

# DAYTON BUSINESS JOURNAL

## Guest Column: Ongoing developments in charter schools

CHARLES KIDWELL

Partner, Porter Wright Morris & Arthur LLP

What are charter schools and the ongoing efforts to make changes to improve education and student opportunities? Charter schools, sometimes confused with private schools, are in fact public schools receiving tax dollars, just like a public school district.

Their intended purpose is to create alternatives for families and a better student education than otherwise might result within lesser performing public school districts or simply as an alternative environment since students sometimes thrive and excel in different situations.

Charter schools were primarily created and sponsored by the Ohio Department of Education (ODE) until 2004-2005, when the legislature created opportunities for qualifying sponsors other than ODE. The focus and objective since that time has been on improving the quality of education while creating higher performing charter schools.

Like anything else in life there is both good and bad and there will be successes and failures. Examples of high quality alternatives to traditional schools

achieving results here in Dayton include the Dayton Early College Academy and Dayton Regional STEM School.

Students attending Ohio charter schools have increased from fewer than 2,000 in 1999 to more than 122,000 in 2014. Today there are more than 65 sponsors in Ohio. Initially, it was believed that market competition would drive families and students to better performing charter schools and ultimately lesser performing schools would not thrive in the marketplace.

This consolidation has not occurred. Thinking has now evolved toward the concept of "accountability," intended to make sponsors the governing authority (board) of the school responsible for performance and attaining results for improved education using public funding.

Legislation changes since 2004 have occurred primarily for clarification or to address issues as they arise by providing additional legislation addressing specific current topics. Today there appears to be a conscientious effort to provide comprehensive legislation on the subject in a concerted effort by the Ohio House, Senate and Governor's office.

These efforts have taken the



*Charles Kidwell is a partner at the law firm Porter Wright. Kidwell has been working with the Fordham Foundation on Charter Schools since they began their partnership with ODE since 2004.*

form of House Bill (H.B.) 2 recently passed on March 26, Senate Bill (S.B.) 148 introduced by Peggy Lehner on April 15, H.B. 64 passed April 23, S.B. 3 passed March 25 and H.B. 7 passed March 16.

The process for a bill introduced to the House or Senate, involves submission of such to a joint committee to reach acceptable language that each can pass and following approval presumably it becomes law. There are enough similarities between H.B.

2, S.B. 148 and the Governor's budget proposals that changes and improvements of an extensive nature may in fact occur in the near future.

Current ongoing legislative activity has focused charter school reform by enhancing oversight of the school's governing body and its sponsor along with providing opportunities and resources for successful charter schools. This new legislation generally provides for (1) granting the Ohio Department of Education control, oversight and power to evaluate all sponsors and hold them accountable, (2) requiring sponsors to oversee schools and governing authority involvement mandated through the financial audits, certain operational matters and elimination of possible conflicts of interest by prohibiting the sponsor's sale of services or assistance in the management and operation of the schools, and (3) provide financial resources and opportunities for successful schools.

Presently, there is a rating system for sponsors. Although schools are to be rated through testing and other measures, inadequate or poor performing schools are still allowed to switch from one sponsor to another to prevent being placed on probation or closed. H.B. 64 and H.B. 7 have proposals to potentially limit the ever increasing testing as measurement tools and deferring the rating process until the issue of testing is resolved.

The other legislative proposals go further seeking to create a uniform system, possibly through ODE, to approve, renew, limit or cancel a sponsor's right to sponsor charter schools along with overseeing and monitoring their performance.

To verify that state and federal resources are used appropriately, fiscal proposals include requiring (1) the designated school financial officer to be independent from the sponsor, (2) compelling governing authority's involvement with the school's auditor, usually the state of Ohio, (3) using independent parties as the school attorney and accountant, and (4) transparency through specific disclosure of information on budgets, expenses, and the use of monies.

To assure governing authorities are acting responsibly, proposals include (1) identifying individuals on school websites (much like disclosure of public school board), (2) elimination of all conflicts of interest with regard to vendors, relatives, associates and/or employees at the schools, and (3) the gathering of additional information regarding backgrounds of the individuals, and prohibition against serving in certain situations.

Two hurdles to overcome, even for high quality and top performing charter schools, have been (1) obtaining adequate fiscal facilities and (2) the consolidation of lesser performing schools with better performers. Proposals include making funds available for physical facilities, either through establishing funding programs, partnering with public schools on local levies or requirements for public school districts to lease available public school district facilities to high performing charters. Mergers of charter schools have not occurred because when a school ceases to exist, it is required to turn assets over to the state of Ohio. Current proposals would permit the merger of schools and retention of their collective

assets in order to promote consolidation of smaller and lesser performers with stronger proven performers.

Current ideas and proposals follow what experience suggests has worked in states having strong charter school systems. Charter school growth throughout the country continues and collecting and analyzing data in the last 10 years is helping to identify ways to improve education. In Ohio various paths have been pursued with charter schools' different types of sponsors, believing that the market competition would determine the best process and outcome.

Places with successful programs include New York, Colorado, Tennessee, Louisiana and the District of Columbia. Efforts have now focused implementation in Ohio on ideas which have worked in other states.

Although some debate whether charter schools can succeed compared to public school districts, data suggests there is a need if we are to improve education. Charter school students include a population of 67 percent economically disadvantaged families along with 68 percent minority individuals, with 25 percent of all students being identified with a disability.

The minority and special needs students population in charter schools is 33 percent higher compared to traditional public schools.

As the debate and work on improving education systems and student results continues, we should give kudos to those in the industry experts, administrators, teachers, parents, politicians and everyone else trying to improve the paths toward better student education.