



I. GOVERNANCE

Political science texts and state and local League of Women Voters' studies of local government generally reference local government both as the most representative of America's democracy and as more closely scrutinized by the public.

Promote representative government that is responsive to the will of the people at every level--federal, state, and local.

Issue – Type 2 charter school governance and local representation

A Type 2 charter school is not under a contract awarded by the elected local district school board and whose terms are also set by and awarded by that locally elected board, as they are for a Type 1 charter school. Type 2 public schools are chartered by the Louisiana Board of Elementary and Secondary Education (BESE) under appeal from a non-profit corporation that has been denied a charter by the local school board. Type 2 charters are authorized for statewide attendance, drawing students and funding from multiple parishes without a vote of their local school boards. There is no cap on the limit of Type 2 charter schools that can be imposed by BESE on a local school district, and individual Type 2 charter operators' contracts also can be approved by BESE to establish several charter schools in the same local school district under the same contract.

Under the 1997 Louisiana Act 477 (Act 2065) and corresponding BESE policy, previously approved taxes dedicated to the local school board's staff, schools, students, and teachers have been allocated the per pupil Minimum Foundation Program funding for operation to the Type 2 charter school boards.¹

Each member of the Board of Elementary Education (BESE) represents 1/8 of the state's population and, therefore, far more parishes and their voters than the members of the local district school board. It is necessary to attend BESE board and committee meetings in Baton Rouge to make public comments before BESE votes. Meetings are held during working hours, rather than evenings. Most voters are unable to attend.²

A Type 2 charter school's board members are either the same members of the board of the non-profit charter corporation, the operator, that is chosen by BESE to govern the charter school, or else the members are chosen directly by that board. Local district's school board members who authorize and renew, or terminate Type 1, 3 and 3B charters in their own districts can also

¹ See [this article](#) for more information on the outcome of the Type 2 charter school lawsuit

² BESE board and committee meetings are open to the public, streamed live via its [website](#), and archived for public review.

terminate the governance of those boards by terminating the contract for violations. The public can also recall its own local school board members from office or not reelect them. In contrast, only BESE can remove a Type 2 charter school board through not renewing the contract or terminating it for violations. In a recent court case heard by the Louisiana Supreme Court between the Iberville Parish School Board and the LDE, the issue of the use of local tax dollars for Type 2 charter schools was litigated with a ruling that Type 2 charter schools are public schools and can receive a local cost allocation through state funding. Questions remain about the constitutionality of the use of state MFP dollars based on local contributions being diverted to Type 2 charter schools without a vote of the public.

Representative Government –Transparency, Open Government and the Sunshine Act: Public access to government information and decision making and to government meetings

Issue – Transparency, open meetings, and access to participation

Under Louisiana law, a charter school board is a political subdivision of the state and all appropriate laws apply, including the “open meetings law”.³ However, a random check of the websites of ten Louisiana charter schools in 10 different parishes revealed only one of the ten charter school boards included both agendas and minutes for each meeting date and the other nine either showed no minutes or only scattered meeting minutes.⁴ Additionally, several of these charter schools’ boards meet during daytime working hours and in some cases out of town at the corporate headquarters or alternate monthly between a charter school location in one parish and another, making it difficult for parents and community members to attend those charter school board meetings.

The legislature has created six different types of charter schools with varying geographical districts, as well as additional “pathways” to authorize a public charter school, such as parent petition, virtual schools, and legislative permission for special education residential schools. Specific and detailed governance; can only be traced through Louisiana laws, revised statutes, BESE’s many individual bulletins, many of which apply in part to charter schools, and the website of the Department of Education. For example, a Type 3B charter school receives only a five-line description in BESE’s *Bulletin 126*, but further references three detailed state statutes and a 2-page section in BESE’s *Recovery District Bulletin 129*, where further critical details are located. It is no wonder that parents, members of the public, and newly elected representatives and senators’ understanding of public charter schools in Louisiana is limited. Without clear and adequate context, any proposed charter school legislation cannot be adequately examined or debated as to its intent or consequences or potential for the state, communities, parents, and students.

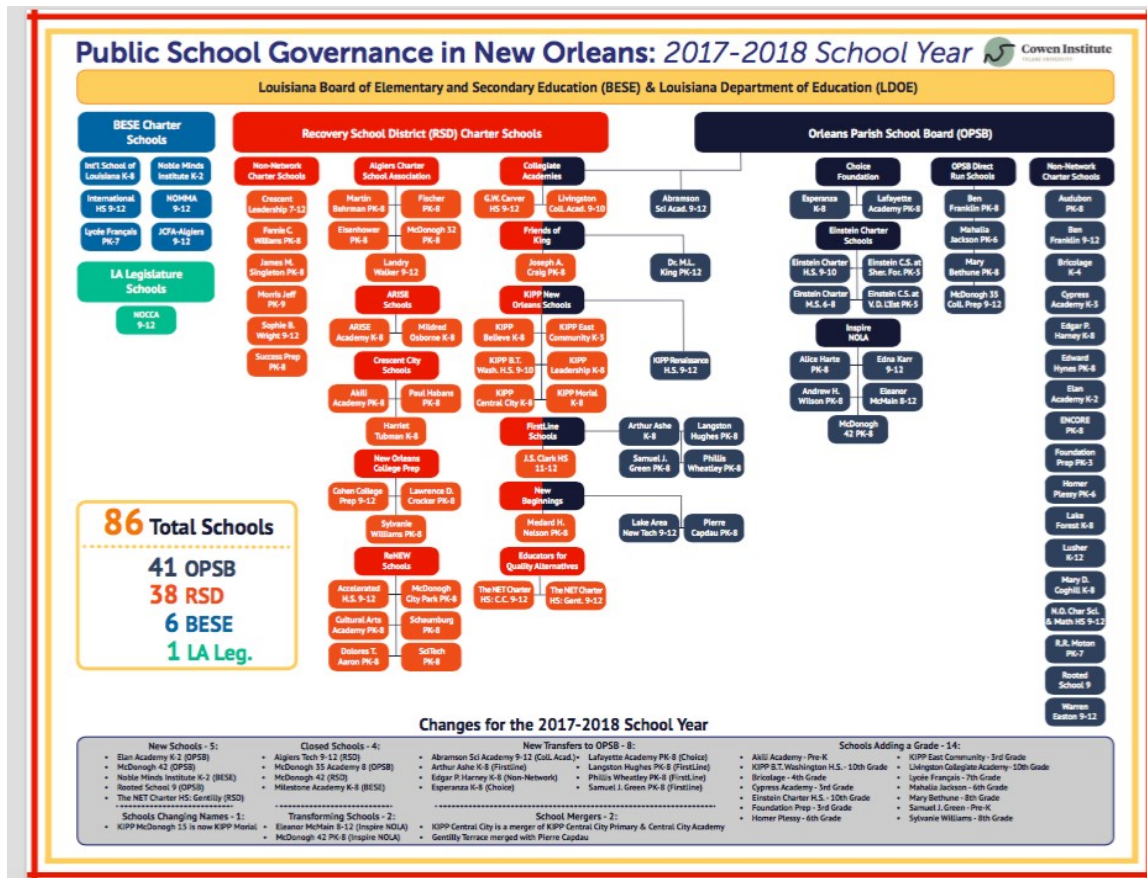
³ See the following: Louisiana Revised Statutes 42-19(A)(2)(a), “Statutes Mandating Posting on Website of Local Political Subdivisions 08/2017, Office of Louisiana Legislative Auditor, “Louisiana Charter School Board Handbook”, p.30, Louisiana Association of Charter Schools.

⁴ The term “website” does not include *Facebook* or other social media

LEAGUE OF WOMEN VOTERS - POLICIES AND ISSUES

The example of New Orleans is most concerning. Orleans Parish Public Schools are the largest single district charter school experiment in the United States. Through legislative changes in school governance after Hurricane Katrina, corresponding policies of BESE, and administrative actions of the LDE and the RSD, most of Orleans Parish schools have changed in governance in the last thirteen years.

The 2017-28 Cowen Institute of Tulane University has outlined a governance chart of the Orleans public schools that shows 86 charter schools having four different governing bodies: BESE, the Recovery School District, Orleans Parish School Board, and the Louisiana Legislature, 12 different charter or education management organizations running 74 of the charter schools, 12 different “non-network” schools, or “stand-alone” schools, and widely varying grade level configurations as new charter schools start up with only a few grade levels. In addition, the chart lists for the 2017-2018 school year the number of new charter schools opening, just closed, “transforming under a new charter operator,” adding a grade to expand, and moving from the governance of the Recovery School District to the Orleans Parish School Board. 23 schools are in one or another of these categories, or 27% of the 86 charter schools as they change governance to the Orleans Parish School Board. The complexity of this system is daunting for any parent, guardian, or concerned member of the community to navigate.



Representative government is accountable, which, for any public entity for the League of Women Voters, means adequate government oversight and control of a public service in order to ensure taxpayer dollars are used efficiently and effectively for that service.

Issue – Oversight of Types 2, 4, and 5 Charter Schools

In Louisiana, accountability for public schools by BESE and the LDE is through the School Performance Score (SPS) – the several measures that make up the current letter grade system used by the LDE to rate all public schools. The Department of Education developed and BESE approved its use of the Charter School Performance Compact (“CSPC”), stated to be the Department of Education’s “accountability mechanism.” The Department of Education must evaluate whether the charter operator of each school has met the obligations of the charter each year so that BESE can decide at intervals whether to renew or terminate the charter.

BESE requires the Department of Education to monitor all charter schools annually two ways: internal review by quantifying self-monitoring reports from each charter school and external monitoring through an announced on-site visit of Departmental staff.

A number of BESE policies, the LDE’s responses to the Legislative Auditor’s recommendations based on its performance audits, the CSPC instrument, and statements in documents accessed through the LDE website indicate a heavier emphasis, or a greater concern for ensuring the autonomy or independence and growth of charter schools and consequently greater care not to interfere with a charter school’s administration and operations any more than the LDE itself deems necessary.

By law the Legislative Auditor is charged with auditing Types 2, 4, and 5 charter schools and each local school district’s accountability across four areas: fiscal, academic, organizational, and legal contractual, and to report the results to the Legislature and the public. 2013 results indicated

Challenges for Orleans Parish Public Schools: Representative Government, Civil Rights, and Privatization (Positions added prior to Hurricane Katrina)

1. Charter school proposals submitted to Orleans Parish School Board (OPSB) should be made readily available in a timely and public manner prior to the mandated public hearing.
2. A Citizens Review Committee, independent of OPSB, should review charter school proposals and make recommendations to OPSB.
3. A technical review panel, comprised of experts in financial, legal, and education strategy areas, should review the proposals for their area of expertise and be available to the Citizens Review Committee.
4. Members of the Citizens Review Committee should be provided a summary of the state law governing charter schools.
5. The recommendations of the Citizens Review Committee should be made public and available prior to the OPSB meeting to determine the outcome of the proposals.

the Department of Education met the financial performance for all monitoring requirements, but did not meet half of the requirements of academic and contractual performance. The October 2017 audit indicated the Department of Education conducted all required annual reviews; however, the CSPC instrument took away the same number of points for violation of minor standards as it did for violating state laws. In responses to the Legislative auditor, the LDE has maintained that conducting multiple on-site audits is financially stressing and considers its existing schedule of visits adequate for identifying issues and routine monitoring of activities and data reviews. In addition, the LDE indicated its belief that the existing CSPC instrument is adequate for its charter review process.⁵

Issue – Orleans Parish Public Schools – Obstacles to Reunification and Governance

Act 35, the 2016 set of laws passed to reunify public schools in Orleans Parish, is problematic. It limits the powers of the Orleans Parish School Board to govern those charter schools that fall under the reunification act. Act 35 prohibits the Orleans Parish School Board from using its authority in any of the areas of the charter schools' contractual autonomy and ensures that each charter school continues to act as its own local educational agency (LEA). In addition it permits collaboration of non-profit organizations with BESE in determining the state's Minimum Foundation Program allocation of funding to the Orleans Parish School Board.⁶

Another significant obstacle to reunification of the OPSB is the extent to which Orleans Parish faces high levels of segregation both in residential patterns and in the existing school landscape. In 2014, over 25% of children attending school in grades K-12 in the New Orleans metro area attended a private school. This is the highest percentage in the U.S.⁷ In 2016-17 90% of public school students in Orleans Parish attended charter schools. That year 85% of these students were African-American. Thirty-two of thirty-three of those schools with an SPS School Performance Score grade of "D" and "F" had a minority enrollment over 96% and all but three of those thirty-three schools had a student population 90% free or reduced lunch. In contrast, 77% of white students in Orleans public schools are enrolled in "A" and "B" schools.^{8 9}

Transparency and Civil Rights: Charter schools as public/private entities

A number of unresolved areas as to the dual public and private natures of charter schools are found in a review of the literature. The Louisiana Legislative Auditor states, "Charter schools are set up as nonprofits, and may report on the nonprofit model. Because charter schools have characteristics of a government agency, and receive a substantial amount of their funding from governmental sources, they may instead choose to report on the governmental model."¹⁰ While charter schools do exercise some autonomy, charter schools are recognized in the legal system

⁵ Louisiana Department of Education, "Monitoring of Charter Schools," Performance Audit Issued May 15,

⁶ Act 35, Louisiana Legislature, 2016 Regular Session

⁷ Diana Samuels, "New Orleans has highest percentage of private students," *Times Picayune*, August 24, 2014.

⁸ "Advancing Educational Equity in New Orleans Public Schools: An Urban League Report on Equity in Unification: Core Issues, Responses, and Recommendations," Urban League of Louisiana, 2017

⁹ For related issues, see "Accessibility" portion of this study.

as public schools and therefore are not exempt from most statutory and constitutional constraints that govern all public schools.^{11 12}

A 1971 U.S. Supreme Court case dealing with a county utility district was the basis for the National Labor Relations Board’s ruling setting a test for determining whether an entity is a political subdivision: whether it is "(1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate." In 2016 the National Labor Relations Board applied this “Hawkins test” to a charter school in New York and another in Pennsylvania in 2016 and found that in they were private corporations whose board members were privately appointed. “The NLRB determined that a charter’s relationship to the state resembled that of a government contractor, as governments provide the funding but do not originate or control the schools.”¹³

The National Labor Relations Board used its earlier case in a 2017 Louisiana lawsuit arising from a charter school’s denying its teachers permission to unionize. The National Labor Relations Board ruled the teachers could not unionize because they were private, contracted employees. The charter school, however, insisted that it is a public school because Louisiana law says it is, and because almost all of New Orleans’ public schools are charter schools, their students are public school students, and the state regulates charter schools. Louisiana charter school board members are public officials under state law, although they are members of a non-profit private board, either the board of the corporation or appointed by the board of the corporation.¹⁴

¹⁰ Statutes Mandating Posting on Website of Local Political Subdivisions 08/2017, Office of Louisiana Legislative Auditor

¹¹ Louisiana Governmental Audit Guide, Louisiana Legislative Auditor, 11/14/2017, Special Reporting – Charter Schools (300-1040).

¹² For example, student codes of conduct and discipline policies are set by each Louisiana charter school as part of its being “autonomous.” One school’s upholding its school dress code in its handbook twice, 2015 and 2017, in the case of students who were homeless violated the federal McKinney-Vento Homeless Assistance Act. The result of the 2015 incident was a verbal warning from the Recovery School District; in 2017 the same school received a letter from the Department of Education, as well as requiring the school to add a statement in its handbook that homeless students would be helped in obtaining uniforms. The Recovery School District wrote, “In incidents where a student’s rights are violated, the RSD and the Department (of Education) have routinely started to examine related school policies to determine if adjustments, such as the addition to the student handbook, should be made to prevent repeat offenses.” [”Marta Jewson, Sophie B. Wright’s refusal to admit homeless students lacking uniforms not its 1st violation,” New Orleans Advocate, July 9, 2017]

¹³ Tanya Thompson and Brenda Canale, “Contrary to Union’s Argument, NLRB Finds Jurisdiction Over Non-Profit Corporation Operating Charter School in Chicago,” Littler, www.littler.com, December 31, 2012.

¹⁴ Rachel Cohen, “Charter Schools Insist: Our Teachers Are Public Employees! Or Private Employees! Whichever Means They Can’t Unionize!” *The American Prospect*, September 5, 2017]

II. Funding and Finance in Charter Schools

The League of Women Voters of the United States, LWVUS, has few policy positions that speak to funding and finance and none that pertain specifically to charter schools.

Under Social Policy: Education, the LWVUS discusses the ramifications of including in its policies the generalized support of "quality education":

The 1974-1976 LWVUS Program included the phrase "equal access to...quality education," reflecting League recognition that "equality" and "quality" are inseparable. However, the LWVUS has never undertaken a process for determining a common League definition of quality education that could serve as a basis for action nationwide. Therefore, when the definition of quality is a key factor in a state or local community, a local or state League must conduct its own study rather than relying on the LWVUS position to take action. Many Leagues that have member agreement on quality education in specific terms use their positions to support an array of local and state educational reforms. A number of Leagues have used this position to oppose private school vouchers. The LWVUS is a member of the National Coalition for Public Education, which opposes vouchers.¹⁵

LWVUS discusses the importance of local leagues taking positions on education financing:

Many state and local Leagues have identified inequities in education financing during the course of their own program studies and have worked for reforms. Action on school financing equity takes place predominantly at the state level, where school financing laws are made.¹⁶

Actual LWVUS policy statements on education relating to funding and finance are few. Specifically, LWVUS policy is:

The League of Women Voters believes that the federal government shares with other levels of government the responsibility to provide an equitable, quality public education for all children pre-K through grade 12. A quality public education is essential for a strong, viable, and sustainable democratic society and is a civil right.¹⁷

¹⁵ Source: LWVUS Impact on Issues, 2016-2018 p.75

¹⁶ Source: LWVUS Impact on Issues, 2016-2018 p.75

¹⁷ Source: LWVUS Impact on Issues, 2016-2018 p.81

The phrase "share with other levels of government the responsibility" provides an impetus to extend the goal of an "equitable, quality public education" to the state and local levels.

LWVUS policy statements on public school funding and finance continue with the following:

The League of Women Voters believes that an equitable, quality public education is critical for students. While the League recognizes that there are instances where the federal government's involvement is the only way to achieve universal change (desegregation, special needs population, gender equity), we also recognize that primary responsibility for public education resides with the states. In accordance with the League of Women Voters' position on Equal Rights, the League continues to support equity in public education for all through:

- Broad guidelines for accountability, leaving implementation to the state and local education agencies
- Adequate funding sources that support the broad goals of national standards
- Mechanisms for local and state funding with adequate federal support for mandates that require less burdensome, compliance-based reporting and regulations.

The League of Women Voters believes a basic role of the federal government in funding education should be to achieve equity among states and populations on the basis of identified needs. This should be done with full understanding that equity does not mean equal, given that some populations are more expensive to educate than others and some localities have specific needs.¹⁸

Because of the federal focus LWVUS policy-making on public school funding defers to state and local Leagues. State and local Leagues may conduct studies to develop state-specific policy positions.

LWVUS policy on privatization is relevant to issues involving finance and funding, particularly the following:

The League's Position

The League of Women Voters believes that when governmental entities consider the transfer of governmental services, assets and/or functions to the private sector, the community impact and goals of such transfers must be identified and considered. Further, the League

¹⁸ Source: LWVUS Impact on Issues, 2016-2018 p.81

believes that transparency, accountability, and preservation of the common good must be ensured.¹⁹

The LWVUS includes education in a list of services often subject to privatization efforts that are “fundamental to the governance of a democratic society” and “should not be privatized in their entirety.”

Among the considerations that the League believes must apply to privatization decisions, these are relevant to school funding and finance²⁰:

- Cost-benefit analyses evaluating short and long term costs of privatization, including the ongoing costs of contract administration and oversight
- An understanding of the impact on customers, the broader community, environment and public employees
- An open, competitive bidding process with clearly defined criteria to be used in selecting a contractor
- A provision or process to ensure the services or assets will be returned to the government if a contractor fails to perform

The creation of charter schools in Louisiana has changed the way that public education is funded, the way buildings where public school students are educated are financed, and the oversight and control of taxpayer monies dedicated to K-12 public education. Taxpayers expect that there is local control of the property and sales taxes that support local public education in cities and parishes (Local Education Agencies) that have elected school boards, and existing charter school funding and finance practices impact the expectation of local control. The League of Women Voters of Louisiana recognizes the following as issues or potential issues that could threaten the adequate funding for and effective financial oversight of Louisiana’s public schools.

Charter School Challenges

● Funding of charter schools and impact on district schools

For type 2 charter schools Louisiana Department of Education withholds from the districts per-pupil block grants known as the Minimum Foundation Program, or MFP, the Local Cost Allocation per enrolled child, and sends the Local Cost Allocation to the charter school along with the state-funded Base Cost Allocation. Having the MFP portion from local taxes be withheld from the local district’s MFP causes districts budgetary hardship because of the diffuse manner in which students leave district schools for a charter school. Students leave multiple grade levels at a

19 Source: LWVUS Impact on Issues, 2016-2018 p.38

20 Source: LWVUS Impact on Issues, 2016-2018 p.38

rate of one or a few from multiple classrooms throughout multiple schools. Losing one or a few students from a classroom does not allow local districts to benefit from an economy of scale by closing classrooms and laying off staff to reduce costs. Local districts costs remain relatively stable and they have to fund salaries, services, debt and maintenance with reduced funding.

The impact of reduced MFP on district budgets is especially strong in the first few years a charter school opens in a district. The opening of type 2 charter schools has been known to send district budgets into deficit. For example, in Lafayette Parish school year 2013-14 \$459,461 in MFP was sent by Louisiana Department of Education to non-district schools as Lafayette parish students attended state approved schools outside the parish. This was at a time when no in-district charter schools existed in the parish. In the 2014-15 school year when three charter schools were operating in the district the amount of MFP dollars transferred to non-district and charter schools increased to \$9,812,200 and in the 2015-16 school year the amount of MFP dollars transferred to non-district and charter schools was \$9,652,336.²¹

Charter schools do not contribute to the Teacher's Retirement System of Louisiana/Louisiana State Employees' Retirement System's unfunded accrued liability, a decades-old state payment shortfall. The funding to pay these legacy costs to support retired teachers is passed down to local districts through the MFP. The burden to pay the legacy costs falls on the MFP of students in district schools. For example, in 2015-16 Lafayette Parish received \$113,509,831 in MFP. The district share of the teacher retirement unfunded accrued liability was \$22,977,837.²² This is 20% of the parish MFP. Brick and mortar charter schools and virtual charter schools are not required to participate in the teacher retirement system nor do they pay the unfunded accrued liability from the MFP portions transferred to them. Transfer of the MFP Local Cost Allocation and the included funds intended to pay the unfunded accrued liability to the charter schools contributes to district deficits and may be perceived as providing a windfall to charter schools.

An additional concern is the funding of virtual charter schools. Virtual schools receive 90% of the MFP dollars received by district school students. Louisiana virtual charters schools, which provide a computer-based online education for students, receive 90% of the full MFP afforded to students in brick-and-mortar schools. It is possible that this may represent a windfall to virtual charter school, if the actual costs of educating students primarily at home by computers are less than brick and mortar schools.

● Funding of Charter School Facilities

²¹ Source: Louisiana School Board Association, 2016 Key Topics

²² Source: Louisiana School Board Association, 2016 Key Topics

Type 2 charter schools have not-for-profit boards, and many are managed by charter management organizations. Type 2 charter schools are typically housed in new buildings on purchased land or in privately owned buildings that are purchased and renovated. The financing often comes from investment groups. The land or buildings may be acquired by associated or subsidiary corporations who retain ownership of the building and lease it to the not-for-profit board which holds the charter school authorization. The terms of the lease may be lucrative for the charter school management organizations. The lease is paid for by the taxpayer and the taxpayer receives no equity in the building, like the taxpayer does through retaining ownership of public buildings paid for through municipal bonding capacity.

Leases for charter school buildings could extend for 20 or 30 years. The corporation owning the real estate may recoup several times the cost of the land and building, and the corporation will be able to sell the building if the charter school closes for any reason.

● **Financial Oversight of Charter Schools**

An Annual Financial Report (AFR) must be submitted to Louisiana Department of Education by September 30 of each year.²³ The AFR and quarterly reports must be accompanied by a statement from the "Charter Operator's lead executive and Board President certifying the accuracy of the reports and the adherence to the Operator's Internal Control procedures."²⁴ The Louisiana Department of Education's Louisiana Charter School Fiscal Oversight Policy defines the charter operator as "the president or chairman of the non-profit corporation (charter operator) that operates the charter school..."

Charter schools must be operated by a not-for-profit corporation. The corporation appoints a school board. The boards frequently contract with not-for-profit charter school management organizations (CMOs) or for-profit educational management organizations (EMOs) to run the school, providing staffing, administration, services, finance, etc. The not-for-profit board submits the school budgets and audits as required by law to the Louisiana Department of Education and to the Legislative Auditor. However, the financial records of the charter school management organizations are not auditable. Substantial management fees are paid yearly by charter school boards to such management organizations and other payments are made to CMOs/EMOs for materials (computers, textbooks) supplies and services. There is no requirement for the for-profit or non-profit management organizations to make their financial records available or to have their accounts audited.

Oversight of charter school finances is conducted by the Board of Elementary and Secondary Education upon the recommendations of Louisiana Department of Education based on its Charter School Performance Compact. The Compact provides

²³ as required by law, Louisiana R.S. 17:25(A)(2) and 17:92

²⁴ Source: Louisiana Department of Education, Louisiana Charter School Fiscal Oversight Policy

four measures of funding and finance performance. The funding and finance-related performance measures in the Charter School Performance Compact are limited. Charter schools, local districts, and city public schools (Local Education Agencies) must submit financial reports including an annual audit. The Legislative Auditor receives a copy of the annual audit of city and school districts and charter schools. The annual audit must be completed by certified public accountants. The Louisiana Legislative Auditor's Local Government Services division reviews annual charter school audits and reserves the right to conduct financial, investigative or performance audits with cause. In fourteen years the Louisiana Legislative Auditor has done nine investigations of charter school financial reporting.

In 2013, eleven charter schools had significant deficiencies or material weaknesses in financial reporting or internal controls.²⁵ Traditional audits are not designed to uncover fraud. No performance indicators of the Charter School Performance Compact require assessing the reasonableness or value to the taxpayer of substantial charter school expenses such as management fees, professional fees, accounting services, and imprecisely identified "other" services. Presumably they may be questioned in an annual audit, however whether such expenses are questioned in a consistent manner by the Louisiana Legislative Auditor and Louisiana Department of Education Bureau of Internal Audit is unknown. The financial records of charter school management organizations are not able to be audited. The Center for Popular Democracy noted that there have been multiple cases of fraud identified in Louisiana charter schools. "We estimate Louisiana's charter schools may have experienced tens of millions in fraud in the 2013/2014 school year alone."²⁶

The steps of the intervention process if schools fail to meet expectations of the Charter School Performance Compact are indicated in the table below.²⁷ Charter Schools begin in good standing and may experience three levels of intervention as follows

Intervention process for charter schools ²⁸	
Level 1: Notice of Concern	A school enters this level upon receiving a Notice of Concern
Level 2: Notice of Breach	A school enters this level when it fails to correct a Notice of Concern or fails to meet a Critical Indicator
Level 3: Revocation Review	A school enters level 3 when it fails to meet its requirements or schedule of a Notice of Breach

²⁵ Source: System Failure; Louisiana's Broken Charter School Laws, Center for Popular Democracy, May 2015

²⁶ Source: System Failure; Louisiana's Broken Charter School Laws, Center for Popular Democracy, May 2015

²⁷ Source: Bulletin 126 section 1105 Intervention Process for Charter Schools

²⁸ Source: Louisiana Charter Schools 2015-2016 Annual Report, Louisiana Department of Education

The Legislative Auditor noted in an interview²⁹ that there is no consistent and timely method of follow up by Louisiana Department of Education when there are material finding etc. in audits. It has been observed that the Board of Elementary and Secondary Education does not follow a consistent procedure in responding to charter school noncompliance with the Charter School Performance Compact. The Legislative Auditor noted that 'return to compliance' letters were not provided consistently by Louisiana Department of Education. The Legislative Auditor points out in its performance audit of Louisiana Department of Education Monitoring of Charter Schools³⁰ that Louisiana Department of Education does not have a timely process to determine if schools placed 'on probation', that is, in intervention levels beyond good standing, have returned to good standing and has allowed schools to continue to operate in the succeeding school year without evidence of correction. Again in 2017 the Legislative Auditor found inconsistent follow-up regarding whether schools with Notices of Concern or Breach had returned to good standing.³¹

An additional concern regarding financial oversight is that charter schools are mandated to follow public bid law only for public works projects in excess of \$150,000 and for food services. Public schools must follow public bid laws for construction, goods and services. Charter schools are exempt from following public bid law for small public works projects (less than \$150,000) for all non-public works projects, and for all non-food goods and services. Specifically, schools participating in the National School Lunch Program must follow public bid law. Public works, as defined in Louisiana law,³² includes any contract for the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity. These contracts also include labor and materials. Charter school buildings built with private equity funding, remaining in private hands are not public works. Charter school buildings that are leased by a non-profit corporation are not public works because the board is a private entity.

A final concern about financial oversight involves charter school boards that lease buildings from private entities and that may also lease or purchase computers, desks, equipment or supplies with taxpayer monies (as well as with grant, donation, or fund-raised money). If a charter school closes for any reason, the equipment and materials do not revert to public ownership. It is reasonable to consider if the taxpayer should or should not recoup public investment in property, materials and

29 Source: LWV-Charter School Study Team interview with the Louisiana Legislative Auditor - Performance Audit Services Branch, 11/15/2017

30 Source: Louisiana Legislative Auditor, Louisiana Department of Education Monitoring of Charter Schools, May 15, 2013

31 Source: Louisiana Legislative Auditor, Evaluation of Charter School Monitoring, Louisiana Department of Education. October 4, 2017

32 Source: Louisiana R.S. 38:2211(A)(12)

equipment purchased with MFP and other taxpayer funds when a charter school closes.

Accessibility and Equity in Charter Schools

Federal legislation governing public education clearly prohibits policies and practices that discriminate against minorities, low income children, and those with special needs.ⁱ States and local jurisdictions are tasked with oversight of school systems and thus accountable to the general public to ensure that schools maintain an equality of opportunity for all children and a balance of enrollment that does not threaten to segregate our school communities.ⁱⁱ

The LWV of the United States has unequivocally stated its commitment to the principle of equal opportunity.

“The League of Women Voters believes that the federal government shares with other levels of government the responsibility to provide equality of opportunity for education, employment and housing for all persons in the United States regardless of their race, color, gender, religion, national origin, age, sexual orientation or disability. “

Furthermore, LWVUS recognizes that discrimination in any form threatens this principle.

“The League is committed to racial integration of schools as a necessary condition for equal access to education.”

LWVUS understands that federal legislation, while necessary to achieve these goals, is not sufficient to ensure the necessary mechanisms required to maintain equity. State and local education authorities must facilitate these mandates.

“The League of Women Voters believes that an equitable, quality public education is critical for students. While the League recognizes that there are instances where the federal government’s involvement is the only way to achieve universal change (desegregation, special needs population, gender equity), we also recognize that primary responsibility for public education resides with the states. In accordance with the League of Women Voters’ position on Equal Rights, we continue to support equity in public education for all through: Broad guidelines for accountability, leaving implementation to the state and local education agencies; Adequate funding sources that support the broad goals of national standards; and mechanisms for local and state funding with adequate federal support for mandates that require less burdensome, compliance-based reporting and regulations.”ⁱⁱⁱ

The creation of charter schools in Louisiana has introduced mechanisms that change the way parents and guardians enroll children in public schools, the manner in which school sites are determined, and the administration of school services and oversight of their execution. The Board of Elementary and Secondary Education and the Louisiana Department of Education, along with local education governing agencies are ultimately responsible for monitoring and oversight of enrollment practices. The League of Women Voters of Louisiana recognizes the following as issues or potential issues that could threaten equal access to and equity among Louisiana's public schools

ISSUES

- Transportation

Bus transportation is a critical component for school access. Free transportation for students is a tool that ensures that students with limited resources have reliable and consistent access to school. It allows districts to balance enrollment and meet the demands for special education services. The Louisiana legislature outlines law for transportation services for school children in charter schools^{iv}. (RS 17:158). Charter schools must comply with these regulations. Charter schools, which do not draw students from traditional attendance zones as is the case with most locally governed school systems, face additional expenses to meet demand in a more dispersed geographic area. Locally authorized charter schools negotiate transportation requirements with the LEA. As of 2018, state authorized charter schools are required to provide transportation for their students. BESE, however, does an appeals process in place.

- Special Education Delivery

Special education delivery requires additional expenses for schools. Expenses may include related special education services: nursing, special transportation, speech and /or language therapy, adaptive physical education, physical and/or occupational therapy, orientation and mobility training for visually challenged students, adaptive equipment, special classroom materials, supplies and additional staffing. Systems which have multiple sites for special education delivery and have larger populations of students requiring specialized services are able to better utilize economies of scale to effectively administer and deliver services. Charter schools, which typically have much smaller populations of special needs students and students who have different needs, face obstacles to providing highly specialized services in a cost effective way. While federal education dollars are distributed to help ensure that the needs of children are met, local school boards with charter schools and Types, 2,4, and 5 charter schools often face challenges when allocating funds to distribute services for efficiency. In some

instances, charter schools have faced heavy litigation and remediation costs for failure to allocate funds for these services.

An additional concern deals with oversight and monitoring of special education services. Because of the decentralized nature of charter schools in Louisiana charter boards and authorizers must be extra diligent in ensuring compliance and maintaining proper channels for parent grievances. The October 2017 legislative audit indicated the Department of Education conducted all required annual reviews. However, using the Compass instrument the LDE took away the same number of points for violation of minor standards as it did for violating state laws, including ADA requirements, suspension rates, expulsion rates, student enrollment and at-risk percentage, and the school's following the required recruitment and enrollment plan and lottery procedures.

The Louisiana legislature has recently approved several public charter schools that are identifiable as schools for students with disabilities, previously called "special education schools" for students ages 3-21. In the 1990s such schools were cited by the Southern Association of Colleges and Schools, now AdvanceED, for segregating students, and were recommended to close them and serve those students on school campuses with their non-disabled peers as the least restrictive environment and as the opportunity to learn on age-appropriate campuses. Some of the recent public charter schools approved are residential facilities, although the state closed and privatized its remaining state residential schools for those with developmental and behavioral disabilities some years ago, in favor of local community group homes.

The Center for Law and Education in 2012 stated, "The consistent message from the US Department of Education has been that those parental choices that are consistent with federal disability law can and should be honored that conversely, a parental choice may not be implemented if it does not meet those requirements. This suggests that for a student in need of special education, a parent's choice of placement, including a charter school specifically for education students with disabilities, should be honored only to the extent it complies with the decision of the student's IEP (Individualized Education Plan) team to provide FAPE in the regular education setting with non-disabled peers to the maximum extent appropriate"³³

- Enrollment Balance

Charter schools are open enrollment institutions. In some cases schools are chartered as special mission schools in which students enrolled have demonstrated a particular proficiency like performing arts or language. Charter schools that require an intelligence

³³ "Charter schools and students with disabilities, preliminary analysis of the legal issues and areas of concern", *Center for Law and Education under contract with the Council of parent attorneys and advocates*, 2012.

test are no longer legal in Louisiana. Regulations outline requirements for lottery enrollment procedures should a charter school receive more applications than space available. The city of New Orleans enrollment policy is unique. In this case there is a OneApp system that is used by parents and guardians to indicate preference for schools across the city. The system does not guarantee placement of children in a parent's choice, but does guarantee placement in the parish. Numerous complaints have surfaced indicating that a full one-third of parents do not get one of their top three choices of schools.³⁴ It seems inevitable that there would be a small number of schools that would generate a more significant demand than others.

Charter school lottery systems are currently in place to manage enrollment of children in charter schools. The Louisiana constitution mandates that charter schools achieve an integrated student body consistent with the district in which it resides. Louisiana's legislative auditor in its [recent report](#) issued several findings in violation of this constitutional mandate and expressed concern with a lack of institutional efforts on the part of the LDE to remedy the issue.^{v vi vii}

The October 2017 audit in part indicated that the Department of Education did not monitor whether the required percentage of at-risk students were enrolled and whether a lottery was held because there were more applicants than seats left.³⁵ 19% of the 2015-2016 schools monitored did not enroll the required number of at-risk students and the Department did not review schools' enrollment lottery processes for compliance.

A challenge for many jurisdictions is to balance enrollment so that racial isolation does not occur. Neighborhood segregation has long worked against many districts attempting to achieve enrollment balance. What often follows this situation is an inadequate balance of staff and resources that tend to flow toward well-resourced regions of districts. Since *Brown v. Topeka* in 1954 many school districts across the United States have come under desegregation orders that mandated school systems actively pursue practices that provide for integrated school populations.

Many school districts in Louisiana remain under desegregation plans, either ordered by the Department of Justice, the Office for Civil Rights, or in voluntary agreement between local, state, and or federal entities. According to a Pro Publica 2014 report, Louisiana has 38 districts that remain under desegregation orders, the overwhelming majority of this number are court-ordered.^{viii}

Desegregation plans can outline a number of actions that districts are required to take before they can achieve unitary status. Actions include: increasing the diversity of

³⁴See this article regarding recent complaints about the New Orleans OneApp system.
http://www.theadvocate.com/new_orleans/news/article_092f220e-418f-11e8-b0ef-4b0c406355eb.html

³⁵ [R.S. 17:3991(C)(1)(c)]

faculty, promoting an integrated student body at school sites, increasing access to rigorous curricula, and ensuring quality of capital facilities and materials of instruction. Some of Louisiana's school systems under desegregation orders have achieved "unitary status", ending the orders through such desegregation plans approved by the federal judge with jurisdiction.

Charter schools are expected to fall into compliance and coordinate with desegregation orders that remain open in Louisiana's school jurisdictions.

While federal law prohibits the explicit use of race to determine enrollment, the US Departments of Justice and Education give guidance on using voluntary policies to achieve diversity across schools. Policies could include: majority/minority voluntary enrollment options, school zone design, magnet programs, schools of choice programs. Most recently, however, some studies raise concerns that choice programs can contribute to trends that leave children of color isolated from their peers.^{ix}

In Avoyelles Parish, for example, a 2015 court-approved comprehensive consent order to complete the desegregation of the Avoyelles Parish School System in three years requires, among other steps, a uniform admission process for its charter schools, along with "rigorous" publicity and outreach toward African-American students.

A federal appeals court is currently considering a Louisiana lawsuit brought by a parish schools board and others regarding a statewide Type 2 charter school authorized by BESE in a parish still under federal desegregation order and as the parish school board and the NAACP Legal Defense and Education Fund had recently negotiated a new desegregation plan. The charter school's student body is 93% African-American, while the school district's enrollment is 62% African-American. There are currently no federal guidelines for this specific area.³⁶

With respect to enrollment requirements, the Louisiana legislature leaves locally authorized charter schools (types 1, 3, and 3B) to work for balanced enrollment between the authorizer and the charter board. For the far greater number of BESE authorized charter schools (types 2, 4, and 5), the legislature has outlined requirements based on "At-Risk" enrollment. The legislature defines at-risk students.^x It also specifies enrollment requirements for charter schools. It is important to note that Type 2 charter schools have a state-wide enrollment zone, so BESE sets the at-risk enrollment target determined by the average at-risk enrollment across the state. Currently, the at risk enrollment percentage is approximately 67%. Enrollment requirements for BESE authorized charter schools are as follows:

³⁶ "Does majority black school, open to all, uphold segregation," *US News*, June 26, 2017; "Court approves three-year plan to complete desegregation in Avoyelles Parish, Louisiana Schools," *Department of Justice, news release*, May 22, 2015; "Charter school segregation lawsuit goes to US appeals court," *New Orleans metro Education News*, June 6, 2017

D. Except as otherwise provided by charter law, each charter school created as a new school and each charter school created as a result of a conversion after the 2011-2012 school year shall maintain the following student enrollment percentages:

1. the charter school percentage of economically disadvantaged students shall be greater than or equal to 85 percent of the percentage of economically disadvantaged students from the local public school districts from which the charter school enrolls; and

2. the charter school percentage of students with exceptionalities shall be greater than or equal to 85 percent of the percentage of students with exceptionalities from the local public school districts from which the charter school enrolls.

E. For the purpose of Subsection D of this Section, the department shall determine the percentages of economically disadvantaged students and students with exceptionalities from local public school districts as follows.

1. For charter schools in operation prior to July 1, 2016, the student enrollment percentages shall be based on the October 1, 2015 pupil membership count and shall remain fixed until the charter school's contract is renewed, unless otherwise provided for in existing charter contracts.

2. For charter schools beginning an initial or renewal charter contract term on or after July 1, 2016, the student enrollment percentages shall be based on the pupil membership counts from the school year immediately preceding the beginning of the charter contract term and shall remain fixed during the charter contract term.

- Discipline

The laws for the discipline of students are outlined in Louisiana Revised Statutes 17. Laws regarding corporal punishment, suspension, and expulsion from schools are consistent across traditional and charter schools. In addition, schools are required to develop a master plan for student behavior supports and discipline. In practice, however, parents of charter school students in New Orleans have raised concerns regarding high rates of suspension among minority students as well as lack of an adequate grievance processes for disciplined students. Recently, schools in New Orleans have developed a common expulsion process that allows for a third-party review central to the city's schools. In news reports, there has been discussion of inconsistent expectations among various charter schools for minor discipline infractions like uniform violations and classroom disruption. These reports leave open questions about the degree to which charter schools use restorative justice practices that work to reduce rates of suspension and encourage a mediation process instead.³⁷

³⁷ https://www.huffingtonpost.com/entry/new-orleans-charter-schools-problems-exposed-at-naacp_us_58ff4297e4b0c13feaa5c810

i Article outlining history of special needs legislation (IDEA) (FAPE)

ii See this 2015 case in Lafayette, LA <http://theind.com/article-21655-local-education-group-targets-charter-school.html>

iii LWVUS *Impact on Issues*

iv Chapter 28. Transportation

§2801. Transportation Requirements for BESE-Authorized Charter Schools

A. Each operator of a BESE authorized charter school shall offer free daily transportation to and from school to any student meeting both of the following conditions:

1. the student resides more than one mile from the school where the student is enrolled;
2. the student resides within the parish or local school district in which the school is physically located.

B. Free daily transportation shall include, at a minimum:

1. whatever transportation is necessary to implement any individualized education plan (IEP) for a child with an identified exceptionality;
2. transportation by a vehicle approved for student transportation in accordance with BESE *Bulletin 119—Louisiana School Transportation Specifications and Procedures* or public transportation payments and/or reimbursements;
3. bus stops or pick-up points no further than one mile from the place of residency of each child residing within the parish, unless the school is located in a large rural parish, in which case the state superintendent may grant a waiver for this requirement; and
4. procedures to ensure compliance with R.S. 14:93.2.1 for children under the age of 10.

C. Charter operators shall submit school transportation plans to the department to ensure compliance with applicable laws and policies. The state superintendent shall set forth the process for transportation plan submission.

D. Charter operators having BESE authorized charter schools in operation during the 2015-2016 school year shall offer transportation to all eligible students no later than the beginning of the 2018-2019 school year. Charter operators having BESE authorized charter schools that begin operation in the 2016-2017 school year shall offer transportation upon opening.

E. The department shall develop a waiver process to exempt from this requirement any type 2 charter schools having a unique mission to serve students with exceptionalities, virtual schools, or other schools upon which this requirement would create a substantial financial burden. Such process shall be set forth the state superintendent, who shall update the board on any waivers granted.

F. No later than the beginning of the 2016-2017 school year, each type 5 charter school located in Orleans Parish shall provide free transportation services for all students enrolled in the charter school who reside within Orleans Parish and more than 1 mile from the charter school's location, which shall include, at a minimum:

1. whatever transportation is necessary to implement any individualized education plan (IEP) for a child with an identified exceptionality, without regard to how far the child resides from the charter school;
2. free transportation by a vehicle approved for student transportation in accordance with BESE *Bulletin 119—Louisiana School Transportation Specifications and Procedures*, for students enrolled in grade 6 or below who reside more than 1 mile from the charter school; and
3. free transportation, free public transportation payments and/or reimbursements for all other students not included in Paragraphs 1 and 2 of this Subsection who reside more than 1 mile from the school.

G. Each charter school operator shall adopt policies and procedures or shall make provision in its bus transportation service agreement to do all of the following:

1. prohibit a school bus operator from loading or unloading students at school while the bus is in a traffic lane of any type of street as defined in R.S. 32:1 and require that students be loaded or unloaded on a shoulder, in a school parking lot, or at other appropriate off-road location at the school as determined by the school governing authority. The requirements of this Paragraph shall not apply if the shoulder of a municipal road is the only available alternative and the municipality has not made the shoulder available by designating that area for loading and unloading students during designated school zone hours;

2. prohibit a school bus operator from loading or unloading students at or near their homes while the bus is in a traffic lane of any type of street as defined in R.S. 32:1 and require that students be loaded or unloaded on a shoulder unless the governing authority determines that loading or unloading on a shoulder is less safe for the student. However, if there is no shoulder or if the shoulder is determined to be less safe, a school bus operator may load and unload a student while the bus is in a lane of traffic but only if the bus is in the lane farthest to the right side of the road so that there is not a lane of traffic between the bus and the right-side curb or other edge of the road;

3. prohibit a school bus operator from loading or unloading a student in a location on a divided highway such that a student, in order to walk between the bus and his home or school, would be required to cross a roadway of the highway on which traffic is not controlled by the visual signals on the school bus.

v

§2713. At-Risk Students

A. Charter schools shall maintain required student enrollment percentages as provided in this Section, based on the demographic information collected in the February 1 pupil membership count for students who were enrolled at the school the previous October 1 according to the October 1 pupil membership count.

B. The following definitions shall apply in this Section.

Students from Local Public School Districts—public school students who reside within the geographic boundaries of the local city or parish school board’s district where a particular charter school is located.

Students with Exceptionalities—students identified as having one or more exceptionalities, as defined in R.S. 17:1942, not including gifted and talented.

C. Unless otherwise explicitly stated in the charter school’s contract, or otherwise provided by charter law, each type 2 charter school created as the result of a conversion, type 3 charter school, and type 4 charter school shall maintain the following student enrollment percentages:

1. the charter school's percentage of free- or reduced-price lunch-eligible students shall be greater than or equal to the percentage of free- or reduced-price lunch-eligible students enrolled at the school in the school year prior to the establishment of the charter school; and

2. the charter school's percentage of students with exceptionalities shall be greater than or equal to the percentage of students with exceptionalities enrolled at the school in the school year prior to the establishment of the charter school.

D. Except as otherwise provided by charter law, each type 1 or type 2 charter school created as a new school shall maintain the following student enrollment percentages:

1. the charter school's percentage of free- or reduced-price lunch-eligible students shall be greater than or equal to 85 percent of the percentage of free- or reduced-price lunch-eligible students from local public school districts. The remaining number of students enrolled in the charter school which would be required to have the same percentage of free- or reduced-price lunch-eligible students from local public school districts shall be comprised of students who are otherwise at-risk as defined in §103 of this bulletin; and

2. the charter school's percentage of students with exceptionalities shall be greater than or equal to 85 percent of the percentage of students with exceptionalities from the local public school districts. The remaining number of students enrolled in the charter school which would be required to have the same percentage of students with exceptionalities from the local public school districts shall be comprised of students who are otherwise at-risk as defined in §103 of this bulletin.

E. For the purpose of Subsection D of this Section, the LDE shall determine the percentages of free or reduced-price lunch-eligible students and students with exceptionalities from local public school districts as follows.

1. For charter schools in operation prior to July 1, 2016, the student enrollment percentages shall be based on the February 1, 2015 pupil membership count and shall remain fixed until the charter school’s contract is renewed, unless otherwise provided for in existing charter contracts.

2. For charter schools beginning an initial or renewal charter contract term on or after July 1, 2016, the student enrollment percentages shall be based on the pupil membership counts from the school year immediately preceding the beginning of the charter contract term and shall remain fixed during the charter contract term, unless the charter contract specifies that the percentages shall be required to reflect the current year’s percentages.

F. The LDE shall perform all calculations necessary to implement this Section.

G. Annually, the LDE shall make a report to BESE on the student enrollment percentages detailed in this Section for all public schools and local education agencies.

H. Each charter authorizer shall hold its authorized charter schools accountable for meeting the required student enrollment percentages in this Section in accordance with state law by taking the following actions for each charter school that fails to meet required enrollment percentages:

1. conducting an inquiry to determine all actions taken by the charter school to attempt to meet the requirements and the reasons for such failure; and

2. providing a written notice to the charter school that provides specific annual enrollment percentage targets the charter school must meet to demonstrate progress toward meeting the required enrollment percentages, and details how the charter authorizer will hold the charter school accountable, including any potential consequences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) R.S. 17:3973, R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:875 (March 2011), LR 40:1325 (July 2014), LR 42:550 (April 2016), LR 43:310 (February 2017).

vi See this link for the Louisiana's legislative auditor's full report.

[http://app.lla.state.la.us/PublicReports.nsf/0/52D8C003F16262F7862581AF005EE0A9/\\$FILE/0001654D.pdf](http://app.lla.state.la.us/PublicReports.nsf/0/52D8C003F16262F7862581AF005EE0A9/$FILE/0001654D.pdf)

vii Type 2 statewide enrollment figures.

viii <http://projects.propublica.org/graphics/desegregation-orders>

ix <https://educationresearchalliancenola.org/files/publications/040417-Bell-Weixler-Barrett-Harris-Jennings-Did-the-New-Orleans-School-Reforms-Increase-Segregation.pdf>

x *Economically Disadvantaged*—any one of the following characteristics of a student:

- a. is eligible for the Louisiana food assistance program for low-income families;
- b. is eligible for the Louisiana disaster food assistance program;
- c. is eligible for the Louisiana program for assistance to needy families with children to assist parents to becoming self-sufficient;
- d. is eligible for the Louisiana healthcare program for families and individuals with limited financial resources;
- e. is eligible for reduced price meals based on the latest available data;
- f. is an English language learner;
- g. is identified as homeless or migrant pursuant to the McKinney-Vento Homeless Children and Youth Assistance Act and the Migrant Education Program within the Elementary and Secondary Education Act;
- h. is incarcerated with the office of juvenile justice or in an adult facility; and/or
- i. has been placed into the custody of the state.

Students with Exceptionalities—students identified as having one or more exceptionalities, as defined in R.S. 17:1942, not including gifted and talented.