An entire school district may not become a charter school site.

D.1. For the purposes of the Oklahoma Charter Schools Act, “conversion school” means a school created by converting all or any part of a traditional public school in order to access any or all flexibilities afforded to a charter school; provided, however, all or any part of a traditional public school shall not be converted to a virtual charter school.

2. Prior to the board of education of a school district converting all or any part of a traditional public school to a conversion school, the board shall prepare a conversion plan. The conversion plan shall include documentation that demonstrates and complies with paragraphs 1, 2, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 34, and 35 of subsection B of Section 3-134 of Title 70 of the Oklahoma Statutes. The conversion plan and all documents shall be in writing and shall be available to the public pursuant to the requirements of the Oklahoma Open Records Act.2 All votes by the board of education of a school district to approve a conversion plan shall be held in an open public session. If the board of education of a school district votes to approve a conversion plan, the board shall notify the State Board of Education within sixty (60) days after the vote. The notification shall include a copy of the minutes for the board meeting at which the conversion plan was approved.

3. A conversion school shall comply with all the same accountability measures as are required of a charter school as defined in subsection C of this section. The provisions of Sections 3-140 and 3-142 of Title 70 of the Oklahoma Statutes shall not apply to a conversion school. Conversion schools shall comply with the same laws and State Board of Education rules relating to student enrollment which apply to traditional public schools. Conversion schools shall be funded by the board of education of the school district as a school site within the school district and funding shall not be affected by the conversion of the school.

4. The board of education of a school district may vote to revert a conversion school back to a traditional public school at any time; provided, the change shall only occur during a break between school years.

5. Unless otherwise provided for in this subsection, a conversion school shall retain the characteristics of a traditional public school.

E.1. Beginning July 1, 2024, the Statewide Charter School Board shall make publicly available a list of supplemental online courses which have been reviewed and certified by the Board to ensure that the courses are high-quality options and are aligned with the subject matter standards adopted by the State Board of Education pursuant to Section 11-103.6 of Title 70 of the Oklahoma Statutes. The Statewide Charter School Board shall give special emphasis on listing supplemental online courses in science, technology, engineering, and math (STEM), foreign language, and advanced placement courses. School districts shall not be limited to selecting supplemental online courses that have been reviewed

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and certified by the Statewide Charter School Board and listed as provided for in this paragraph.

2. In conjunction with the Office of Management and Enterprise Services, the Board shall negotiate and enter into contracts with supplemental online course providers to offer a state rate price to school districts for supplemental online courses that have been reviewed and certified by the Statewide Charter School Board and listed as provided for in this subsection.

70 Okla. Stat. § 3-134

**Applications--Pre-submission training--
Contents—Procedures**

Effective: May 5, 2022 to June 30, 2024

A. For written applications filed after January 1, 2008, prior to submission of the application to a proposed sponsor seeking to establish a charter school, the applicant shall be required to complete training which shall not exceed ten (10) hours provided by the State Department of Education on the process and requirements for establishing a charter school. The Department shall develop and implement the training by January 1, 2008. The Department may provide the training in any format and manner that the Department determines to be efficient and effective including, but not limited to, web-based training.

B. Except as otherwise provided for in Section 3-137 of this title, an applicant seeking to establish a charter school shall submit a written application to the proposed sponsor as prescribed in subsection E of this section. The application shall include:

1. A mission statement for the charter school;
2. A description including, but not limited to, background information of the organizational structure and the governing body of the charter school;
3. A financial plan for the first five (5) years of operation of the charter school and a description of the treasurer or other officers or persons who shall have primary responsibility for the finances of the charter

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school. Such person shall have demonstrated experience in school finance or the equivalent thereof;

4. A description of the hiring policy of the charter school;

5. The name of the applicant or applicants and requested sponsor;

6. A description of the facility and location of the charter school;

7. A description of the grades being served;

8. An outline of criteria designed to measure the effectiveness of the charter school;

9. A demonstration of support for the charter school from residents of the school district which may include but is not limited to a survey of the school district residents or a petition signed by residents of the school district;

10. Documentation that the applicants completed charter school training as set forth in subsection A of this section;

11. A description of the minimum and maximum enrollment planned per year for each term of the charter contract;

12. The proposed calendar for the charter school and sample daily schedule;

13. Unless otherwise authorized by law or regulation, a description of the academic program aligned with state standards;

14. A description of the instructional design of the charter school, including the type of learning

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environment, class size and structure, curriculum overview and teaching methods;

15. The plan for using internal and external assessments to measure and report student progress on the performance framework developed by the applicant in accordance with subsection C of Section 3-135 of this title;

16. The plans for identifying and successfully serving students with disabilities, students who are English language learners and students who are academically behind;

17. A description of cocurricular or extracurricular programs and how they will be funded and delivered;

18. Plans and time lines for student recruitment and enrollment, including lottery procedures;

19. The student discipline policies for the charter school, including those for special education students;

20. An organizational chart that clearly presents the organizational structure of the charter school, including lines of authority and reporting between the governing board, staff, any related bodies such as advisory bodies or parent and teacher councils and any external organizations that will play a role in managing the school;

21. A clear description of the roles and responsibilities for the governing board, the leadership and management team for the charter school and any other entities shown in the organizational chart;

22. The leadership and teacher employment policies for the charter school;

23. Proposed governing bylaws;

24. Explanations of any partnerships or contractual partnerships central to the operations or mission of the charter school;
25. The plans for providing transportation, food service and all other significant operational or ancillary services;
26. Opportunities and expectations for parental involvement;
27. A detailed school start-up plan that identifies tasks, time lines and responsible individuals;
28. A description of the financial plan and policies for the charter school, including financial controls and audit requirements;
29. A description of the insurance coverage the charter school will obtain;
30. Start-up and five-year budgets with clearly stated assumptions;
31. Start-up and first-year cash-flow projections with clearly stated assumptions;
32. Evidence of anticipated fundraising contributions, if claimed in the application;
33. A sound facilities plan, including backup or contingency plans if appropriate;
34. A requirement that the charter school governing board meet at a minimum quarterly in the state and that for those charter schools outside of counties with a population of five hundred thousand (500,000) or more, that a majority of members are residents within the geographic boundary of the sponsoring entity; and

35. A requirement that the charter school follow the requirements of the Oklahoma Open Meeting Act¹ and Oklahoma Open Records Act.

C. A board of education of a public school district, public body, public or private college or university, private person, or private organization may contract with a sponsor to establish a charter school. A private school shall not be eligible to contract for a charter school under the provisions of the Oklahoma Charter Schools Act.

D. The sponsor of a charter school is the board of education of a school district, the board of education of a technology center school district, a higher education institution, the State Board of Education, or a federally recognized Indian tribe which meets the criteria established in Section 3-132 of this title. Any board of education of a school district in the state may sponsor one or more charter schools. The physical location of a charter school sponsored by a board of education of a school district or a technology center school district shall be within the boundaries of the sponsoring school district. The physical location of a charter school otherwise sponsored by the State Board of Education pursuant to paragraph 8 of subsection A of Section 3-132 of this title shall be in the school district in which the application originated.

E. An applicant for a charter school may submit an application to a proposed sponsor which shall either accept or reject sponsorship of the charter school within ninety (90) days of receipt of the application. If the proposed sponsor rejects the application, it shall notify the applicant in writing of the reasons for the

¹ Title 25, § 301 et seq.

rejection. The applicant may submit a revised application for reconsideration to the proposed sponsor within thirty (30) days after receiving notification of the rejection. The proposed sponsor shall accept or reject the revised application within thirty (30) days of its receipt. Should the sponsor reject the application on reconsideration, the applicant may appeal the decision to the State Board of Education with the revised application for review pursuant to paragraph 8 of subsection A of Section 3-132 of this title. The State Board of Education shall hear the appeal no later than sixty (60) days from the date received by the Board.

F. A board of education of a school district, board of education of a technology center school district, higher education institution, or federally recognized Indian tribe sponsor of a charter school shall notify the State Board of Education when it accepts sponsorship of a charter school. The notification shall include a copy of the charter of the charter school.

G. Applicants for charter schools proposed to be sponsored by an entity other than a school district pursuant to paragraph 1 of subsection A of Section 3-132 of this title may, upon rejection of the revised application, proceed to binding arbitration under the commercial rules of the American Arbitration Association with costs of the arbitration to be borne by the proposed sponsor. Applicants for charter schools proposed to be sponsored by school districts pursuant to paragraph 1 of subsection A of Section 3-132 of this title may not proceed to binding arbitration but may be sponsored by the State Board of Education as provided in paragraph 8 of subsection A of Section 3-132 of this title.

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H. If a board of education of a technology center school district, a higher education institution, the State Board of Education, or a federally recognized Indian tribe accepts sponsorship of a charter school, the administrative, fiscal and oversight responsibilities of the technology center school district, the higher education institution, or the federally recognized Indian tribe shall be listed in the contract. No responsibilities shall be delegated to a school district unless the local school district agrees to assume the responsibilities.

I. A sponsor of a public charter school shall have the following powers and duties:

1. Provide oversight of the operations of charter schools in the state through annual performance reviews of charter schools and reauthorization of charter schools for which it is a sponsor;
2. Solicit and evaluate charter applications;
3. Approve quality charter applications that meet identified educational needs and promote a diversity of educational choices;
4. Decline to approve weak or inadequate charter applications;
5. Negotiate and execute sound charter contracts with each approved public charter school;
6. Monitor, in accordance with charter contract terms, the performance and legal compliance of charter schools; and
7. Determine whether each charter contract merits renewal, nonrenewal or revocation.

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J. Sponsors shall establish a procedure for accepting, approving and disapproving charter school applications in accordance with subsection E of this section.

K. Sponsors shall be required to develop and maintain chartering policies and practices consistent with recognized principles and standards for quality charter authorizing as established by the State Department of Education in all major areas of authorizing responsibility, including organizational capacity and infrastructure, soliciting and evaluating charter applications, performance contracting, ongoing charter school oversight and evaluation and charter renewal decision-making.

L. Sponsors acting in their official capacity shall be immune from civil and criminal liability with respect to all activities related to a charter school with which they contract.

70 Okla. Stat. § 3-134

**Applications--Pre-submission training--
Contents—Procedures**

Effective: July 1, 2024

A. For written applications filed after July 1, 2024, prior to submission of the application to a proposed sponsor seeking to establish a charter school or to the Statewide Charter School Board to establish a virtual charter school, the applicant shall be required to complete training which shall not exceed ten (10) hours provided by the Statewide Charter School Board on the process and requirements for establishing a charter school or virtual charter school. The sponsor of a charter school that enters into a new or renewed sponsorship contract on or after July 1, 2024, shall be required to complete training provided by the Statewide Charter School Board or an organization approved by the Statewide Charter School Board on the oversight duties of the sponsor. The Board shall develop and implement the training and publish a list of organizations approved to provide training by July 1, 2024. The Board and organizations approved by the Board may provide the training in any format and manner determined to be efficient and effective including, but not limited to, web-based training.

B. Except as otherwise provided for in Section 3-137 of this title, an applicant seeking to establish a virtual charter school shall submit a written application to the Statewide Charter School Board, and an applicant seeking to establish a charter school shall submit a written application to the proposed sponsor as

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provided for in subsection E of this section. The application shall include:

1. A mission statement for the charter school or virtual charter school;
2. A description including, but not limited to, background information of the organizational structure and the governing board of the charter school or virtual charter school;
3. A financial plan for the first five (5) years of operation of the charter school or virtual charter school and a description of the treasurer or other officers or persons who shall have primary responsibility for the finances of the charter school or virtual charter school. Such person shall have demonstrated experience in school finance or the equivalent thereof;
4. A description of the hiring policy of the charter school or virtual charter school;
5. The name of the applicant or applicants and requested sponsor;
6. A description of the facility and location of the charter school;
7. A description of the grades being served;
8. An outline of criteria designed to measure the effectiveness of the charter school or virtual charter school;
9. Documentation that the applicants completed training as set forth in subsection A of this section;
10. A description of the minimum and maximum enrollment planned per year for each term of the charter contract;

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11. The proposed calendar for the charter school or virtual charter school and sample daily schedule;
12. Unless otherwise authorized by law or regulation, a description of the academic program aligned with state standards;
13. A description of the instructional design of the charter school or virtual charter school including the type of learning environment, class size and structure, curriculum overview, and teaching methods;
14. The plan for using internal and external assessments to measure and report student progress on the performance framework developed by the applicant in accordance with Section 3-136 of this title;
15. The plans for identifying and successfully serving students with disabilities, students who are English language learners, and students who are academically behind;
16. A description of cocurricular or extracurricular programs and how they will be funded and delivered;
17. Plans and time lines for student recruitment and enrollment including lottery procedures;
18. The student discipline policies for the charter school or virtual charter school including those for special education students;
19. An organizational chart that clearly presents the organizational structure of the charter school or virtual charter school, including lines of authority and reporting between the governing board, staff, any related bodies such as advisory bodies or parent and

teacher councils, and any external organizations that will play a role in managing the school;

20. A clear description of the roles and responsibilities for the governing board, the leadership and management team for the charter school or virtual charter school, and any other entities shown in the organizational chart;

21. The leadership and teacher employment policies for the charter school or virtual charter school;

22. Proposed governing bylaws;

23. Explanations of any partnerships or contractual partnerships central to the operations or mission of the charter school or virtual charter school;

24. The plans for providing transportation, food service, and all other significant operational or ancillary services;

25. Opportunities and expectations for parental involvement;

26. A detailed school start-up plan that identifies tasks, time lines, and responsible individuals;

27. A description of the financial plan and policies for the charter school or virtual charter school including financial controls and audit requirements;

28. A description of the insurance coverage the charter school or virtual charter school will obtain;

29. Start-up and five-year budgets with clearly stated assumptions;

30. Start-up and first-year cash-flow projections with clearly stated assumptions;

31. Evidence of anticipated fundraising contributions, if claimed in the application;

32. A sound facilities plan including backup or contingency plans if appropriate;

33. A requirement that the charter school or virtual charter school governing board meet no fewer than ten (10) months of the year in the state and that for those charter schools outside of counties with a population of five hundred thousand (500,000) or more, that a minimum of two (2) members are residents within the geographic boundary of the charter school;

34. A requirement that the charter school or virtual charter school follow the requirements of the Oklahoma Open Meeting Act¹ and Oklahoma Open Records Act;² and

35. A copy of any proposed contract between the governing board of a charter school or virtual charter school and an educational management organization, as defined by Section 5-200 of this title, which meets the requirements of the Oklahoma Charter Schools Act.

C. A board of education of a public school district, public body, public or private college or university, private person, or private organization may contract with a sponsor to establish a charter school or virtual charter school. A private school shall not be eligible to contract for a charter school or virtual charter school under the provisions of the Oklahoma Charter Schools Act.

¹ Title 25, § 301 et seq.

² Title 51, § 24A.1 et seq.

D. The sponsor of a charter school is the board of education of a school district, a higher education institution, a private institution of higher learning accredited pursuant to Section 4103 of this title, a federally recognized Indian tribe which meets the criteria established in Section 3-132 of this title, or beginning July 1, 2024, the Statewide Charter School Board. Any sponsor authorized pursuant to subsection A of Section 3-132 of this title may sponsor one or more charter schools. The physical location of a charter school sponsored by a board of education of a school district shall be within the boundaries of the sponsoring school district. The physical location of a charter school sponsored by the Statewide Charter School Board pursuant to paragraph 6 of subsection A of Section 3-132 of this title shall be in the school district in which the application originated.

E.1. Beginning July 1, 2024, any application seeking to establish a charter school in this state shall be submitted first to the school district in which the proposed charter school is to be located. The school district board of education shall approve or deny the application within sixty (60) days of receipt of the application. If the charter school application is denied, nothing shall prohibit an applicant from submitting a revised application to the school district board of education, which shall approve or deny the revised application within sixty (60) days of receipt of the application.

2. An applicant for a charter school that has been denied pursuant to paragraph 1 of this subsection may submit an application to a proposed sponsor listed in paragraphs 2 through 6 of subsection A of Section 3-132 of this title, which shall either accept or

reject sponsorship of the charter school within ninety (90) days of receipt of the application. If the proposed sponsor rejects the application, it shall notify the applicant in writing of the reasons for the rejection. The applicant may submit a revised application for reconsideration to the proposed sponsor within thirty (30) days after receiving notification of the rejection. The proposed sponsor shall accept or reject the revised application within thirty (30) days of its receipt.

3. Beginning July 1, 2024, an applicant for a virtual charter school shall submit an application to the Statewide Charter School Board, which shall either accept or reject sponsorship of the virtual charter school within ninety (90) days of receipt of the application. If the application is rejected, the Statewide Charter School Board shall notify the applicant in writing of the reasons for the rejection. The applicant may submit a revised application for reconsideration to the Statewide Charter school Board within thirty (30) days after receiving notification of the rejection. The Statewide Charter School Board shall accept or reject the revised application within thirty (30) days of its receipt.

F. A board of education of a school district, a higher education institution, a private institution of higher learning accredited pursuant to Section 4103 of this title, or a federally recognized Indian tribe shall notify the State Board of Education and the Statewide Charter School Board when it accepts sponsorship of a charter school. The notification shall include a copy of the charter of the charter school.

G. Applicants for charter schools and virtual charter schools proposed to be sponsored by the Statewide Charter School Board may, upon rejection of a revised application, proceed to binding arbitration under the commercial rules of the American Arbitration Association with costs of the arbitration to be borne by the applicant.

H. If a board of education of a school district, a higher education institution, a private institution of higher learning accredited pursuant to Section 4103 of this title, or a federally recognized Indian tribe accepts sponsorship of a charter school, the administrative, fiscal, and oversight responsibilities of the school district, the higher education institution, the private institution of higher learning accredited pursuant to Section 4103 of this title, or the federally recognized Indian tribe shall be listed in the contract. No administrative, fiscal, or oversight responsibilities of a charter school shall be delegated to a school district unless the school district agrees to enter into a contract to assume the responsibilities.

I. A sponsor of a public charter school shall have the following powers and duties over charter schools it sponsors, and the Statewide Charter School Board shall have the following powers and duties over the charter schools and virtual charter schools it sponsors:

1. Provide services and oversight of the operations of charter schools or virtual charter schools in the state through annual performance reviews and reauthorization;
2. Solicit and evaluate charter applications;

3. Approve quality charter applications that meet identified educational needs and promote a diversity of educational choices;

4. Decline to approve weak or inadequate charter applications;

5. Negotiate and execute sound charter contracts with each approved public charter school or virtual charter school;

6. Approve or deny proposed contracts between the governing board of a charter school or virtual charter school and an educational management organization, as defined by section 5-200 of this title;

7. Monitor, in accordance with charter contract terms, the performance and legal compliance of charter schools and virtual charter schools; and

8. Determine whether each charter contract merits renewal, nonrenewal, or revocation.

J. Sponsors shall establish a procedure for accepting, approving, and disapproving charter school applications in accordance with subsection E of this section. The Statewide Charter School Board shall post its application, application process, and application time frames on the Board's website.

K. Sponsors including the Statewide Charter School Board shall develop and maintain chartering policies and practices consistent with recognized principles and standards for quality charter sponsoring in all major areas of sponsoring responsibility including organizational capacity and infrastructure, soliciting and evaluating charter school and virtual charter school applications, performance contracting, ongoing charter school and virtual charter school oversight

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and evaluation, and charter contract renewal decision-making.

L. Sponsors acting in their official capacity shall be immune from civil and criminal liability with respect to all activities related to a charter school with which they contract.

70 Okla. Stat. § 3-135

**Sponsor to contract with governing board--
Contents of contract**

Effective: to June 30, 2024

A. The sponsor of a charter school shall enter into a written contract with the governing body of the charter school. The contract shall incorporate the provisions of the charter of the charter school and contain, but shall not be limited to, the following provisions:

1. A description of the program to be offered by the school which complies with the purposes outlined in Section 3-136 of this title;
2. Admission policies and procedures;
3. Management and administration of the charter school, including that a majority of the charter governing board members are residents of the State of Oklahoma and meet no less than quarterly in a public meeting within the boundaries of the school district in which the charter school is located or within the State of Oklahoma in the instance of multiple charter school locations by the same sponsor;
4. Requirements and procedures for program and financial audits;
5. A description of how the charter school will comply with the charter requirements set forth in the Oklahoma Charter Schools Act;
6. Assumption of liability by the charter school;
7. The term of the contract;

8. A description of the high standards of expectation and rigor for charter school plans and assurance that charter school plans adopted meet at least those standards;

9. Policies that require that the charter school be as equally free and open to all students as traditional public schools;

10. Procedures that require students enrolled in the charter school to be selected by lottery to ensure fairness if more students apply than a school has the capacity to accommodate;

11. Policies that require the charter school to be subject to the same academic standards and expectations as existing public schools; and

12. A description of the requirements and procedures for the charter school to receive funding in accordance with statutory requirements and guidelines for existing public schools.

B. A charter school shall not enter into an employment contract with any teacher or other personnel until the charter school has a contract with a sponsoring school district. The employment contract shall set forth the personnel policies of the charter school, including, but not limited to, policies related to certification, professional development evaluation, suspension, dismissal and nonreemployment, sick leave, personal business leave, emergency leave, and family and medical leave. The contract shall also specifically set forth the salary, hours, fringe benefits, and work conditions. The contract may provide for employer-employee bargaining, but the charter school shall not be required to comply with the provisions of Sections 509.1 through 509.10 of this title. The

contract shall conform to all applicable provisions set forth in Section 3-136 of this title.

Upon contracting with any teacher or other personnel, the governing body of the charter school shall, in writing, disclose employment rights of the employees in the event the charter school closes or the charter is not renewed.

No charter school may begin serving students without a charter contract executed in accordance with the provisions of the Oklahoma Charter Schools Act and approved in an open meeting of the sponsor. The sponsor may establish reasonable preopening requirements or conditions to monitor the start-up progress of newly approved charter schools and ensure that each school is prepared to open smoothly on the date agreed and to ensure that each school meets all building, health, safety, insurance and other legal requirements for the opening of a school.

C. The performance provisions within the charter contract shall be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the evaluations of the charter school by the sponsor. The sponsor shall require a charter school to submit the data required in this section in the identical format that is required by the State Department of Education of all public schools in order to avoid duplicative administrative efforts or allow a charter school to provide permission to the Department to share all required data with the sponsor of the charter school. The performance framework shall include indicators, measures and metrics for, at a minimum:

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1. Student academic proficiency;
2. Student academic growth;
3. Achievement gaps in both proficiency and growth between major student subgroups;
4. Student attendance;
5. Recurrent enrollment from year to year as determined by the methodology used for public schools in Oklahoma;
6. In the case of high schools, graduation rates as determined by the methodology used for public schools in Oklahoma;
7. In the case of high schools, postsecondary readiness;
8. Financial performance and sustainability; and
9. Governing board performance and stewardship, including compliance with all applicable laws, regulations and terms of the charter contract.

D. The sponsor shall not request any metric or data from a charter school that it does not produce or publish for all school sites in the district or under its sponsorship, unless the metric or data is unique to a charter school.

E. A charter contract may provide for one or more schools by an applicant to the extent approved by the sponsor and consistent with applicable law. An applicant or the governing board of an applicant may hold one or more charter contracts. Each charter school that is part of a charter contract shall be separate and distinct from any other charter school under the same charter contract.

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70 Okla. Stat. § 3-136

**Rules and standards to be incorporated into
charter**

Effective: to June 30, 2024

A. A charter school shall adopt a charter which will ensure compliance with the following:

1. A charter school shall comply with all federal regulations and state and local rules and statutes relating to health, safety, civil rights and insurance. By January 1, 2000, the State Department of Education shall prepare a list of relevant rules and statutes which a charter school must comply with as required by this paragraph and shall annually provide an update to the list;

2. A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution;

3. The charter school may provide a comprehensive program of instruction for a prekindergarten program, a kindergarten program or any grade between grades one and twelve. Instruction may be provided to all persons between the ages of four (4) and twenty-one (21) years. A charter school may offer a curriculum which emphasizes a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts, or foreign language. The charter of a charter school which offers grades nine through twelve shall specifically address whether the charter school will comply with the graduation requirements established

in Section 11-103.6 of this title. No charter school shall be chartered for the purpose of offering a curriculum for deaf or blind students that is the same or similar to the curriculum being provided by or for educating deaf or blind students that are being served by the Oklahoma School for the Blind or the Oklahoma School for the Deaf;

4. A charter school shall participate in the testing as required by the Oklahoma School Testing Program Act¹ and the reporting of test results as is required of a school district. A charter school shall also provide any necessary data to the Office of Accountability;

5. Except as provided for in the Oklahoma Charter Schools Act and its charter, a charter school shall be exempt from all statutes and rules relating to schools, boards of education, and school districts;

6. A charter school, to the extent possible, shall be subject to the same reporting requirements, financial audits, audit procedures, and audit requirements as a school district. The State Department of Education or State Auditor and Inspector may conduct financial, program, or compliance audits. A charter school shall use the Oklahoma Cost Accounting System to report financial transactions to the sponsoring school district;

7. A charter school shall comply with all federal and state laws relating to the education of children with disabilities in the same manner as a school district;

8. A charter school shall provide for a governing body for the school which shall be responsible for the

¹ Title 70, § 1210.505 et seq.

policies and operational decisions of the charter school;

9. A charter school shall not be used as a method of generating revenue for students who are being home schooled and are not being educated at an organized charter school site;

10. A charter school may not charge tuition or fees;

11. A charter school shall provide instruction each year for at least the number of days required in Section 1-109 of this title;

12. A charter school shall comply with the student suspension requirements provided for in Section 24-101.3 of this title;

13. A charter school shall be considered a school district for purposes of tort liability under The Governmental Tort Claims Act;²

14. Employees of a charter school may participate as members of the Teachers' Retirement System of Oklahoma in accordance with applicable statutes and rules if otherwise allowed pursuant to law;

15. A charter school may participate in all health and related insurance programs available to the employees of the sponsor of the charter school;

16. A charter school shall comply with the Oklahoma Open Meeting Act³ and the Oklahoma Open Records Act;⁴

² Title 51, § 151 et seq.

³ Title 25, § 301 et seq.

⁴ Title 51, § 24A.1 et seq.

17. The governing body of a charter school shall be subject to the same conflict of interest requirements as a member of a local school board; and

18. No later than September 1 each year, the governing board of each charter school formed pursuant to the Oklahoma Charter Schools Act shall prepare a statement of actual income and expenditures for the charter school for the fiscal year that ended on the preceding June 30, in a manner compliant with Section 5-135 of this title. The statement of expenditures shall include functional categories as defined in rules adopted by the State Board of Education to implement the Oklahoma Cost Accounting System pursuant to Section 5-145 of this title. Charter schools shall not be permitted to submit estimates of expenditures or prorated amounts to fulfill the requirements of this paragraph.

B. The charter of a charter school shall include a description of the personnel policies, personnel qualifications, and method of school governance, and the specific role and duties of the sponsor of the charter school.

C. The charter of a charter school may be amended at the request of the governing body of the charter school and upon the approval of the sponsor.

D. A charter school may enter into contracts and sue and be sued.

E. The governing body of a charter school may not levy taxes or issue bonds.

F. The charter of a charter school shall include a provision specifying the method or methods to be employed for disposing of real and personal property

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acquired by the charter school upon expiration or termination of the charter or failure of the charter school to continue operations. Except as otherwise provided, any real or personal property purchased with state or local funds shall be retained by the sponsoring school district. If a charter school that was previously sponsored by the board of education of a school district continues operation within the school district under a new charter sponsored by an entity authorized pursuant to Section 3-132 of this title, the charter school may retain any personal property purchased with state or local funds for use in the operation of the charter school until termination of the new charter or failure of the charter school to continue operations.

70 Okla. Stat. § 3-136

**Written charter contract requirements--
Employment contracts**

Effective: July 1, 2024

A. Beginning July 1, 2024, a written contract entered into between the Statewide Charter School Board and the governing board of a charter school or statewide virtual charter school or a written contract entered into between a sponsor and the governing board of a charter school shall ensure compliance with the following:

1. Except as provided for in the Oklahoma Charter Schools Act, a charter school and virtual charter school shall be exempt from all statutes and rules relating to schools, boards of education, and school districts; provided, however, a charter school or virtual charter school shall comply with all federal regulations and state and local rules and statutes relating to health, safety, civil rights, and insurance. By January 1, 2000, the State Department of Education shall prepare a list of relevant rules and statutes which a charter school and virtual charter school must comply with as required by this paragraph and shall annually provide an update to the list;
2. A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or religious institution;
3. The charter contract shall provide a description of the educational program to be offered. A charter

school or virtual charter school may provide a comprehensive program of instruction for a prekindergarten program, a kindergarten program, or any grade between grades one and twelve. Instruction may be provided to all persons between four (4) and twenty-one (21) years of age. A charter school or virtual charter school may offer a curriculum which emphasizes a specific learning philosophy or style or certain subject areas such as mathematics, science, fine arts, performance arts, or foreign language. The charter of a charter school or virtual charter school which offers grades nine through twelve shall specifically address whether the charter school or virtual charter school will comply with the graduation requirements established in Section 11-103.6 of this title. No charter school shall be chartered for the purpose of offering a curriculum for deaf or blind students that is the same or similar to the curriculum being provided by or for educating deaf or blind students that are being served by the Oklahoma School for the Blind or the Oklahoma School for the Deaf;

4. A charter school or virtual charter school shall participate in the testing as required by the Oklahoma School Testing Program Act¹ and the reporting of test results as is required of a school district. A charter school or virtual charter school shall also provide any necessary data to the Office of Accountability within the State Department of Education;

5. A charter school or virtual charter school shall be subject to the same reporting requirements, financial

¹ Title 70, § 1210.505 et seq.

audits, audit procedures, and audit requirements as a school district. The State Department of Education or State Auditor and Inspector may conduct financial, program, or compliance audits. The Statewide Charter School Board may request that the State Auditor and Inspector conduct a financial, program, or compliance audit for any charter school or virtual charter school it oversees. A charter school or virtual charter school shall use the Oklahoma Cost Accounting System to report financial transactions to the State Department of Education. The charter school or virtual charter school shall be subject to the limitations on spending, including provisions of the Oklahoma Constitution, for any funds received from the state, either through the State Department of Education or other sources;

6. A charter school or virtual charter school shall comply with all federal and state laws relating to the education of children with disabilities in the same manner as a school district;

7. A charter school or virtual charter school shall provide for a governing board for the school which shall be responsible for the policies and operational decisions of the charter school or virtual charter school. All of the charter school or virtual charter school governing board members shall be residents of this state and shall meet no fewer than ten (10) months of the year in a public meeting within the boundaries of the school district in which the charter school is located or within this state if the governing board oversees multiple charter schools in this state or oversees a virtual charter school. The governing board of a charter school or virtual charter school shall be subject to the same conflict of interest

requirements as a member of a school district board of education including but not limited to Sections 5-113 and 5-124 of this title. Members appointed to the governing board of a charter school or virtual charter school shall be subject to the same instruction and continuing education requirements as a member of a school district board of education and pursuant to Section 5-110 of this title shall complete twelve (12) hours of instruction within fifteen (15) months of appointment to the governing board and pursuant to Section 5-110.1 of this title shall attend continuing education;

8. A charter school or virtual charter school shall not be used as a method of generating revenue for students who are being home schooled and are not being educated at an organized charter school site or by a virtual charter school;

9. A charter school or virtual charter school shall be as equally free and open to all students as traditional public schools and shall not charge tuition or fees;

10. A charter school or virtual charter school shall provide instruction each year for at least the number of days or hours required in Section 1-109 of this title;

11. A charter school or virtual charter school shall comply with the student suspension requirements provided for in Section 24-101.3 of this title;

12. A charter school or virtual charter school shall be considered a school district for purposes of tort liability under The Governmental Tort Claims Act;²

² Title 51, § 151 et seq.

13. Employees of a charter school or virtual charter school may participate as members of the Teachers' Retirement System of Oklahoma in accordance with applicable statutes and rules if otherwise allowed pursuant to law;

14. A charter school or virtual charter school may participate in all health and related insurance programs available to employees of a public school district;

15. A charter school or virtual charter school and their respective governing boards shall comply with the Oklahoma Open Meeting Act³ and the Oklahoma Open Records Act;⁴

16. The governing board of a charter school or virtual charter school shall notify the sponsor within ten (10) business days in the instance of any significant adverse actions, material findings of noncompliance, or pending actions, claims, or proceedings in this state relating to the charter school, the virtual charter school, or an educational management organization with which the charter school or virtual charter school has a contract;

17. No later than September 1 each year, the governing board of each charter school or virtual charter school formed pursuant to the Oklahoma Charter Schools Act shall prepare a statement of actual income and expenditures for the charter school or virtual charter school for the fiscal year that ended on the preceding June 30, in a manner compliant with Section 5-135 of this title. The statement of

³ Title 25, § 301 et seq.

⁴ Title 51, § 24A.1 et seq.

expenditures shall include functional categories as defined in rules adopted by the State Board of Education to implement the Oklahoma Cost Accounting System pursuant to Section 5-145 of this title. Charter schools and virtual charter schools shall not be permitted to submit estimates of expenditures or prorated amounts to fulfill the requirements of this paragraph; and

18. A charter school or virtual charter school contract shall include performance provisions based on a performance framework that clearly sets forth the academic and operational performance indicators that shall be used by charter school and virtual charter school sponsors to evaluate their respective schools. The sponsor may develop a separate performance framework to evaluate a charter school or virtual charter school that has been designated by the State Department of Education as implementing an alternative education program throughout the school. The sponsor shall require a charter school or virtual charter school to submit the data required in this subsection in the identical format that is required by the State Department of Education of all public schools in order to avoid duplicative administrative efforts or allow a charter school or virtual charter school to provide permission to the Department to share all required data with the Board. The performance framework shall serve as the minimum requirement for charter school and virtual charter school performance evaluation and shall include, but not be limited to, the following indicators:

- a. student academic proficiency,
- b. student academic growth,

- c. achievement gaps in both proficiency and growth between major student subgroups,
- d. student attendance,
- e. recurrent enrollment from year to year as determined by the methodology used for public schools in Oklahoma,
- f. in the case of high schools, graduation rates as determined by the methodology used for public schools in Oklahoma,
- g. in the case of high schools, postsecondary readiness,
- h. financial performance and sustainability and compliance with state and Internal Revenue Service financial reporting requirements,
- i. audit findings or deficiencies,
- j. accreditation and timely reporting,
- k. governing board performance and stewardship including compliance with all applicable laws, regulations, and terms of the charter contract, and
- l. mobility of student population for the virtual charter school framework.

The sponsor including the Statewide Charter School Board shall annually evaluate its charter schools or virtual charter schools according to the performance framework. The results of the evaluation shall be presented to the governing board of the charter school or virtual charter school and the governing board of the charter school sponsor in an open meeting.

B. An applicant or the governing board of an applicant may hold one or more charter contracts. Each charter school or virtual charter school that is part of a charter contract shall be separate and distinct from any other charter school or virtual charter school. For the purposes of this subsection, “separate and distinct” shall mean that a charter school or virtual charter school governing board with oversight of more than one charter school or virtual charter school shall not combine accounting, budgeting, recordkeeping, admissions, employment, or policies and operational decisions of the charter schools or virtual charter schools it oversees.

C. The charter contract of a charter school or virtual charter school shall include a description of the personnel policies, personnel qualifications, and method of school governance. A charter school or virtual charter school shall not enter into an employment contract with any teacher or other personnel until a contract has been executed with its sponsor. The employment contract shall set forth the personnel policies of the charter school or virtual charter school including, but not limited to, policies related to certification, professional development, evaluation, suspension, dismissal and nonreemployment, sick leave, personal business leave, emergency leave, and family and medical leave. The contract shall also specifically set forth the salary, hours, fringe benefits, and work conditions. The contract may provide for employer-employee bargaining, but the charter school or virtual charter school shall not be required to comply with the provisions of Sections 509.1 through 509.10 of this title.

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Upon contracting with any teacher or other personnel, the governing board of a charter school or virtual charter school shall, in writing, disclose employment rights of the employees in the event the charter school or virtual charter school closes or the charter contract is not renewed.

No charter school or virtual charter school may begin serving students without a contract executed in accordance with the provisions of the Oklahoma Charter Schools Act and approved in an open meeting of the governing board of the sponsor or the Statewide Charter School Board. The governing board of the sponsor or the Statewide Charter School Board may establish reasonable preopening requirements or conditions to monitor the start-up progress of newly approved charter schools or virtual charter schools and ensure that each brick-and-mortar school is prepared to open smoothly on the date agreed and to ensure that each school meets all building, health, safety, insurance, and other legal requirements for the opening of a school.

D. The charter of a charter school or virtual charter school may be amended at the request of the governing board of the charter school or virtual charter school and upon the approval of the sponsor.

E. A charter school or virtual charter school may enter into contracts and sue and be sued.

F. The governing board of a charter school or virtual charter school shall not levy taxes or issue bonds. A school district that proposes a bond shall include any charter school established pursuant to subsection A of Section 3-132 of this title and located within the

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school district in planning conversations regarding the bond.

G. The charter of a charter school or virtual charter school shall include a provision specifying the method or methods to be employed for disposing of real and personal property acquired by the charter school or virtual charter school upon expiration or termination of the charter or failure of the charter school or virtual charter school to continue operations. Except as otherwise provided, any real or personal property purchased with state or local funds shall be retained by the sponsor. If a charter school that was previously sponsored by the board of education of a school district continues operation within the school district under a new charter sponsored by an entity authorized pursuant to Section 3-132 of this title, the charter school may retain any personal property purchased with state or local funds for use in the operation of the charter school until termination of the new charter or failure of the charter school to continue operations.

70 Okla. Stat. § 3-137

**Duration of contract--Performance report--
Renewal--Termination--School closure**

Effective: to June 30, 2024

A. An approved contract for a charter school shall be effective for five (5) years from the first day of operation. A charter contract may be renewed for successive five-year terms of duration, although the sponsor may vary the term based on the performance, demonstrated capacities and particular circumstances of each charter school. A sponsor may grant renewal with specific conditions for necessary improvements to a charter school.

B. Prior to the beginning of the fourth year of operation of a charter school, the sponsor shall issue a charter school performance report and charter renewal application guidance to the school and the charter school board. The performance report shall summarize the performance record to date of the charter school, based on the data required by the Oklahoma Charter Schools Act and the charter contract and taking into consideration the percentage of at-risk students enrolled in the school, and shall provide notice of any weaknesses or concerns perceived by the sponsor concerning the charter school that may jeopardize its position in seeking renewal if not timely rectified. The charter school shall have forty-five (45) days to respond to the performance report and submit any corrections or clarifications for the report.

C.1. Prior to the beginning of the fifth year of operation, the charter school may apply for renewal of the contract with the sponsor. The renewal

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application guidance shall, at a minimum, provide an opportunity for the charter school to:

- a. present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal,
- b. describe improvements undertaken or planned for the school, and
- c. detail the plan for the next charter term for the school.

2. The renewal application guidance shall include or refer explicitly to the criteria that will guide the renewal decisions of the sponsor, which shall be based on the performance framework set forth in the charter contract and consistent with the Oklahoma Charter Schools Act.

D. The sponsor may deny the request for renewal if it determines the charter school has failed to complete the obligations of the contract or comply with the provisions of the Oklahoma Charter Schools Act. A sponsor shall give written notice of its intent to deny the request for renewal at least eight (8) months prior to expiration of the contract. In making charter renewal decisions, a sponsor shall:

1. Ground decisions on evidence of the performance of the school over the term of the charter contract in accordance with the performance framework set forth in the charter contract and shall take into consideration the percentage of at-risk students enrolled in the school;

2. Grant renewal to schools that have achieved the standards, targets and performance expectations as stated in the charter contract and are

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organizationally and fiscally viable and have been faithful to the terms of the contract and applicable law;

3. Ensure that data used in making renewal decisions are available to the school and the public; and

4. Provide a public report summarizing the evidence used as the basis for each decision.

E. If a sponsor denies a request for renewal, the governing board of the sponsor may, if requested by the charter school, proceed to binding arbitration as provided for in subsection G of Section 3-134 of this title.

F. A sponsor may terminate a contract during the term of the contract for failure to meet the requirements for student performance contained in the contract, failure to meet the standards of fiscal management, violations of the law or other good cause. The sponsor shall give at least ninety (90) days' written notice to the governing board prior to terminating the contract. The governing board may request, in writing, an informal hearing before the sponsor within fourteen (14) days of receiving notice. The sponsor shall conduct an informal hearing before taking action. If a sponsor decides to terminate a contract, the governing board may, if requested by the charter school, proceed to binding arbitration as provided for in subsection G of Section 3-134 of this title.

G.1. Beginning in the 2016-2017 school year, the State Board of Education shall identify charter schools in the state that are ranked in the bottom five percent (5%) of all public schools as determined pursuant to Section 1210.545 of this title.

2. At the time of its charter renewal, based on an average of the current year and the two (2) prior operating years, a sponsor may close a charter school site identified as being among the bottom five percent (5%) of public schools in the state. The average of the current year and two (2) prior operating years shall be calculated by using the percentage ranking for each year divided by three, as determined by this subsection.

3. If there is a change to the calculation described in Section 1210.545 of this title that results in a charter school site that was not ranked in the bottom five percent (5%) being ranked in the bottom five percent (5%), then the sponsor shall use the higher of the two rankings to calculate the ranking of the charter school site.

4. In the event that a sponsor fails to close a charter school site consistent with this subsection, the sponsor shall appear before the State Board of Education to provide support for its decision. The State Board of Education may, by majority vote, uphold or overturn the decision of the sponsor. If the decision of the sponsor is overturned by the State Board of Education, the Board may implement one of the following actions:

- a. transfer the sponsorship of the charter school identified in this paragraph to another sponsor,
- b. order the closure of the charter school identified in this paragraph at the end of the current school year, or
- c. order the reduction of any administrative fee collected by the sponsor that is applicable to the charter school identified in this paragraph. The

reduction shall become effective at the beginning of the month following the month the hearing of the sponsor is held by the State Board of Education.

5. A charter school that is closed by the State Board of Education pursuant to paragraph 4 of this subsection shall not be granted a charter by any other sponsor.

6. The requirements of this subsection shall not apply to a charter school that has been designated by the State Department of Education as implementing an alternative education program throughout the charter school.

7. In making a school site closure decision, the State Board of Education shall consider the following:

a. enrollment of students with special challenges such as drug or alcohol addiction, prior withdrawal from school, prior incarceration or other special circumstances,

b. high mobility of the student population resulting from the specific purpose of the charter school,

c. annual improvement in the performance of students enrolled in the charter school compared with the performance of students enrolled in the charter school in the immediately preceding school year, and

d. whether a majority of students attending the charter school under consideration for closure would likely revert to attending public schools with lower academic achievement, as

demonstrated pursuant to Section 1210.545 of this title.

8. If the State Board of Education has closed or transferred authorization of at least twenty-five percent (25%) of the charter schools chartered by one sponsor pursuant to paragraph 4 of this subsection, the authority of the sponsor to authorize new charter schools may be suspended by the Board until the Board approves the sponsor to authorize new charter schools. A determination under this paragraph to suspend the authority of a sponsor to authorize new charter schools shall identify the deficiencies that, if corrected, will result in the approval of the sponsor to authorize new charter schools.

H. If a sponsor terminates a contract or the charter school is closed, the closure shall be conducted in accordance with the following protocol:

1. Within two (2) calendar weeks of a final closure determination, the sponsor shall meet with the governing board and leadership of the charter school to establish a transition team composed of school staff, applicant staff and others designated by the applicant that will attend to the closure, including the transfer of students, student records and school funds;
2. The sponsor and transition team shall communicate regularly and effectively with families of students enrolled in the charter school, as well as with school staff and other stakeholders, to keep them apprised of key information regarding the closure of the school and their options and risks;
3. The sponsor and transition team shall ensure that current instruction of students enrolled in the charter

school continues per the charter agreement for the remainder of the school year;

4. The sponsor and transition team shall ensure that all necessary and prudent notifications are issued to agencies, employees, insurers, contractors, creditors, debtors and management organizations; and

5. The governing board of the charter school shall continue to meet as necessary to take actions needed to wind down school operations, manage school finances, allocate resources and facilitate all aspects of closure.

I. A sponsor shall develop revocation and nonrenewal processes that are consistent with the Oklahoma Charter Schools Act and that:

1. Provide the charter school with a timely notification of the prospect of revocation or nonrenewal and of the reasons for possible closure;

2. Allow the charter school a reasonable amount of time in which to prepare a response;

3. Provide the charter school with an opportunity to submit documents and give testimony in a public hearing challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose and prior to taking any final nonrenewal or revocation decision related to the school;

4. Allow the charter school access to representation by counsel to call witnesses on its behalf;

5. Permit the recording of the proceedings; and

6. After a reasonable period for deliberation, require a final determination be made and conveyed in writing to the charter school.

J. If a sponsor revokes or does not renew a charter, the sponsor shall clearly state in a resolution the reasons for the revocation or nonrenewal.

K.1. Before a sponsor may issue a charter to a charter school governing body that has had its charter terminated or has been informed that its charter will not be renewed by the current sponsor, the sponsor shall request to have the proposal reviewed by the State Board of Education at a hearing. The State Board of Education shall conduct a hearing in which the sponsor shall present information indicating that the proposal of the organizer is substantively different in the areas of deficiency identified by the current sponsor from the current proposal as set forth within the charter with its current sponsor.

2. After the State Board of Education conducts a hearing pursuant to this subsection, the Board shall either approve or deny the proposal.

3. If the proposal is denied, no sponsor may issue a charter to the charter school governing body.

L. If a contract is not renewed, the governing board of the charter school may submit an application to a proposed new sponsor as provided for in Section 3-134 of this title.

M. If a contract is not renewed or is terminated according to this section, a student who attended the charter school may enroll in the resident school district of the student or may apply for a transfer in accordance with Section 8-103 of this title.

70 Okla. Stat. § 3-137

**Duration of contract--Performance report--
Renewal--Termination--School closure**

Effective: July 1, 2024

A. An initial contract between a charter school or virtual charter school and its sponsor approved on or after July 1, 2024, shall be effective for five (5) years from the first day of operation. After completing an initial five-year term, a charter contract may be renewed for up to ten-year terms of duration, although the sponsor may vary the term based on the performance, demonstrated capacities, and particular circumstances of each charter school or virtual charter school. A sponsor may grant renewal with specific conditions for necessary improvements to a charter school or virtual charter school.

B. Prior to the beginning of the final year of the contract term of a charter school or virtual charter school, the sponsor shall issue a performance report and charter renewal application guidance to the charter school and its governing board or the virtual charter school and its governing board. The performance report shall summarize the performance record to date of the charter school or virtual charter school based on the data required by the Oklahoma Charter Schools Act, the annual performance framework evaluation, a review of the contract with an educational management organization if the charter school or virtual charter school contracts with an educational management organization, and the charter contract. The performance review shall take into consideration the percentage of at-risk students enrolled in the charter school or virtual charter

school. The performance report shall provide notice of any weaknesses, concerns, violations, or deficiencies perceived by the sponsor concerning the charter school or virtual charter school that may jeopardize its position in seeking renewal if not timely rectified. If there are weaknesses, concerns, violations, or deficiencies the sponsor may require a charter school or virtual charter school to develop a corrective action plan and corresponding timeline to remedy any weaknesses, concerns, violations, or deficiencies. If the sponsor requires a corrective action plan, the charter school or virtual charter school shall have forty-five (45) days to respond to the performance report and submit any corrections or clarifications for the report. If the charter school or virtual charter school does not substantially complete the corrective action plan, the sponsor may choose to revoke or not renew the charter contract pursuant to the requirements of this section.

C. 1. Prior to the beginning of the final year of a charter contract term, the charter school or virtual charter school may apply for renewal of the contract with the sponsor including the Statewide Charter School Board. The renewal application guidance shall, at a minimum, provide an opportunity for the charter school or virtual charter school to:

- a. present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal,
- b. describe improvements undertaken or planned for the school, and
- c. detail the plan for the next charter term for the school.

2. The renewal application guidance shall include or refer explicitly to the criteria that will guide the renewal decisions of the sponsor, which shall be based on the performance framework set forth in the charter contract and consistent with the Oklahoma Charter Schools Act.

D. The sponsor may deny the request for renewal if it determines the charter school or virtual charter school has failed to complete the obligations of the contract or comply with the provisions of the Oklahoma Charter Schools Act. A sponsor shall give written notice of its intent to deny the request for renewal at least eight (8) months prior to expiration of the contract. In making charter renewal decisions, a sponsor shall:

1. Ground decisions on evidence of the performance of the charter school or virtual charter school over the term of the charter contract in accordance with the performance framework set forth in the charter contract and shall take into consideration the percentage of at-risk students enrolled in the school;
2. Grant renewal to charter schools or virtual charter schools that have achieved the standards, targets, and performance expectations as stated in the charter contract and are organizationally and fiscally viable and have been faithful to the terms of the contract and applicable law;
3. Ensure that data used in making renewal decisions are available to the school and the public; and
4. Provide a public report summarizing the evidence used as the basis for each decision.

E. If the Statewide Charter School Board denies a request for renewal, the Board may, if requested by the charter school or virtual charter school, proceed to binding arbitration as provided for in subsection G of Section 3-134 of this title.

F. A sponsor may terminate a contract during the term of the contract for failure to meet the requirements for student performance contained in the contract and performance framework, failure to meet the standards of fiscal management, violations of the law, or other good cause. The sponsor shall give at least ninety (90) days' written notice to the governing board of the charter school or virtual charter school prior to terminating the contract. The governing board may request, in writing, an informal hearing before the sponsor within fourteen (14) days of receiving notice. The sponsor shall conduct an informal hearing before taking action.

G. Beginning July 1, 2024, and subject to the provisions of this section, a charter school sponsor authorized by subsection A of Section 3-132 of this title with a charter contract that includes more than one charter school site may terminate or not renew a charter school contract for a specific charter school site.

H. 1. Beginning in the 2016-2017 school year, the State Board of Education shall identify charter schools and virtual charter schools in the state that are ranked in the bottom five percent (5%) of all public schools as determined pursuant to Section 1210.545 of this title.

2. At the time of its charter renewal, based on an average of the current year and the two (2) prior

operating years, a sponsor may close a charter school site or virtual charter school identified as being among the bottom five percent (5%) of public schools in the state. The average of the current year and two (2) prior operating years shall be calculated by using the percentage ranking for each year divided by three, as determined by this subsection.

3. If there is a change to the calculation described in Section 1210.545 of this title that results in a charter school site or virtual charter school that was not ranked in the bottom five percent (5%) being ranked in the bottom five percent (5%), then the sponsor shall use the higher of the two rankings to calculate the ranking of the charter school site or virtual charter school.

4. A charter school or virtual charter school that is closed by its sponsor pursuant to this subsection shall not be granted a subsequent charter contract.

5. The requirements of this subsection shall not apply to a charter school or virtual charter school that has been designated by the State Department of Education as implementing an alternative education program.

6. In making a charter school site or virtual charter school closure decision, the sponsor shall consider the following:

a. enrollment of students with special challenges such as drug or alcohol addiction, prior withdrawal from school, prior incarceration, or other special circumstances,

b. high mobility of the student population resulting from the specific purpose of the charter school or virtual charter school,

c. annual improvement in the performance of students enrolled in the charter school or virtual charter school compared with the performance of students enrolled in the charter school or virtual charter school in the immediately preceding school year, and

d. whether a majority of students attending the charter school or virtual charter school under consideration for closure would likely revert to attending public schools with lower academic achievement, as demonstrated pursuant to Section 1210.545 of this title.

7. If at least twenty-five percent (25%) of the charter schools chartered by one sponsor are closed within a five-year period pursuant to this subsection, the authority of the sponsor to sponsor new charter schools may be suspended by the Statewide Charter School Board until the Board approves the sponsor to sponsor new charter schools. A determination made pursuant to this paragraph shall identify the deficiencies that, if corrected, will result in the approval of the sponsor to sponsor new charter schools.

I. If a sponsor terminates a contract or the charter school or virtual charter school is closed, the closure shall be conducted in accordance with the following protocol:

1. Within two (2) calendar weeks of a final closure determination, the sponsor shall meet with the governing board and leadership of the charter school

or virtual charter school to establish a transition team composed of school staff, applicant staff, and others designated by the applicant that will attend to the closure including the transfer of students, student records, and school funds;

2. The sponsor and transition team shall communicate regularly and effectively with families of students enrolled in the charter school or virtual charter school, as well as with school staff and other stakeholders, to keep them apprised of key information regarding the closure of the school and their options and risks;

3. The sponsor and transition team shall ensure that current instruction of students enrolled in the charter school or virtual charter school continues per the charter contract for the remainder of the school year;

4. The sponsor and transition team shall ensure that all necessary and prudent notifications are issued to agencies, employees, insurers, contractors, creditors, debtors, and management organizations; and

5. The governing board of the charter school or virtual charter school shall continue to meet as necessary to take actions needed to wind down school operations, manage school finances, allocate resources, and facilitate all aspects of closure.

J. A sponsor including the Statewide Charter School Board shall develop revocation and nonrenewal processes that are consistent with the Oklahoma Charter Schools Act and that:

1. Provide the charter school or virtual charter school with a timely notification of the prospect of revocation or nonrenewal and of the reasons for possible closure;

2. Allow the charter school or virtual charter school a reasonable amount of time in which to prepare a response;

3. Provide the charter school or virtual charter school with an opportunity to submit documents and give testimony in a public hearing challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose and prior to taking any final nonrenewal or revocation decision related to the school;

4. Allow the charter school or virtual charter school access to representation by counsel to call witnesses on its behalf;

5. Permit the recording of the proceedings; and

6. After a reasonable period for deliberation, require a final determination be made and conveyed in writing to the charter school or virtual charter school.

K. If a sponsor revokes or does not renew a charter contract, the sponsor shall clearly state in a resolution the reasons for the revocation or nonrenewal. If a charter is revoked or nonrenewed, the charter school or virtual charter school shall disclose the revocation or nonrenewal in any subsequent application.

L. If a charter contract is not renewed, the governing board of the charter school may submit an application to a proposed new sponsor as provided for in Section 3-134 of this title.

M. If a charter contract is not renewed or is terminated according to this section, a student who attended the charter school or virtual charter school may enroll in the resident school district of the

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student or may apply for a transfer in accordance with the Education Open Transfer Act.¹

¹ Title 70, § 8-101.1 et seq.

70 Okla. Stat. § 3-142

**Funding--Charter School Closure
Reimbursement Revolving Fund**

Effective: May 28, 2021 to June 30, 2024

A. The student membership and attendance of the charter school shall be considered separate from the student membership and attendance of the sponsor for the purpose of calculating enrollment and funding including weighted average daily membership pursuant to Section 18-201.1 of this title and State Aid pursuant to Section 18-200.1 of this title. A charter school shall receive the State Aid allocation, federal funds to which it is eligible and qualifies for and any other state-appropriated revenue generated by its students for the applicable year. Not more than three percent (3%) of the State Aid allocation may be charged by the sponsor as a fee for administrative services rendered. The State Board of Education shall determine the policy and procedure for making payments to a charter school. The fee for administrative services as authorized in this subsection shall only be assessed on the State Aid allocation amount and shall not be assessed on any other appropriated amounts. A sponsor of a charter school shall not charge any additional State Aid allocation or charge the charter school any additional fee above the amounts allowed by this subsection unless the additional fees are for additional services rendered. The charter school sponsor shall provide to the State Department of Education financial records documenting any state funds charged by the sponsor for administrative services rendered for the previous year.

B.1. The weighted average daily membership for the first year of operation of a charter school shall be determined initially by multiplying the actual enrollment of students as of August 1 by 1.333. The charter school shall receive revenue equal to that which would be generated by the estimated weighted average daily membership calculated pursuant to this paragraph. At midyear, the allocation for the charter school shall be adjusted using the first quarter weighted average daily membership for the charter school calculated pursuant to subsection A of this section.

2. For the purpose of calculating weighted average daily membership pursuant to Section 18-201.1 of this title and State Aid pursuant to Section 18-200.1 of this title, the weighted average daily membership for the first year of operation of a full-time statewide virtual charter school sponsored by the Statewide Virtual Charter School Board shall be determined by multiplying the actual enrollment of students as of August 1 by 1.333. The full-time virtual charter school shall receive revenue equal to that which would be generated by the estimated weighted average daily membership calculated pursuant to this paragraph. At midyear, the allocation for the full-time statewide virtual charter school shall be adjusted using the first quarter weighted average daily membership for the virtual charter school calculated pursuant to subsection A of this section.

C. Except as explicitly authorized by state law, a charter school shall not be eligible to receive state-dedicated, local or county revenue; provided, a charter school may be eligible to receive any other aid, grants or revenues allowed to other schools. A charter school

shall be considered a local education agency for purposes of funding.

D. Any unexpended funds received by a charter school may be reserved and used for future purposes. The governing body of a charter school shall not levy taxes or issue bonds. If otherwise allowed by law, the governing body of a charter school may enter into private contracts for the purposes of borrowing money from lenders. If the governing body of the charter school borrows money, the charter school shall be solely responsible for repaying the debt, and the state or the sponsor shall not in any way be responsible or obligated to repay the debt.

E. Any charter school which chooses to lease property shall be eligible to receive current government lease rates.

F. Except as otherwise provided in this subsection, each charter school shall pay to the Charter School Closure Reimbursement Revolving Fund created in subsection G of this section an amount equal to Five Dollars (\$5.00) per student based on average daily membership, as defined by paragraph 2 of Section 18-107 of this title, during the first nine (9) weeks of the school year. Each charter school shall complete the payment every school year within thirty (30) days after the first nine (9) weeks of the school year. If the Charter School Closure Reimbursement Revolving Fund has a balance of One Million Dollars (\$1,000,000.00) or more on July 1, no payment shall be required the following school year.

G. There is hereby created in the State Treasury a revolving fund for the State Department of Education to be designated the "Charter School Closure

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Reimbursement Revolving Fund”. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the State Department of Education from charter schools as provided in subsection F of this section. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the State Department of Education for the purpose of reimbursing charter school sponsors for costs incurred due to the closure of a charter school. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment. The State Department of Education may promulgate rules regarding sponsor eligibility for reimbursement.

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70 Okla. Stat. § 3-142

**Funding--Charter School Closure
Reimbursement Revolving Fund**

Effective: July 1, 2024

A. The student membership and attendance of a charter school shall be considered separate from the student membership and attendance of the sponsor for the purpose of calculating enrollment and funding including weighted average daily membership pursuant to Section 18-201.1 of this title and State Aid pursuant to Section 18-200.1 of this title. A charter school shall receive the State Aid allocation, federal funds to which it is eligible and qualifies for, and any other state-appropriated revenue generated by its students for the applicable year. Not more than three percent (3%) of the State Aid allocation may be charged by the sponsor as a fee for administrative services rendered if the sponsor is a school district, a comprehensive or regional institution of higher education, a two-year college, a private institution of higher learning accredited pursuant to Section 4103 of this title, or a federally recognized Indian tribe pursuant to Section 3-132 of this title. The Statewide Charter School Board shall not charge any charter school or virtual charter school a fee for administrative or other services. The State Department of Education shall determine the policy and procedure for making payments to a charter school or virtual charter school. The fee for administrative services as authorized in this subsection shall only be assessed on the State Aid allocation amount and shall not be assessed on any other appropriated amounts. A sponsor of a charter

school shall not charge any additional State Aid allocation or charge the charter school any additional fee above the amounts allowed by this subsection unless the additional fees are for additional services rendered. The charter school sponsor shall provide to the State Department of Education financial records documenting any state funds charged by the sponsor for administrative services rendered for the previous year.

B. The fee for administrative services authorized by subsection A of this section shall be used by the sponsor to provide oversight and services to the charter schools it sponsors. The State Department of Education shall develop data codes for the Oklahoma Cost Accounting System which shall be used to comply with the administrative services reporting required by this section. A charter school sponsor shall publish a detailed report on its website and present the report in a public meeting of the charter school governing board and the charter school sponsor governing board. The report shall provide sponsor performance and stewardship including compliance with all applicable laws, regulations, and terms of the charter contract and listing expenses related to oversight and services provided by the sponsor to the charter schools it sponsors.

C. For the purpose of calculating weighted average daily membership pursuant to Section 18-201.1 of this title and State Aid pursuant to Section 18-200.1 of this title, the weighted average daily membership for the first year of operation of a charter school or full-time statewide virtual charter school shall be determined initially by multiplying the actual enrollment of students as of August 1 by 1.333. The

charter school or virtual charter school shall receive revenue equal to that which would be generated by the estimated weighted average daily membership calculated pursuant to this subsection. At midyear, the allocation for the charter school or virtual charter school shall be adjusted using the first quarter weighted average daily membership for the charter school or virtual charter school calculated pursuant to subsection A of this section. For each subsequent school year, weighted average daily membership shall be calculated as provided for in Section 18-201.1 of this title, and State Aid shall be calculated as provided for in Section 18-200.1 of this title.

D. Except as explicitly authorized by state law, a charter school or virtual charter school shall not be eligible to receive state-dedicated, local, or county revenue; provided, a charter school or virtual charter school may be eligible to receive any other aid, grants, or revenues allowed to other schools. A charter school or virtual charter school shall be considered a local education agency for purposes of funding.

E. Any unexpended funds received by a charter school or virtual charter school may be reserved and used for future purposes. The governing board of a charter school or virtual charter school shall not levy taxes or issue bonds. If otherwise allowed by law, the governing board of a charter school or virtual charter school may enter into private contracts for the purposes of borrowing money from lenders. If the governing board of the charter school or virtual charter school borrows money, the charter school or virtual charter school shall be solely responsible for repaying the debt, and the state or the sponsor shall

not in any way be responsible or obligated to repay the debt.

F. Any charter school or virtual charter school which chooses to lease property shall be eligible to receive current government lease rates.

G. Except as otherwise provided in this subsection, each charter school shall pay to the Charter School Closure Reimbursement Revolving Fund created in subsection H of this section an amount equal to Five Dollars (\$5.00) per student based on average daily membership, as defined by paragraph 2 of Section 18-107 of this title, during the first nine (9) weeks of the school year. Each charter school shall complete the payment every school year within thirty (30) days after the first nine (9) weeks of the school year. If the Charter School Closure Reimbursement Revolving Fund has a balance of One Million Dollars (\$1,000,000.00) or more on July 1, no payment shall be required the following school year.

H. There is hereby created in the State Treasury a revolving fund for the Statewide Charter School Board to be designated the "Charter School Closure Reimbursement Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Statewide Charter School Board from charter schools as provided in subsection G of this section. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Statewide Charter School Board for the purpose of paying for expenditures incurred due to the closure of a charter school. Expenditures from the fund shall be made upon warrants issued by the State Treasurer

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against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

70 Okla. Stat. § 3-145.1

Statewide Virtual Charter School Board

Effective: to June 30, 2024

A. There is hereby created the Statewide Virtual Charter School Board. The Board shall have the sole authority to authorize and sponsor statewide virtual charter schools in this state. The Board shall be composed of five (5) voting members as follows:

1. One member appointed by the Governor, who shall be a resident and elector of the Fifth Congressional District;

2. Two members appointed by the President Pro Tempore of the Senate, one of whom shall be a resident and elector of the First Congressional District and one of whom shall be a resident and elector of the Third Congressional District;

3. Two members appointed by the Speaker of the House of Representatives, one of whom shall be a resident and elector of the Second Congressional District and one of whom shall be a resident and elector of the Fourth Congressional District; and

4. The State Superintendent of Public Instruction and the Secretary of Education or their designees shall serve as ex officio nonvoting members, and shall not be counted toward a quorum.

B. Initial appointments shall be made by August 1, 2012. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one member for one (1) year and one member for three (3) years. The Governor shall appoint one member for two (2) years. Members shall

serve until their successors are duly appointed for a term of three (3) years. Appointments shall be made by and take effect on November 1 of the year in which the appointment is made. Annually by December 30 the Board shall elect from its membership a chair and vice-chair.

C. A member may be removed from the Board by the appointing authority for cause which shall include, but not be limited to:

1. Being found guilty by a court of competent jurisdiction of a felony or any offense involving moral turpitude;
2. Being found guilty of malfeasance, misfeasance or nonfeasance in relation to Board duties;
3. Being found mentally incompetent by a court of competent jurisdiction; or
4. Failing to attend three successive meetings of the Board without just cause, as determined by the Board.

D. Vacancies shall be filled by the appointing authority.

E. No member of the Senate or House of Representatives may be appointed to the Board while serving as a member of the Legislature, or for two (2) full years following the expiration of the term of office.

F. The State Department of Education shall provide staff support to the Board until December 31, 2014, and thereafter the Department shall provide office space for the operation of the Board.

130a

70 Okla. Stat. § 3-145.2

Meetings—Reimbursement

Effective: to June 30, 2024

A. The Statewide Virtual Charter School Board shall meet at the call of the chair. The first meeting of the Board shall be held no later than sixty (60) days after the effective date of this act.

B. Three members of the Board shall constitute a quorum and an affirmative vote of at least three members shall be required in order for the Board to take any final action.

C. Members of the Board shall receive necessary traveling expenses while in the performance of their duties in accordance with the State Travel Reimbursement Act. Members shall receive reimbursement from the State Department of Education.

131a

70 Okla. Stat. § 3-145.3

Powers and duties

Effective: July 1, 2021 to June 30, 2024

A. Subject to the requirements of the Oklahoma Charter Schools Act, the Statewide Virtual Charter School Board shall:

1. Provide oversight of the operations of statewide virtual charter schools in this state;

2. Establish a procedure for accepting, approving and disapproving statewide virtual charter school applications and a process for renewal or revocation of approved charter school contracts which minimally meet the procedures set forth in the Oklahoma Charter Schools Act;

3. Make publicly available a list of supplemental online courses which have been reviewed and certified by the Statewide Virtual Charter School Board to ensure that the courses are high quality options and are aligned with the subject matter standards adopted by the State Board of Education pursuant to Section 11-103.6 of this title. The Statewide Virtual Charter School Board shall give special emphasis on listing supplemental online courses in science, technology, engineering and math (STEM), foreign language and advanced placement courses. School districts shall not be limited to selecting supplemental online courses that have been reviewed and certified by the Statewide Virtual Charter School Board and listed as provided for in this paragraph; and

4. In conjunction with the Office of Management and Enterprise Services, negotiate and enter into

contracts with supplemental online course providers to offer a state rate price to school districts for supplemental online courses that have been reviewed and certified by the Statewide Virtual Charter School Board and listed as provided for in paragraph 3 of this subsection.

B. Each statewide virtual charter school which has been approved and sponsored by the Board or any virtual charter school for which the Board has assumed sponsorship of as provided for in Section 3-145.5 of this title shall be considered a statewide virtual charter school and, except as provided in subsection H of this section, the geographic boundaries of each statewide virtual charter school shall be the borders of the state.

C. Each statewide virtual charter school approved by the Statewide Virtual Charter School Board shall be eligible to receive federal funds generated by students enrolled in the charter school for the applicable year. Each statewide virtual charter school shall be considered a separate local education agency for purposes of reporting and accountability.

D. As calculated as provided for in Section 3-142 of this title, a statewide virtual charter school shall receive the State Aid allocation and any other state-appropriated revenue generated by students enrolled in the virtual charter school for the applicable year, less up to five percent (5%) of the State Aid allocation, which may be retained by the Statewide Virtual Charter School Board for administrative expenses and to support the mission of the Board. A statewide virtual charter school shall be eligible for any other funding any other charter school is eligible for as

provided for in Section 3-142 of this title. Each statewide virtual charter school shall be considered a separate local education agency for purposes of reporting and accountability.

E. A virtual charter school shall be subject to the same reporting requirements, financial audits, audit procedures and audit requirements as a school district. The State Department of Education or State Auditor and Inspector may conduct financial, program or compliance audits. A virtual charter school shall use the Oklahoma Cost Accounting System (OCAS) to report financial transactions to the State Department of Education.

F. A virtual charter school governing body shall be responsible for the policies that govern the operational decisions of the virtual charter school. The governing body of a virtual charter school shall be subject to the same conflict of interest requirements as a member of a local school board including, but not limited to, Sections 5-113 and 5-124 of this title. Members appointed to the governing body of a virtual charter school after July 1, 2019, shall be subject to the same instruction and continuing education requirements as a member of a local school board and pursuant to Section 5-110 of this title, complete twelve (12) hours of instruction within fifteen (15) months of appointment to the governing body, and pursuant to Section 5-110.1 of this title, attend continuing education.

G. Students enrolled full-time in a statewide virtual charter school sponsored by the Statewide Virtual Charter School Board shall not be authorized to participate in any activities administered by the

Oklahoma Secondary Schools Activities Association. However, the students may participate in intramural activities sponsored by a statewide virtual charter school, an online provider for the charter school or any other outside organization.

H.1. Beginning with the 2021--2022 school year, a public school student who wishes to enroll in a virtual charter school shall be considered a transfer student from their resident school district. A virtual charter school shall pre-enroll any public school student whose parent expresses intent to enroll in the district. Upon pre-enrollment, the State Department of Education shall initiate a transfer on a form to be completed by the receiving virtual charter school. Upon approval of the receiving virtual charter school, the student may begin instructional activities. Upon notice that a public school student has transferred to a virtual charter school, the resident school district shall transmit the student's records within three (3) school days.

2. The State Department of Education shall notify the Legislature and Governor if it determines that the information technology infrastructure necessary to process the transfer of students to a virtual charter school is inadequate and one (1) additional school year is needed for implementation.

3. A public school student may transfer to one statewide virtual charter school at any time during a school year. For purposes of this subsection, "school year" shall mean July 1 through the following June 30. After one statewide virtual charter school transfer during a school year, no public school student shall be permitted to transfer to any other statewide virtual

charter school without the concurrence of both the resident school district and the receiving virtual charter school. A student shall have a grace period of fifteen (15) school days from the first day of enrollment in a statewide virtual charter school to withdraw without academic penalty and shall continue to have the option of one virtual charter school transfer without the concurrence of both districts during that same school year. A statewide virtual charter school student that has utilized the allowable one transfer pursuant to this subsection shall not be permitted to transfer to another district or other statewide virtual charter school without first notifying his or her resident district and initiating a new transfer. Upon cancellation of a transfer the virtual charter school shall transmit the student's records to the student's new school district within three (3) school days. Students enrolled in a statewide virtual charter school shall not be required to submit a virtual charter transfer for consecutive years of enrollment. Any student enrolled in a statewide virtual charter school the year prior to the implementation of this section shall not be required to submit a transfer in order to remain enrolled.

4. For purposes of this subsection, "parent" shall mean the parent of the student or person having custody of the student as provided for in paragraph 1 of subsection A of Section 1-113 of this title.

I.1. A student shall be eligible to enroll in a statewide virtual charter school if he or she is a student whose parent or legal guardian is transferred or is pending transfer to a military installation within this state while on active military duty pursuant to an official military order.

2. A statewide virtual charter school shall accept applications by electronic means for enrollment and course registration for students described in paragraph 1 of this subsection.

3. The parent or legal guardian of a student described in paragraph 1 of this subsection shall provide proof of residence in this state within ten (10) days after the published arrival date provided on official documentation. A parent or legal guardian may use the following addresses as proof of residence:

- a. a temporary on-base billeting facility,
- b. a purchased or leased home or apartment, or
- c. federal government or public-private venture off-base military housing.

4. The provisions of paragraph 3 of subsection H shall apply to students described in paragraph 1 of this subsection.

5. For purposes of this subsection:

- a. “active military duty” means full-time military duty status in the active uniformed service of the United States including members of the National Guard and Military Reserve on active duty orders, and
- b. “military installation” means a base, camp, post, station, yard, center, homeport facility for any ship or other installation under the jurisdiction of the Department of Defense or the United States Coast Guard.

J. A virtual charter school shall not accept or deny a transfer based on ethnicity, national origin, gender, income level, disabling condition, proficiency in the

English language, measure of achievement, aptitude or athletic ability.

K. The decision of the Statewide Virtual Charter School Board to deny, nonrenew or terminate the charter contract of a statewide virtual charter school may be appealed to the State Board of Education within thirty (30) days of the decision by the Statewide Virtual Charter School Board. The State Board of Education shall act on the appeal within sixty (60) days of receipt of the request from the statewide virtual charter school applicant. The State Board of Education may reverse the decision of the Statewide Virtual Charter School Board or may remand the matter back to the Statewide Virtual Charter School Board for further proceeding as directed.