

FINANCIAL RESPONSIBILITY FOR CHARTER SCHOOL FACILITIES IMPROVEMENTS IN NEW ORLEANS

Presented to The Scott S. Cowen Institute for Public Education Initiatives
September 10, 2009



EXECUTIVE SUMMARY

New Orleans has an unprecedented number of charter schools, due in part to efforts to quickly and effectively rebuild the education system after Hurricanes Katrina and Rita. Pursuant to various Louisiana laws, local school districts provide charter schools with free facilities, typically entering into a lease agreement for each facility. Unfortunately, many of these facilities are in need of costly repairs or renovations. Customarily, charter schools only pay for school operating expenses. Disagreements have arisen, however, about whether certain facility repairs constitute operating expenses to be paid by the Charter or capital expenses to be paid by the school district. As a result of such disagreements, students suffer as improvements are delayed or, in some cases, must be funded from the charter school's operating budget without any certainty of reimbursement by the school district.

This memorandum begins with a summary of existing laws and policies governing New Orleans charter facilities. It goes on to describe guidelines established under leasing laws and in the accounting field that provide some insight into how operating expenses and capital expenses are distinguished in other contexts. Finally, it recommends best practices and outlines alternative approaches regarding the issue described above.

As a first step, we recommend that the Cowen Institute consider sharing with school districts and charter schools the model lease terms provided herein as Appendix A. This could help inform future lease negotiations by giving both parties equal access to facility-related lease provisions, which would encourage the parties to carefully negotiate such terms. If desired in the future, the Cowen Institute may wish to consider alternative approaches, such as a model memorandum of understanding, or new or amended legislation, regulations or school district policies. Ultimately, any approach that provides a clearer delineation of responsibility for charter school facilities will save time, money and hassle and result in a better educational experience for the students of New Orleans.

TABLE OF CONTENTS

Page

I.	INTRODUCTION	1
A.	The Role of Charter Schools in New Orleans after Hurricane Katrina.....	1
B.	Challenges in Allocating Responsibility for Rebuilding Charter School Facilities	2
II.	EXISTING LEGAL AND POLICY GUIDANCE	2
A.	The Charter Law	2
B.	The RSD Act	4
C.	State Standards and Sources of Funding for School Facilities.....	6
D.	Louisiana Administrative Code—Louisiana Handbook for School Administrators	7
E.	Policies, Plans, and Similar Documents	8
1.	Existing Lease Agreements.....	8
2.	OPSB E500 and E501	9
3.	The Master Plan.....	10
4.	New Schools for New Orleans: Charter School Operations Guidebook	11
5.	New Schools for New Orleans: Charter School Legal Handbook	12
III.	USEFUL ANALOGIES FOR DETERMINING WHERE TO DRAW THE LINE BETWEEN CAPITAL AND OPERATING EXPENSES.....	12
A.	Leasing Laws.....	12
B.	Accounting Principles	12
1.	Louisiana Rules	12
2.	California Rules for Comparison and Reference.....	13
IV.	RECOMMENDED BEST PRACTICES FOR FUTURE LEASES	14
A.	Coming to Terms in a Written Agreement	14
B.	Pre-Occupancy Inspection.....	14
C.	Neutral Dispute Resolution Procedure.....	15
V.	ALTERNATIVE APPROACHES	15
A.	Memorandum of Understanding.....	15
B.	New or Amended Statutes	16
C.	New or Amended Regulations	16
D.	New or Amended School District Policies.....	17
VI.	CONCLUSION	17
VII.	APPENDICES	
	Appendix A: Model Charter School Lease	
	Appendix B: Lease Agreement between the RSD and the Algiers Charter School Association	
	Appendix C: Types of Charter Schools in New Orleans	
	Appendix D: Selected Excerpts for Reference	

I. INTRODUCTION

A. The Role of Charter Schools in New Orleans after Hurricane Katrina

To reorganize the public school system after Hurricanes Katrina and Rita, New Orleans has relied heavily on charter schools (“Charters”), such that now the city has a higher percentage of Charters than anywhere else in the nation. A Charter is an independent public school, usually operated by a nonprofit corporation, under the terms of a charter agreement with a local school board or the state. Charters are accountable to the state of Louisiana (the “State”) for student performance, fiscal management and compliance with the charter agreement, but they are autonomous in terms of personnel decisions, school management and operations, curriculum and other day-to-day matters. After Hurricane Katrina, the state transferred over one hundred low-performing New Orleans schools from the Orleans Parish School Board (the “OPSB”) to the state-run Recovery School District (the “RSD”), to be operated by the RSD for an initial period of five years, after which they may be transferred back to the OPSB if certain performance targets have been met. To reopen these schools quickly after the storm, the RSD authorized a number of Charters, which created a decentralized system capable of a quick response. Although the RSD now operates its own schools, it continues to depend on Charters for about half the schools in its jurisdiction.¹

Another reason for the abundance of Charters in New Orleans is that Louisiana law provides Charters with free facilities, while Charters in other states often struggle to find affordable options. Under the unique Recovery School District Act (the “RSD Act”), the OPSB must provide the RSD with free facilities, while under the Louisiana Charter School Demonstration Program Law (the “Charter Law”), the RSD must in turn provide such free facilities to the Charters it authorizes. The RSD Act and the Charter Law allowed Charters to have access to existing school facilities that would otherwise have been little more than empty buildings after Hurricanes Katrina and Rita. Unfortunately, many of these free facilities require costly repairs or renovations. Even before the hurricanes, numerous New Orleans public schools were in disrepair or had significant deferred maintenance needs. The storms, of course, made matters worse, and many buildings remain in serious need of attention.

¹ Recovery School District, District Snapshot, <http://www.rsdl.net/InfoGlance.aspx> (last visited September 10, 2009).

B. Challenges in Allocating Responsibility for Rebuilding Charter School Facilities

Since August 2007, the OPSB and RSD have been collaborating on a *School Facilities Master Plan for Orleans Parish* (the “Master Plan”), the goal of which is “to address existing conditions and devise a plan that envisions school buildings that are both innovative and transformative for students.”² Funding for such an initiative comes from a variety of sources: federal, state, and local.³ At the local level, determining who is responsible for what kind of expense depends in part on the ownership arrangement for the facility. Unfortunately, school facility arrangements in New Orleans are multi-layered and complex, which can lead to confusion among those trying to coordinate and fund a facility improvement (unless context indicates otherwise, the term “Improvement” will hereinafter refer generically to any work needed on a given facility, regardless of the classification of such work as an operating or capital expense). As will be explained below, Charters are typically responsible for operating expenses, while the entity that owns the facilities occupied by the Charter is responsible for capital expenses. Disagreements arise, however, about where to draw the line between operating expenses and capital expenses. As a result of such disagreements, students suffer as Improvements are delayed or, in some cases, must be funded from the Charter’s operating budget.

II. EXISTING LEGAL AND POLICY GUIDANCE

The following sections summarize the existing laws and policies that govern charter school facilities in New Orleans. Understanding the existing framework can help Charters and their authorizing entities establish policies or best practices to address the issue of responsibility for repairs in charter facilities.

A. The Charter Law

There are three different entities overseeing Charters in New Orleans: (i) the RSD, which oversees “Type 5”⁴ Charters, (ii) the OPSB, which oversees “Type 1,”⁵ “Type 3,”⁶ and “Type 4”⁷

² SCHOOL FACILITIES MASTER PLAN FOR ORLEANS PARISH, at iv (2008), *available at* <http://www.sfmppop.org> [hereinafter MASTER PLAN].

³ MASTER PLAN, *supra* note 2, at 97-104.

⁴ Charter School Demonstration Programs Law, LA. REV. STAT. ANN. § 17:3973(2)(v) (2008).

⁵ *Id.* § 3973(2)(i).

⁶ *Id.* § 3973(2)(iii).

Charters, and (iii) the Louisiana Board of Elementary and Secondary Education (the “BESE”), which directly oversees and funds “Type 2”⁸ Charters.⁹ For a chart summarizing the differences among the types of Charters, see Appendix C. Because the OPSB and the RSD oversee the vast majority of New Orleans Charters, this memorandum will focus on these entities and their Charters, paying particular attention to Type 5 Charters, given their especially complex facility arrangements.

Under the Charter Law, local school boards, such as OPSB, must make any vacant school facility available to Charters for lease or purchase at fair market value.¹⁰ However, if a facility was constructed at no cost to the local school board (e.g., via federal, state, or private funding), the school board must provide such facility to the Charter at no cost.¹¹ The Charter Law provides that a Charter may negotiate with its local school board, such as OPSB, for the operation and maintenance of the facility.¹² Thus, the Charter Law contemplates that financial responsibility for operating expenses will be negotiated on a case-by-case basis.

Although the allocation of financial responsibility for the upkeep of school facilities is somewhat ad hoc, the level of expected maintenance is more uniform—Charters are held to the same standard of maintenance as other schools in the district. The Charter Law notes that Charters are exempt from many of the rules and regulations governing public schools, but provides that they are not exempt from those related to building maintenance.¹³ These generally-applicable rules and regulations include the Louisiana Sanitary Code,¹⁴ inspections for asbestos,¹⁵ the public bidding laws,¹⁶ and the Louisiana Handbook for School Administrators, which is incorporated into the Louisiana Administrative Code (discussed below).¹⁷

⁷ *Id.* § 3973(2)(iv).

⁸ *Id.* § 3973(2)(ii).

⁹ THE 2008 STATE OF PUBLIC EDUCATION IN NEW ORLEANS REPORT 13 (The Scott S. Cowen Inst. for Pub. Educ. Initiatives at Tulane Univ. ed., 2008), *available at* <http://education.tulane.edu/sos.html> [hereinafter COWEN REPORT].

¹⁰ LA. REV. STAT. ANN. § 17:3982(B) (2008).

¹¹ *Id.*

¹² *Id.* § 3991(D).

¹³ *Id.* § 3996(A)(1).

¹⁴ LA. ADMIN. CODE tit. 51, § 101 et seq. (2008).

¹⁵ LA. REV. STAT. ANN. § 30:2341 et seq. (2008).

¹⁶ LA. REV. STAT. ANN. § 38:2211-2296 (2008).

¹⁷ For a compliance checklist, see generally, NEW SCHOOLS FOR NEW ORLEANS, CHARTER SCHOOL LEGAL HANDBOOK [hereinafter LEGAL HANDBOOK], *available at* <http://newschoolsforneworleans.org/resources.php>.

The Charter Law provides guidance as to who owns which assets, and this may help inform the allocation of responsibility for operating and capital expenses. With respect to fixed assets, the Charter Law includes several different ownership schemes. If a Type 1, 2, 3, or 5 Charter, as defined by the Charter Law,¹⁸ purchases an asset with private funds, the Charter owns that asset outright.¹⁹ If such a Charter purchases an asset with public funds, the asset belongs to the Charter, so long as it is in good standing—if the charter is revoked or the Charter ceases to operate, these assets cede to the school board.²⁰ For Type 4 Charters, all purchased assets belong to the local school board.²¹ These different asset ownership schemes could possibly impact how associated Improvement costs should be allocated. For example, if the Charter owns a fixed asset, it would seem appropriate for it to be responsible for the costs of needed Improvements to the asset. However, such responsibility may be less appropriate if the school board retains reversion rights in the asset.

B. The RSD Act

In 2003, the state legislature passed the RSD Act, which created the RSD, a special state school district administered by the Louisiana Department of Education and subject to the authority of the state Board of Elementary and Secondary Education, which was authorized to manage and supervise schools that did not meet the performance standards set forth in the RSD Act. Pursuant to a provision added to the RSD Act in 2005, a majority of public schools in New Orleans are now managed as Type 5 Charters by the RSD. The school facilities transferred to the RSD were among those most in need of Improvement both before and after the hurricanes, so these facilities are a major focus of the Master Plan.

Under the RSD Act, the RSD has the right to use the facilities of schools that have been transferred to it, but the OPSB continues to own such facilities.²² However, the OPSB may, in its discretion, grant the RSD the “the rights and responsibilities of ownership” regarding the transferred school facilities.²³ On January 15, 2008, the OPSB passed a resolution granting such rights and

¹⁸ LA. REV. STAT. ANN. § 17:3973(2)(b) (2008).

¹⁹ *Id.* § 3991(H).

²⁰ *Id.* (discussing Types 1, 2, 3, and 5 Charters).

²¹ *Id.* (discussing Type 4 Charters).

²² Recovery School District Act, LA. REV. STAT. ANN. § 17:1990(B)(4)(a) (2008).

²³ *Id.* § 1990(B)(4)(b)(i).

responsibilities to the RSD.²⁴ Read together with the provisions of the RSD Act, this resolution allows the RSD to “lease land or property, dispose of property other than the land as is necessary to properly manage the operation of the schools, rebuild school buildings, or renovate school buildings.”²⁵ Under its leasing authority, the RSD leases OPSB-owned facilities to various Charters.²⁶ Because the RSD received its facilities from the OPSB at no cost,²⁷ under the Charter Law, the RSD must therefore provide such facilities to the Charters at no cost.²⁸

When the time comes to repair a Type 5 Charter facility, three entities are involved: (1) the OPSB, which owns the building, (2) the RSD, which manages the building, and (3) the Charter, which occupies the building. As between the RSD and the OPSB, the RSD is responsible for “routine maintenance and repair such that the facilities and property are maintained in as good an order as when the right of use was acquired,”²⁹ while the OPSB is responsible for “the type of extensive repair to buildings or facilities that would be considered to be a capital expense.”³⁰ As among the RSD-authorized Charters, the RSD, and the OPSB, the OPSB is responsible for capital expenses, while each Charter and the RSD allocate responsibility for maintenance in a lease agreement. For instance, in the lease agreement between the RSD and the Algiers Charter School Association, a copy of which is attached hereto as Appendix B, the lessee-Charter is responsible for “its pro-rata share [of] all routine maintenance and repair . . . as calculated in relation to its student enrollment at the school.”³¹ In other words, the Charter assumes responsibility for its proportionate share of the RSD’s maintenance obligation under the RSD Act. Given this complexity, questions arise as to which entity is responsible for the cost of a particular Improvement. The joint implementation of the Master Plan by the OPSB and the RSD may address this problem, at least in part, but many questions remain as to how best to implement the statutory standard for Improvement responsibilities.

²⁴ Orleans Parish School Board, Resolution No. 01-08, *available at* http://www.nops.k12.la.us/uploads/File/board/board_meetings/Board_Agenda_01_15_08.doc.

²⁵ LA. REV. STAT. ANN. § 17:1990(B)(4)(b)(i) (2008).

²⁶ *See, e.g.*, Lease Agreement among the Algiers Charter School Association, the RSD and the BESE for the operation of the Algiers Technological Academy, dated as of July 1, 2007 [hereinafter *Algiers Lease*], *available at* www.algierscharterschools.org/downloads/2007/212037.PDF.

²⁷ LA. REV. STAT. ANN. § 17:3982(B) (2008).

²⁸ *Id.*

²⁹ *Id.* § 1990(B)(4)(a).

³⁰ *Id.*

³¹ *Algiers Lease*, *supra* note 26, at 4.

C. State Standards and Sources of Funding for School Facilities

Louisiana statutes define a “school” as “an institution for the teaching of children, consisting of an *adequate physical plant*, whether owned or leased, instructional staff members, and students.”³² Thus, the adequacy of school facilities is intrinsic to the definition of a school, and it follows that an inadequate facility is not fit to be a “school” under the law. This standard is echoed, and arguably extended to Charters, in the Charter Law, which requires each charter to contain “[i]nformation concerning the school location and the adequacy of its facilities and equipment.”³³ Louisiana law further provides that both the State and each local school district will share responsibility for funding the day-to-day cost of operating and maintaining public schools. State statutes provide that the legislature is required to “annually appropriate funds sufficient to fully fund” the cost of the education program so as to ensure “a minimum foundation of education in all public elementary and secondary schools.”³⁴ The State provides this minimum foundation funding to school districts and Charters³⁵ on a per pupil basis, and the local schools use the minimum foundation funding, together with local tax revenue derived from sales taxes and, to a lesser extent, property taxes, to fund school operating and maintenance expenses.³⁶

Charters receive their proportionate share of State and local funding for school operations, and so it follows that Charters should bear financial responsibility for their own operating expenses. Under the RSD Act, the RSD has a duty to maintain the facilities transferred to it in “as good an order as when the right of use was acquired.”³⁷ When the RSD transfers a facility to a Charter, the RSD has an interest in passing this duty on to the Charter by contract or lease. As the facility

³² LA. REV. STAT. ANN. § 17:236 (2008) (emphasis added).

³³ *Id.* § 3991(B)(15).

³⁴ La. Const. Art. 8, § 13(B).

³⁵ Type 1, 3, 4, and 5 Charters receive funding from the Minimum Foundation Program (the “MFP”), but Type 2 Charters receive funding from a general fund appropriation flowing through the State Department of Education and BESE. *See* La. Charter Sch. Assoc., Charter School Overview, <http://lacharterschools.org> (follow “LA Charter Schools / Overview” hyperlinks) (last visited September 10, 2009).

³⁶ Under the MFP, local school boards must ensure that 70% of their general funds are expended in the areas of instruction and school administration. Moreover, state MFP funds can only be expended for educational purposes. Among other things, expenditures for educational purposes include operations and maintenance of plant services and facility acquisition and construction services, as defined by the Louisiana Accounting and Uniform Governmental Handbook. Expenses relating to facility acquisition and construction services may be considered capital expenses, so a limited amount of state MFP funding may go towards capital expenses, though in practice, the majority is devoted to general school operation and instruction, given the 70% instructional expenditure requirement and ongoing operational needs. PAUL G. PASTOREK, LA. DEPT. OF EDUC., MINIMUM FOUNDATION PROGRAM, 2007–2008 HANDBOOK, 32–34 (2008), *available at* <http://www.louisianaschools.net/lde/uploads/12091.pdf>.

³⁷ LA. REV. STAT. ANN. § 17:1990(B)(4)(a) (2008).

occupants, the Charters are better situated to respond to day-to-day maintenance needs. Further, as a policy matter, having the Charters take responsibility for maintenance gives them an incentive to use the facility in a way that minimizes damage.

Likewise, the primary source of funding for capital projects undertaken by local school districts in Louisiana is the proceeds of district-issued bonds secured by property tax revenues. (For Type 1, 3, 4, and 5 Charters, an additional source of funding for school capital needs is hurricane-related aid from the Federal Emergency Management Agency and from Community Development Block Grants.³⁸) To the extent that the funding for capital projects is generated, controlled and spent based on priorities set by the OPSB, it follows that the OPSB should bear the costs of capital expenditures on school facilities whether occupied by Charters or by traditional public schools.³⁹

Problems arise, however, if, as has been the case in post-Katrina and Rita New Orleans, a Charter receives a facility in sub-par condition and the needed improvements go beyond ordinary maintenance. A clear delineation of responsibility, including a clear distinction between capital outlay and operating expenses, would minimize conflict and help each school operator better plan for the future.

D. Louisiana Administrative Code—Louisiana Handbook for School Administrators

The Louisiana Handbook for School Administrators contains regulations applicable to all public schools in the state. The section entitled “Plant Operations and Maintenance” describes the types of school facilities that should be available at each school and states that such facilities are to be properly maintained. For instance, the handbook notes, “[s]chool facilities and grounds shall be kept attractive, functional, and clean through regular preventive and corrective maintenance.”⁴⁰ The handbook is silent, however, as to the allocation of financial responsibility for needed Improvements.

³⁸ COWEN REPORT, *supra* note 9, at 36.

³⁹ We understand that the Cowen Institute is receiving advice under a separate engagement with another law firm on the issues surrounding outstanding bonds of the OPSB. Thus, we have kept our analysis of these matters exceedingly brief.

⁴⁰ LOUISIANA HANDBOOK FOR SCHOOL ADMINISTRATORS, LA. ADMIN. CODE tit. 28, § 1501(D), *available at* <http://www.louisianaschools.net/LDE/bese/1041.html>.

E. Policies, Plans, and Similar Documents

1. Existing Lease Agreements

Existing lease agreements between the RSD and various Charters indicate how these entities currently divide responsibility for facilities expenses. For example, we located online a lease agreement between the RSD and the Algiers Charter School Association, Inc., an association of several Type 5 Charters, which is attached hereto as Appendix B.⁴¹ It appears from the title of the lease, “State of Louisiana Department of Education, Recovery School District Lease Agreement,” that the RSD may use a similar form agreement for its other Charters, although we did not undertake to verify this inference. Under this agreement, the Charter is responsible for the following:⁴²

1. Keeping the property in good working order and in a safe and sanitary condition, ordinary wear and tear excepted.

2. Its pro-rata share [of] all routine maintenance and repair, including but not limited to replacement of light bulbs, broken windows, toilets and ballasts, as calculated in relation to its student enrollment at the school.

3. Keeping all equipment, including those considered capital expenditures (as defined below), properly maintained in clean, safe and operable condition, immediately reporting any repairs that become necessary and taking all precautions to mitigate further damages. If the Charter fails to report and/or mitigate any such damage, the RSD reserves the right to seek reimbursement.

4. Repairing any damage caused by the Charter, the Charter’s employees, agents, representatives, contractors or invitees.

In turn, the RSD is responsible for extensive repairs to the building or facility that would be considered a capital expense.⁴³ The agreement states that capital expenditures “generally refer to expenditures that add value to the [p]roperty or equipment or substantially prolong the life of the [p]roperty or equipment,” including work done on the roof, flooring and structural components of the building (excluding doors and glass windows), boilers, elevators, HVAC, fire panels and the public address systems.⁴⁴ The lease gives RSD the power to determine, on a case-by-case basis,

⁴¹ Algiers Lease, *supra* note 26.

⁴² *Id.* § 8.

⁴³ *Id.*

⁴⁴ *Id.*

which facilities improvements qualify as a capital expense.⁴⁵ The agreement does not specify procedures for resolution of disputes between the parties other than designating a forum for legal actions brought between the parties. Under this agreement, then, if the Charter disputed the RSD's expense determination, its only formal legal recourse would be in court.

Under the Algiers lease, the Charter and the RSD are to conduct a pre-occupancy inspection, which provides the Charter with an opportunity to ensure that it receives a facility that is in good condition at the outset.⁴⁶ In the course of this inspection, representatives from the RSD and the Charter agree upon the condition of all the facilities and note any Improvements that the RSD is to complete in a specified time frame. This provision represents a best practice, and so if a Charter is entering into a new lease, it should ensure that such a pre-occupancy inspection is written into the agreement. Naturally, a Charter should take this inspection process seriously because once it takes occupancy, it may have a difficult time proving whether damage to the facility was the result of a pre-existing condition.

2. OPSB E500 and E501

The OPSB's School Board Policy Manual documents OPSB's policies relating to school district operation. Such policies inform how OPSB conducts its business and can be amended from time to time by the OPSB. In September 2008, the OPSB adopted amendments to its policy E500 regarding facilities, capital and maintenance management.⁴⁷ At that same meeting, the OPSB also considered a new policy, E501, regarding charter school facility management,⁴⁸ but this was returned to committee. Both the amendments to policy E500 and the new policy E501 contain three relevant definitions: Capital Improvement Project, Major Maintenance and Routine Maintenance and Repair, defined as follows:

Capital Improvement Project – A project that improves or expands an existing OPSB facility or creates a new OPSB-owned capital asset with a cost of \$50,000 or greater.

⁴⁵ *Id.*

⁴⁶ *Id.* § 9.

⁴⁷ OPSB POLICY MANUAL, POLICY E500, FACILITIES, CAPITAL AND MAINTENANCE MANAGEMENT, *available at* http://www.nops.k12.la.us/pages/board_policy (last visited September 10, 2009).

⁴⁸ OPSB POLICY MANUAL, PROPOSED POLICY E501, CHARTER SCHOOL FACILITY MANAGEMENT, *available at* http://www.nops.k12.la.us/press_releases/7 (last visited September 10, 2009).

Major Maintenance – A significant repair to or replacement of a component of an OPSB facility with a cost of \$10,000 or greater per occurrence which does not extend the life of the facility.

Routine Maintenance and Repair – A repair, restoration, or replacement of an existing facilities element that has a cost of less than \$10,000 per occurrence. Maintenance activities may be performed on a preventive, routine, scheduled, or emergency basis. All maintenance and repair activities must be performed in accordance with all applicable local, state, and federal codes, ordinances, statutes and regulations and performed by a properly licensed, qualified contractor. Preventive maintenance shall be included as a Charter responsibility regardless of the cost.

Notable is the OPSB's decision to delineate the three categories using the cost of the facilities improvement and to indicate, both in E500 and E501, that "preventive maintenance" is to be the Charter's responsibility regardless of cost. Although a helpful indication of the current policy of the OPSB, these written policies still leave many questions unanswered, such as which type(s) of Charters the OPSB views them as governing, how the cost of an Improvement is determined, what the boundaries of "preventive maintenance" are, and whether the Charter would bear financial responsibility for major maintenance to the extent that it was needed as a result of a Charter's failure to conduct preventive maintenance in accordance with its responsibilities.

Draft policy E501 additionally indicates that the OPSB is responsible for Capital Improvement Projects that it deems necessary, while the Charter is responsible for all types of maintenance, including major maintenance as defined above. It also requires each Charter to develop a preventive maintenance program and submit it to the OPSB for approval. Based on review of the minutes and agendas of subsequent board meetings, policy E501 has not yet been adopted by the OPSB. Therefore, there is the opportunity for the Cowen Institute or Charters to advocate for an alternative policy (at least to the extent elements of E501 are not found in E500) if desired.

3. The Master Plan

A joint effort of the OPSB and the RSD, the Master Plan outlines a strategy for rebuilding the city's public school infrastructure. The Master Plan lists needed Improvements⁴⁹ and highlights

⁴⁹ MASTER PLAN, "School Facility Assessment for Orleans Parish-Deferred Maintenance Plan," *supra* note 2.

possible sources of financing⁵⁰, but it does not directly distinguish between capital and operating expenses. However, in the “Facilities Assessments & CADD Space Inventory” section, the Master Plan defines the following terms, which are used in the Deferred Maintenance Plan to classify existing OPSB facilities:⁵¹

- General Maintenance—includes the normal ongoing maintenance and upkeep of a building, extending its useful life.
- Minor Renovation—includes selective upgrades of some systems or building components, such as the replacement or repair of boilers, HVAC, roofing, flooring, ceiling, lighting, electrical upgrades, or painting, and minor reconfiguration of interior spaces.
- Moderate Renovation—focuses on addressing code requirements. It includes replacements or upgrades to building components such as ADA accessibility, heating, HVAC, roof, electrical, windows, flooring, ceiling, lighting, and technology, as well as some reconfiguration of interior spaces.
- Major Renovation—includes building additions and the replacement or more extensive upgrade to the building components listed under *Moderate Renovation*.
- Replace—entails building an entirely new school facility.

Although these definitions are not explicitly categorized into capital versus operating expenses, one can infer that the dividing line is probably between *General Maintenance* and *Minor Renovation*, or else between *Minor Renovation* and *Moderate Renovation*.

4. New Schools for New Orleans: Charter School Operations Guidebook

This guidebook contains information about budgeting and finance, but does not discuss facilities expenses at a level of detail helpful in distinguishing between capital and operating expenses. It notes, “while charters that lease RSD facilities are not responsible for capital improvements, from a budgeting perspective, you will need to add on costs for maintenance, parts and larger repair initiatives as part of your budget development process.”⁵² Such “larger repair initiatives” might be similar to deferred maintenance repairs, preventive maintenance or the Minor Renovations, discussed above.

⁵⁰ MASTER PLAN, “Implementation: Potential Funding and Financing Strategies,” *supra* note 2, at 97.

⁵¹ MASTER PLAN, *supra* note 2, at 33.

⁵² NEW SCHOOLS FOR NEW ORLEANS, CHARTER SCHOOL OPERATIONS GUIDEBOOK 52 (2009), *available at* <http://newschoolsforneworleans.org/resources.php>.

5. New Schools for New Orleans: Charter School Legal Handbook

The Legal Handbook contains a useful compliance checklist for buildings and facilities,⁵³ but it does not discuss capital versus operating expenses.

III. **USEFUL ANALOGIES FOR DETERMINING WHERE TO DRAW THE LINE BETWEEN CAPITAL AND OPERATING EXPENSES**

Leasing law and school accounting rules provide further resources for distinguishing between capital expenses and operating expenses in the context of Charter school facility Improvements.

A. **Leasing Laws**

If a Charter has a lease agreement with its authorizer, the facilities provisions in such lease should set forth the responsibilities of the parties. However, if a lease is silent or unclear as to intent of the parties, disputes are typically resolved in litigation with reference to statutes or case law. Since lessors and lessees often disagree over who should pay for a given Improvement, a fairly substantial body of law has developed to address the issue.⁵⁴ These background leasing norms also provide another point of reference for considering how to distinguish between capital and operating expenses.

B. **Accounting Principles**

1. Louisiana Rules

The decision whether to classify a facilities expense as a capital or an operating expense can also be informed by accounting principles. The Charter Law requires Charters to apply accounting

⁵³ LEGAL HANDBOOK, *supra* note 17, at 59.

⁵⁴ Under Louisiana property law, the following are obligations of the lessor: (1) the lessor must deliver the property to the lessee in a “condition suitable for the purpose of which it was leased.” LA. CIV. CODE ANN. art. 2682. Because of this duty to deliver the premises in good condition, the lessee would not be responsible for repairs that were necessary before the lease commenced, (2) “during the lease, the lessor is bound to make all repairs that become necessary to maintain the [property] in a condition suitable for the purpose for which it was leased, except for those for which the lessee is responsible.” LA. CIV. CODE ANN. art. 2691. If the lessee requests the lessor make a repair, and the lessor fails to respond, the lessee may make the repair and deduct the cost from subsequent rent, provided the repair was necessary and the amount expended was reasonable. LA. CIV. CODE ANN. art. 2694. The lessee is responsible for the following: (1) the lessee must return the property at the end of the lease in a “condition that is the same as it was when the [property] was delivered to him, except for normal wear and tear. . . .” LA. CIV. CODE ANN. art. 2683, (2) the lessee must repair damage to the property caused by his or her own fault, or the fault of someone on the property with his or her consent. LA. CIV. CODE ANN. art. 2692. The lessee must also repair deterioration resulting from his or her use of the property, to the extent it exceeds the normal or agreed use of the property. *Id.*

and financial practices in accordance with generally accepted standards for similar entities.⁵⁵ In addition to complying with generally accepted accounting principles, a Charter's budget must also comply with the *Louisiana Accounting and Uniform Governmental Handbook* (the "Accounting Handbook").⁵⁶

The Accounting Handbook distinguishes between "Repairs and Maintenance Services" (object code 430) and "Construction Services" (object code 450). These categories roughly correspond to operating and capital expenses, respectively. "Repairs and Maintenance" includes expenses relating to the upkeep of buildings and equipment, including computers and related technology, as well as portable building relocation expenses.

"Construction Services" includes expenses relating to constructing, renovating, and remodeling school facilities, including the installation of new phone lines or Internet cables. "Construction Services" also covers major permanent structural alterations, such as the installation of heating and ventilating systems, fire protection systems, and other service systems (see object code 720, Buildings).

Although the Accounting Handbook provides guidance, it is also subject to interpretation. For instance, the object code for "Construction Services" is only used in connection with function codes 4500 ("Building Acquisition and Construction Services") and 4600 ("Building Improvement Services"). This means that expenditures classified as "Construction Services" must be made in connection with the acquisition, construction, or renovation of a building. However, what qualifies as a renovation? Repairing a single roof leak is clearly not a renovation. Would it be a renovation though if there were twenty leaks, or would the entire roof need to be replaced to rise to that level? Depending on how broadly or narrowly a term is interpreted, the results could vary.

2. California Rules for Comparison and Reference

The *California School Accounting Manual* provides an additional point of reference for thinking through how to describe the difference between a capital and an operating expense. The following is a summary of how California defines the relevant concepts:

⁵⁵ LA. REV. STAT. ANN. § 17:3983(A)(3)(c) (2008).

⁵⁶ LA. ADMIN. CODE tit. 28, § 2503 (2008).

- Repair—repair costs are those that are “necessary to keep an asset in its intended operating condition, but that do not materially increase the value or physical properties of the asset.”
- Capital Outlay—all additions and betterments to capital facilities. An *addition* is a “physical extension of some existing asset.” A *betterment* occurs when a “part of an existing asset is replaced by another, and the replacement provides a significant increase in the life and value of the asset.”
- Supplies—repair parts, regardless of value, that are used to maintain the facilities are normally characterized as supplies. Supplies might include plumbing fixtures, compressors (if part of a larger unit), bus transmissions, engines, and timer devices for automatic sprinkler systems. These supplies are not considered capital assets.

These accounting manuals provide examples of how to distinguish between types of expenses. Other similar resources include Governmental Accounting Standards Board policies, other state-level policies, tax laws, and grant funding restrictions that may apply to sources of funding for the various types of facilities expenditures.

IV. RECOMMENDED BEST PRACTICES FOR FUTURE LEASES

A. Coming to Terms in a Written Agreement

It is likely that most New Orleans Charters are already party to a lease agreement. Unless these Charters renegotiate, they are bound by the terms of their existing lease until termination. However, Charters seeking new or different facilities should negotiate the relevant facilities agreement so that it clearly allocates to one party or another the financial responsibility for facilities expenditures. Based on sample Charter leases from around the country, as well as the resources identified herein, we have drafted sample language, provided in Appendix A, to serve as a starting point for a conversation between the parties about these issues.

B. Pre-Occupancy Inspection

As noted above, a pre-occupancy inspection should be written into the terms of any lease. The Charter should be sure to send a representative with extensive experience in identifying potential structural issues. The results should be written in a mutually agreed upon report with a corresponding list of Improvements to be completed by the lessor and a timeframe for the completion of each Improvement.

C. Neutral Dispute Resolution Procedure

The steps above will help minimize conflict about facilities expenses, but the parties should nevertheless agree upon a fair dispute resolution procedure to be followed were a disagreement to arise. We recommend the parties designate a neutral third party to resolve facilities disputes quickly. If there are enough disputes to warrant it, the RSD, the OPSB and the BESE might consider legislation or regulations creating an administrative hearing procedure by which such disputes could be resolved. Such a mechanism should serve to minimize the delays and uncertainty that currently plague Charter schools and at times deplete their budgets, and will ultimately result in a better educational experience for the students of New Orleans.

V. ALTERNATIVE APPROACHES

The sample lease provisions in Appendix A could also inform the development of alternative approaches, such as the negotiation of a memorandum of understanding (the “MOU”) or advocacy for revised legislation, regulations or school district policies, depending on the approach the Cowen Institute prefers. The following section contains a discussion of some of the benefits and challenges of these respective alternatives.

A. Memorandum of Understanding

An individually-tailored MOU between a given school district and a Charter would be fairly easy to implement, since it would not require changing existing law and could perhaps even be used despite the existence of a lease. Although a Charter may not be able to get out of an existing lease, it could potentially negotiate a separate MOU with its authorizing school district, with provisions similar to those found in Appendix A, which would help both parties better interpret any ambiguous facility-related terms in the existing lease. The MOU could address numerous other areas of responsibility between school districts and Charters, making it a more comprehensive approach than a lease or any of the alternatives proposed below. The MOU could also address New Orleans-specific issues without changing state charter school laws. Furthermore, the MOU would be flexible enough to accommodate any facility issues unique to a particular school.

However, layering another agreement on top of a lease could create an additional administrative burden or result in uncertainty as to which document should govern in the event of a

dispute. If the goal is to clarify responsibility, the simplest approach is to amend an existing lease (or enter into a new one). If each Charter acts individually, drafting and negotiating the MOU may be as much or even more work than a lease amendment. Moreover, depending on how the MOU is worded and the intent of the parties at the time of signing, it may not be enforceable under contract law. A lease, by its nature, tends to be enforceable absent any unusual problems.

B. New or Amended Statutes

Another option is to pass new legislation or to amend the Charter Law, the RSD Act or both to clarify responsibility for the various facility-related expenses. Amending the RSD Act would be of more limited value, however, because it is expected that governance of the RSD charter schools will eventually transfer to the OPSB or another school district.

The main advantage of legislation is that it would apply evenly to all school districts and Charters, reducing uncertainty and the transaction costs of individual negotiations. However, the legislative process takes time, requires attention and resources, and, ultimately, legislation does not have the flexibility to address every possible issue. Furthermore, legislation would impact the entire state, not just New Orleans. To the extent New Orleans schools have unique facility needs, legislation may not be able to address these as effectively as a local solution would.

C. New or Amended Regulations

Because the Charter Law and the RSD Act already use terms like “maintenance,” “repair,” and “capital expense” another option is to enact regulations interpreting these statutes. Such clarifications could be added to The Louisiana Handbook for School Administrators, the Accounting Handbook (discussed above), or elsewhere as appropriate. The advantages of regulations are the same as for statutes, namely even-handed application and reduced transaction costs associated with individual negotiations.

The drawbacks are similar as well. Although new regulations would be easier to implement than new statutes, they would still be more difficult than a lease or MOU. The Louisiana Department of Education (the “DOE”) would be responsible for implementing these new rules. The school districts and Charters would certainly have input, but ultimately the decision would be

made by the DOE. Working with the DOE would take time and, again, the text of the regulations may not respond to the facility needs unique to New Orleans schools.

D. New or Amended School District Policies

The OPSB's School Board Policy Manual informs how the OPSB conducts its business and can be amended from time to time by the OPSB. As noted above, proposed policy E501, regarding charter school facility management, was returned to committee in September 2008. As currently drafted, policy E501 favors the OPSB at the expense of Charters. Although the OPSB would ultimately decide whether to adopt the policy and in what form, the Cowen Institute could advocate for an alternative policy (at least to the extent elements of E501 are not found in E500), based on the concepts from the model lease language in Appendix A. If the Cowen Institute could convince the OPSB to adopt a more balanced policy, this would make future lease negotiations more predictable and efficient. It would also target New Orleans schools without affecting the law for the rest of the State. Note, however, that this policy would have no impact on Type 2 Charters, which are authorized by the BESE.

The risk is that the OPSB would adopt the policy in its current form and thus expose Charters to financial uncertainty by giving the OPSB sole discretion to decide what is and is not a capital expense. The new policy could not retroactively change existing leases, but it could be cited in interpreting ambiguous terms in existing leases and it could affect how the OPSB negotiates leases in the future. Depending on the terms of the policy, it could help level the playing field between OPSB and Charters or further skew it in favor of the OPSB. Therefore, even if the Cowen Institute does not actively pursue this approach, it should nevertheless monitor the development of this policy.

VI. CONCLUSION

Various options exist for improving the delineation of financial responsibility for making Improvements to Charter facilities in New Orleans. The pursuit of any of the alternatives outlined above may serve as a focal point for Charters and the local school districts to address and clarify this issue.

APPENDIX A
MODEL CHARTER SCHOOL LEASE

PARTIES

The parties to this Lease Agreement (this “Lease”) are the Charter Authorizer⁵⁷ (“Lessor”) and the Charter Operator (“Lessee”) operating the school known as _____, located at _____ (the “Premises”).

PERSONAL PROPERTY

Lessee shall have the right to use certain items of personal property located on the Premises, as specified in Exhibit A (“Lessor’s Personal Property”) during the Term of this Lease. Ownership of Lessor’s Personal Property will remain with Lessor, and Lessor’s Personal Property shall not constitute an asset of Lessee. Lessee shall take ordinary care to protect and preserve Lessor’s Personal Property. At the termination of this Lease, Lessee shall return Lessor’s Personal Property to Lessor in substantially the same quality as provided to Lessee at the beginning of the Term of this Lease, ordinary wear and tear excepted. Any personal property purchased by Lessee during the Term of this Lease shall be treated in accordance with applicable law.⁵⁸

PRE-OCCUPANCY INSPECTION

Prior to the execution of this Lease, Lessor and Lessee shall have performed an inspection of the Premises, including without limitation, the structural, non-structural and surrounding elements and systems. In addition, the parties shall have completed a mutually agreeable pre-occupancy inspection report (“Pre-Occupancy Inspection Report”), attached as Exhibit B to this Lease. The Pre-Occupancy Inspection Report shall include a description of the condition of the aforementioned elements and systems, a schedule listing any repairs that Lessor has agreed to complete at Lessor’s sole cost and expense (except as otherwise set forth in Exhibit B), and a scheduled time for completion of any such repairs that have not been completed before execution of this Lease. In the event that Lessor fails to complete the repairs according to the schedule provided in the Pre-Occupancy Inspection Report, Lessee may offset the cost of such repairs against any monetary obligation that Lessee may have to Lessor, such as Lessee’s required contribution to any Shared Obligation, as described below. [If Lessee has no monetary obligation to Lessor against which to offset the cost of such repairs, Lessee may make the repairs, and Lessor shall pay the reasonable cost of the repairs to Lessee within thirty (30) days after receipt of an invoice therefor.]

⁵⁷ For purposes of this Appendix, “Charter Authorizer” may refer to the Orleans Parish School Board (“OPSB”), the Recovery School District (“RSD”) or the Louisiana Board of Elementary and Secondary Education (“BESE”), depending on the type of charter.

⁵⁸ See LA. REV. STAT. ANN. § 3991(H) for a discussion of the Charter Law’s different asset ownership schemes. These schemes vary depending on the source of funds as well as the type of charter. Charters, districts, and their legal counsel should carefully consider whether certain provisions of this Section should be revised in accordance with their own circumstances and applicable Louisiana law.

CARE OF PREMISES

Lessee's Responsibilities

Lessee Obligations.

[*If single-occupancy Lessee*] Lessee shall be responsible for all Routine Maintenance and Repair of the Premises, all at Lessee's sole cost and expense, subject to Lessor Obligations and any Shared Obligations specified below. Lessee shall promptly perform all Routine Maintenance and Repair, and shall keep the Premises in good condition and repair, ordinary wear and tear excepted.

[*Or if multi-occupancy Lessee*] Lessee shall be responsible for its pro-rata share of all Routine Maintenance and Repair of the Premises, as calculated in relation to total student enrollment at the school, subject to Lessor Obligations and any Shared Obligations specified below. Lessee shall promptly perform all Routine Maintenance and Repair, and shall keep the Premises in good condition and repair, ordinary wear and tear excepted.

"Routine Maintenance and Repair," as used in this Lease, means all maintenance and repairs to the Premises that are not specifically designated as either Lessor Obligations or Shared Obligations, as defined below. Examples of Routine Maintenance and Repair for which Lessee is responsible include, without limitation, those listed in Schedule 1.

Compliance with Applicable Laws.

Lessee shall comply with all applicable laws, statutes, ordinances, and governmental rules, regulations or requirements with respect to Lessee's use, occupancy and care of the Premises, and performance of obligations under this Lease, including without limitation, those relating to health, safety, noise, environmental protection, waste disposal, water and air quality, public bidding, employment, and prevailing wage, now and during the Term of this Lease. Lessee shall not, however, be responsible for ensuring that the Premises meet all applicable laws, statutes, ordinances, and governmental rules, regulations or requirements, including but not limited to: the Americans with Disabilities Act ("ADA"), the Fair Employment and Housing Act ("FEHA"), environmental laws, local fire marshal and zoning ordinances, asbestos laws and other applicable building code standards, except as expressly provided in this Lease. Lessor shall make, at its own expense, any inspections, alterations, replacements or upgrades to the Premises which now or hereafter may be required by applicable law, except that Lessee shall assume responsibility for such legal compliance to the extent that it is triggered by any modification or improvement made by Lessee.

Damage Caused by Lessee.

Lessee shall be solely responsible for any damage caused by Lessee or Lessee's employees, agents, representatives, contractors or invitees, ordinary wear and tear excepted.

Notification and Preventive Repair.

Lessee shall promptly notify Lessor of any needed repairs that are Lessor's responsibility under this Lease, in accordance with the notice provisions contained herein. Lessee shall also take such

measures as are usually taken by prudent operators of similar school facilities to mitigate future damage to the Premises. Lessee's measures to mitigate future damage shall be in compliance with applicable law and district policies in effect from time to time.⁵⁹ Lessor reserves the right to seek reimbursement from Lessee if Lessee fails to notify Lessor [after X period of time] and/or reasonably mitigate damage.

Failure to Repair.

At Lessor's option, if Lessee fails to make any repairs to the Premises that Lessee is required to make pursuant to the terms of this Lease for more than thirty (30) days after notice from Lessor (although notice shall not be required if there is an emergency), Lessor may make the repairs, and Lessee shall pay the reasonable cost of the repairs to Lessor within thirty (30) days after receipt of an invoice therefor.

Lessor's Responsibilities

Lessor Obligations.

Lessor shall only be responsible for the maintenance, repair and/or replacement obligations specified in Schedule 2 ("Lessor Obligation(s)"). Lessor shall not be responsible for any repairs that are required as a result of Lessee's negligence or intentional acts. Lessor shall have the right to enter the Premises to perform Lessor Obligations; provided, however, that Lessor shall use reasonable efforts to minimize disruption to Lessee's operations on the Premises.

Compliance with Laws.

Lessor has received no notice of any violation of law, statute, ordinance, or governmental rule, regulation or requirement that calls into question the appropriateness or sufficiency of the site for its intended purpose. Lessor is and shall remain responsible for ensuring the Premises meet all applicable laws, statutes, ordinances, and governmental rules, regulations and requirements, including but not limited to: the ADA, FEHA, environmental laws, local fire marshal and zoning ordinances, asbestos laws and other applicable building code standards. Lessor shall make, at its own expense, any inspections, alterations, replacements or upgrades to the Premises which may now or hereafter be required by applicable law, except that Lessee shall assume responsibility for legal compliance to the extent that it is triggered by any modification or improvement made by Lessee.

Repair and Deduct.

Lessee may submit a written request to Lessor that Lessor carry out and pay for a Lessor Obligation which is reasonably necessary to keep the Premises in good condition and repair. Lessor shall respond to such request within thirty (30) days of receiving such request. If Lessor does not

⁵⁹ OPSB is currently considering a new policy, E501, regarding charter school facility management. Under E501, charters are responsible for "preventive maintenance," and each charter is required to develop a "preventive maintenance program" to be submitted to OPSB for approval. See OPSB POLICY MANUAL, PROPOSED POLICY E501, CHARTER SCHOOL FACILITY MANAGEMENT, available at http://www.nops.k12.la.us/press_releases/7 (last visited September 10, 2009). Although the policy has not yet been adopted, future adoption of the policy may place additional preventive maintenance responsibilities upon charters.

respond within thirty (30) days, Lessee may carry out the Lessor Obligation and deduct the cost of the Lessor Obligation from Lessee's required contribution to any Shared Obligation, as described below. Any such Lessor Obligation carried out by Lessee shall be subject to the provisions of "LESSEE'S RESPONSIBILITIES – Compliance with Applicable Laws."

Shared Obligations

Notwithstanding the foregoing allocation of Lessee's and Lessor's responsibilities for care of the Premises, the parties have agreed to share the costs of certain capital repairs or replacements of components or systems of the Premises that have an expected useful life beyond the Term of the Lease, as described in Schedule 3 (such specified capital repair or replacement, a "Shared Obligation," or collectively, the "Shared Obligations"). Lessor shall undertake and bear the full cost of a Shared Obligation whenever such component or system fails or is no longer useable for its intended purpose, which cost will be amortized over the anticipated useful life of the repaired or replaced component or system ("Useful Life") as Lessor shall reasonably determine in accordance with generally accepted accounting principles and consistent with standards applied by prudent operators of similar school facilities. Lessor shall determine Lessee's share of the amortized cost of the capital repair or replacement ("Lessee's Amortized Share") by multiplying the full cost of the capital repair or replacement, which includes any interest on the unamortized balance thereof at the rate of [six percent (6%)] per annum or such other rate as may have been paid by Lessor on funds borrowed for the capital repair or improvement, by a fraction, the numerator of which is the remaining Term of the Lease (measured in years) as of the date the cost is incurred, and the denominator of which is the Useful Life of the capital repair or replacement. Lessee shall reimburse Lessor for Lessee's Amortized Share through annual payments to Lessor, made in arrears, for the duration of the Term of the Lease. The amount of each annual payment shall be calculated by dividing Lessee's Amortized Share by the remaining Term of the Lease (measured in years).

ALTERATIONS

Limitations on Alterations.

Lessee may not make, or allow a third party to make, any structural alterations or installations to the Premises, including but not limited to wiring, flooring, adding or deleting walls and/or partitions, even at Lessee's expense, without the express and prior written consent of the Lessor. However, Lessee may be allowed to make such alterations or installations to the Premises as necessary to implement its charter program and shall assume full responsibility for making said alterations or installations in compliance with applicable laws following review and written approval by the Lessor. Lessor shall not unreasonably withhold such approval. Lessor shall provide its response, or a date by which it expects to have a response, within thirty (30) days of receipt of Lessee's request, and if it does not provide such response within thirty (30) days, then it shall be deemed that the request is approved. Lessee shall not make or request Lessor to approve any alterations that will diminish the value of the Premises.

Cost and Performance of Alterations.

Any such alterations or installations initiated by Lessee, with Lessor's approval, shall be paid for by Lessee, except as otherwise provided in this Lease with respect to Lessor Obligations or Shared

Obligations. Any approved alterations or installations must be performed in compliance with applicable laws by a licensed contractor with proper bonding and insurance. Copies of the contractor's bonding and insurance shall be provided to Lessor. Lessor shall reserve the right to inspect any work performed by Lessee's contractor.

Ownership of Alterations.

Unless agreed upon by the parties at the time any alterations or installations are approved by Lessor, any physical additions or improvements to the Premises shall become the property of Lessor without compensation to Lessee. At the termination of this Lease, Lessor may require Lessee, at Lessee's expense, to remove any physical additions, alterations or installations, or to repair and restore the Premises to the condition in which it existed at the beginning of this Lease. At the time Lessor approves any alterations or installations, Lessee may request that Lessor inform Lessee whether or not such alterations or installations must be removed upon termination of the Lease.

DISPUTE RESOLUTION

[To be negotiated among the parties, but see sample language provided below.]

[Prior to any court action, disputes between Lessor and Lessee regarding the alleged violation, misinterpretation or misapplication of this Lease may be resolved using the dispute resolution process identified below.

The party initiating the dispute resolution process ("Initiating Party") shall prepare and send to the other party ("Responding Party") a notice of dispute that shall include the following information: (1) the name, addresses and telephone numbers of the designated representative(s) of the Initiating Party; (2) a statement of the facts of the dispute, including information regarding the parties' attempts to resolve the dispute; (3) the specific sections of this Lease that are in dispute; and (4) the specific resolution sought by the Initiating Party. Within five (5) days from receipt of the notice of dispute, the representative(s) from the Responding Party shall meet with the representative(s) from the Initiating Party in an informal setting to try to resolve the dispute.

If the informal meeting fails to resolve the dispute, the Initiating Party shall notify the Responding Party in writing that it intends to proceed to mediation of the dispute and shall request the appointment of a mediator within seven (7) days to assist the parties in resolving the dispute. The Initiating Party shall request appointment of a mediator who is available to meet as soon as possible but not later than thirty (30) days after receipt of the request for appointment. The Initiating Party shall forward a copy of the notice of the dispute to the appointed mediator. The Responding Party shall file a written response with the mediator and serve a copy on the Initiating Party within seven (7) days of the first scheduled mediation. The mediation procedure shall be entirely informal in nature; however, copies of exhibits upon which either party relies shall be shared with the other party in advance of the mediation. The relevant facts should be elicited in a narrative fashion to the extent possible, rather than through examination and cross-examination of witnesses. The rules of evidence will not apply and no record of the proceedings will be made. If an agreement is reached, the agreement shall be reduced in writing and shall be signed by both parties.

Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, or other emergency situations, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first. Both parties agree that any relevant statute of limitations is tolled during this forty-five (45) day period. Mediation may continue after the commencement of a civil action, if the parties so desire.]

Exhibit A

Description of Lessor's Personal Property

[Examples: chairs, desks, office equipment, athletic equipment, cafeteria appliances, etc.]

Exhibit B

Pre-Occupancy Inspection Report

Schedule 1

Lessee Obligations

Lessee shall be solely responsible for [its pro-rata share of] all Routine Maintenance and Repair[, as calculated in relation to total student enrollment at the school], which includes:

1. Routine maintenance, repair and/or replacement of non-structural and surrounding elements, including but not limited to:
 - a. Non-structural elements: Light bulbs, windows, doors
 - b. Surrounding elements: Signs, landscaping
2. Routine maintenance, repair and/or replacement, up to and including the amount of \$[X], of the following elements and systems, unless otherwise designated as a Shared Obligation in Schedule 3:
 - a. Elements: Ceilings, interior/exterior walls and partitions, lockers, ballasts
 - b. Systems: HVAC, electrical, plumbing (including toilets, sinks and water fountains), sewage, fire/life safety, gutters and downspouts, communication systems (including phones, internet wiring, television and cable systems, and the public address system)

Schedule 2

Lessor Obligations

1. Lessor shall be solely responsible for maintenance, repair and/or replacement of:
 - a. Roofs and roofing
 - b. Subflooring
 - c. Building foundations
2. Lessor shall be solely responsible for maintenance, repair and/or replacement exceeding \$[X] of the following elements and systems, unless otherwise designated as a Shared Obligation in Schedule 3:
 - a. Elements: Ceilings, interior/exterior walls and partitions, lockers, ballasts
 - b. Systems: HVAC, electrical, plumbing (including toilets, sinks and water fountains), sewage, fire/life safety, gutters and downspouts, communication systems

Schedule 3

Shared Obligations

Lessor and Lessee shall share the amortized cost of capital repairs or replacements of the following:

1. [Parking lots and parking areas]
2. [Driveways and walkways]
3. [Fencing]
4. [Track]

APPENDIX B

LEASE AGREEMENT BETWEEN THE RSD AND THE ALGIERS CHARTER SCHOOL ASSOCIATION

<p>STATE OF LOUISIANA DEPARTMENT OF EDUCATION, RECOVERY SCHOOL DISTRICT LEASE AGREEMENT</p>
--

WHEREAS, pursuant to La. R.S. 17:10.7, the Louisiana Legislature authorized the transfer of certain school buildings and facilities to the State of Louisiana, Department of Education, Recovery School District; and

WHEREAS, pursuant to La. R.S. 17:1990, the Recovery School District is authorized to lease any property or facilities so transferred, the following Lease Agreement is entered into under the following terms and conditions.

1. PARTIES

The parties to this Lease Agreement ("Lease Agreement") are the Louisiana State Department of Education through its Recovery School District (herein referred to as "Lessor" or "RSD"), the Louisiana Board of Elementary and Secondary Education (herein referred to as "BESE") and the Algiers Charter School Association, Inc., (herein referred to as "Lessee" or "Charter Operator") operating the school known as the Algiers Technology Academy.

2. PROPERTY

The property leased from Lessor by Lessee is as follows: the Julius Rosenwald Elementary School campus located at 6501 Berkley Drive, New Orleans, LA 70131, (herein referred to as "Property") more particularly described and identified in Exhibit A, attached hereto, and subject to the provisions of this Lease Agreement.

After community input Lessor reserves the right to place two or more schools on said Property if school capacity allows for such placement, in which event Lessee shall have a non-

exclusive right of use of common areas, including, but not limited to cafeterias, auditoriums, adjacent parking lots, playgrounds, athletic fields and any buildings belonging to the Julius Rosenwald Elementary School. If two or more schools are housed in the leased Property, Lessee shall have the exclusive use of designated classrooms, as mutually agreed to by the parties and the other charter operator assigned to the property.

3. RENT

Lessor will forgo the payment of rent for the term of this Lease Agreement. Lessor reserves the right to impose Rent should this Property be leased to Lessee under a new lease agreement for a period beyond the terms of this Lease Agreement.

4. TERM OF LEASE

This Lease Agreement shall begin on or about July 1, 2007, but in no event shall Lessee begin occupancy of the Property until all the requirements of Paragraph 9 have been met. Lessor, , may at the end of the first school year of this Lease Agreement move the Lessee to another facility as deemed necessary, taking into consideration such factors as building capacity, design alignment with grade levels served by Lessee, projected enrollment, program-specific needs, and community needs. The Lessor may make any facility under its jurisdiction available to the Lessee during the term of this Lease Agreement. Lessor shall make available only those facilities that it reasonably believes are safe and ready for occupancy.

The term of this Lease Agreement shall coincide with the terms of the Charter Contract between the Charter Operator and the Louisiana State Board of Elementary and Secondary Education ("BESE").

The Charter Operator may, at any time, terminate this Lease Agreement upon thirty (30) days notice, to locate its school in a non-RSD facility, provided that the non-RSD facility

complies with all applicable health and safety provisions and any other applicable State, Federal or local laws and regulations.

5. PERMITTED USES OF PROPERTY

The Lessee shall use the Property solely for the purpose of conducting classes and activities incidental to the lawful operation of the school and consistent with the mission and purpose of the Charter School Contract between the Charter School Operator and BESE. Lessee shall adhere to the School Facility Use policy adopted by the Louisiana Board of Elementary and Secondary Education. A copy of the School Facility Use policy is attached as Exhibit B.

6. EDUCATIONAL STANDARDS REQUIRED

The Lessee shall provide educational services according to the educational standards ("Performance Standards") as established by state and federal law and as may be further defined in the Charter School Contract between the Charter School Operator and BESE.

7. CONTENTS

Lessor will replace the contents, including, but not limited to furniture, equipment and supplies, in the leased Property that were damaged by Hurricane Katrina. Ownership of the contents will remain with the Lessor and do not constitute an asset of Lessee. Lessee will be responsible for any damage or destruction to any contents purchased by Lessee. Repair and/or replacement of damaged, lost or stolen contents shall be the sole responsibility of Lessee. Lessee shall maintain an inventory to ensure the protection and preservation of all contents belonging to Lessor. Lessee shall be responsible for taking ordinary care to protect and preserve any and all contents in the leased Property. At the termination of this Lease Agreement, Lessee shall return

the contents to Lessor in substantially the same quality and quantity as provided at the beginning of this Lease Agreement, ordinary wear and tear excepted.

8. CARE OF PROPERTY

Lessee shall be responsible for taking ordinary care to protect and preserve any and all parts of the leased Property that Lessee, its employees, agents, representatives, contractors, or invitees may traverse incidental to the use of the Property. Lessee shall keep the Property in good working order and in a safe and sanitary condition, ordinary wear and tear excepted. Lessee shall be responsible for its pro-rata share all routine maintenance and repair, including, but not limited to replacement of light bulbs, broken windows, toilets and ballasts, as calculated in relation to its student enrollment at the school.

Lessee shall not be required to make extensive repairs to the building or facility that would be considered a capital expense. Capital expenses will be determined on a case-by-case basis by the Lessor, but generally refer to those expenditures that add value to the Property or equipment or substantially prolong the life of the Property or equipment. Lessee shall adhere to any and all policies pertaining to care and maintenance of RSD school facilities that are adopted by the Louisiana Board of Elementary and Secondary Education, now and during the term of this Lease Agreement. Examples of capital expenses may include, but are not limited to roof, flooring and structural components of the building (excluding doors and glass windows), boilers, elevators, HVAC, fire panels and the Public Address System.

Lessee shall keep all equipment, including those considered capital expenditures, such as boilers, elevators, HVAC, fire panels, and the Public Address System, properly maintained in clean, safe and operable condition. Lessee shall be responsible for immediately reporting any repairs that become necessary and shall take all precautions to mitigate further damages. Lessor

reserves the right to seek reimbursement from Lessee if Lessee fails to report and/or mitigate any damages. Any damage caused by Lessee, Lessee's employees, agents, representatives, contractors, or invitees shall be repaired at Lessee's expense.

All capital expenditures shall be requested and made in accordance with the mutually agreed upon Recovery School District Facility Maintenance Policy and Procedures.

Lessor may enter the Property at any time to make operational repairs if Lessee fails to do so. Lessee will be responsible for costs of any repairs the Lessor may be required to perform that are not considered capital expenses.

Failure to properly maintain the Property may constitute grounds for termination of this agreement, provided that Lessor shall give, in writing, notice specifying Lessee's failure, and Lessee does not correct the alleged failure within fifteen (15) days or receipt of the notice specifying the failure.

9. PRE-OCCUPANCY INSPECTION

Prior to occupancy of the Property by Lessee, representatives from the Recovery School District and from the Charter Operator shall perform an inspection of the structural integrity, mechanical systems, communications system, building interior and exterior and landscaping of the Property. The parties shall complete a building inspection report listing the condition of all building structural and building systems. The parties shall list and agree to any repairs that the RSD will complete and provide a scheduled time for completion of the repairs, if repairs cannot be completed before occupancy.

The parties shall also complete a communications report listing the condition of all communications systems, including, but not limited to, all internet wiring, computer systems, and approved software.

In no event shall Lessee be permitted to occupy the Property until after all building and communication reports have been completed and signed by both parties.

10. ALTERATIONS

Lessee may not make any changes, alterations, or installations to the Property, including but not limited to wiring, flooring, adding or deleting walls and/or partitions, even at Lessee's expense, without the express and prior written consent of the Lessor. Lessee is prohibited from altering, accessing, configuring, installing or maintaining the Property's communication/IT network infrastructure and equipment. Lessee is further prohibited from allowing any third party to alter, access, configure, install or maintain the Property's communication/IT network infrastructure and equipment. Equipment includes, but is not limited to, servers, switches, routers, WAPs, telephones, call managers, security devices, filters, VPNs, firewalls, and wireless networks. Any such changes, alterations or installations initiated by Lessee, with Lessor's approval, shall be paid for by Lessee unless the alteration constitutes a capital expense or unless Lessor and Lessee agree otherwise in writing.

Lessee shall not change any keys or any locks on any doors in the Property, without notice to Lessor.

Any approved changes or alterations must be performed by a licensed contractor with proper bonding and insurance. Copies of the contractor's bonding and insurance shall be provided to the Lessor. Any approved changes, alterations or installations made by Lessee shall not diminish the value of the Property. The Lessor shall reserve the right to inspect any work performed by the Lessee's contractor.

Unless agreed upon by the parties at the time alterations are approved by Lessor, any physical additions or improvements to the Property will become property of Lessor. At the

termination of this Lease Agreement, Lessor may require Lessee, at the Lessee's expense, to remove any physical additions, changes, alterations or improvements, or repair any changes, alterations or improvements and restore the Property to the condition in which it existed at the beginning of this Lease Agreement. At the time Lessor approves any changes, alterations or improvements to the Property, Lessee shall be informed whether or not such changes, alterations or improvements, must be removed at the termination of this Lease Agreement.

Any material changes, alterations or improvements made without prior approval may be grounds for termination of this Agreement. Lessee shall be fully responsible for payment of any damages caused by unauthorized changes, alterations or improvements.

11. INDEMNIFICATION

Except to the extent caused by the negligence or misconduct of Lessor, or any of its employees or agents, Lessee shall fully indemnify and hold harmless Lessor and its employees, agents, representatives and contractors against all losses, claims, damages, liabilities, penalties, obligations and expenses, including, without limitation costs for counsel, when incurred, incidental to, caused by, connected with, relating to, arising out of, or based upon, directly or indirectly, Lessee's use of, and/or activities on, the leased Property or the use of, and/or activities on, the leased Property of Lessee's employees or contractors.

All the foregoing indemnification provisions shall apply to permitted uses, as well as uses that are not permitted under this Lease Agreement.

12. OBLIGATION TO INSURE

Flood insurance shall be provided by Lessor. Property insurance, to the extent that such insurance provides coverage for the building and contents purchased by Lessor, will be provided by Lessor. Lessee will be billed monthly for its pro-rata share of property (including building

and contents procured by Lessor) and flood insurance premiums, calculated based upon student enrollment at the school.

If property and contents insurance is procured by the Recovery School District, through Division of Administration's Office of Risk Management ("ORM") or otherwise, the Charter Operator shall be responsible for property and contents insurance premiums associated with the facility it is occupying, unless the cost of premiums for such insurance coverage is received by the Department of Education through a general fund appropriation, which requires no contribution of funds from the RSD budget. The Charter Operator shall be responsible for all deductibles associated with any claim made under property insurance procured through the State Office of Risk Management. All deductibles associated with a claim made under such insurance coverage shall be in accordance with the ORM's policy in effect at the time of the occurrence giving rise to a claim.

Property insurance for contents and other physical property procured by Lessee shall be the sole responsibility of Lessee.

Property and/or flood insurance procured by a third party shall not relieve Lessee from obtaining any other insurance required under this Lease Agreement.

Lessee shall maintain comprehensive general liability insurance with a minimum of \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, as required by the Charter School Contract. Any insurance obtained by Lessee shall provide the Recovery School District with the ability to file a claim for any loss of property owned or purchased with state or local funds. Lessee shall provide Lessor with a Certificate of Liability Insurance prior to occupancy of the Property.

Lessee's obligation to procure insurance shall apply to permitted uses, as well as uses that are not permitted uses under this Lease Agreement.

The Charter Operator shall immediately notify the RSD when ever any event occurs that will require the filing of a claim.

13. UTILITIES

The Lessee shall be responsible for the payment of its pro-rata share of all utilities and services, including, but not limited to, the payment of electricity, gas, water, and all telephonic services, used in accordance with student enrollment at the school.

14. JANITORIAL AND SANITATION DISPOSAL SERVICES Lessee shall be responsible for providing is pro-rata share of janitorial services, including all sanitation disposal services, pest control services, and city inspections in relation to its student enrollment.

15. LESSOR'S RIGHT OF INSPECTION

Lessor shall have the right to enter the Property at any time to inspect the Property, so long as the Lessor's inspection does not unreasonably interfere with the operation of the school, including, but not limited to, the classes or activities being performed at the time of the inspection, and, so long as Lessor is accompanied by the Principal or Principal's designee. If maintenance, cleaning, or repairs are discovered, the Lessor shall immediately notify Lessee of the maintenance, cleaning or repairs that are needed. If Lessee fails to make the necessary maintenance, cleaning or repairs, Lessor may complete the work and invoice Lessee for said maintenance, cleaning or repairs. Lessor shall have a full set of keys to all doors in the leased Property. Notwithstanding anything herein to the contrary, any damage, loss or claim resulting directly or indirectly form Lessor's loss or possession of said keys shall be the responsibility of Lessor.

Notwithstanding the foregoing, Lessor shall have a right to inspect the Property at any time if, in its sole discretion, there is an imminent threat to health, safety or welfare.

16. UNUSED PORTION OF LEASED PROPERTY

The Recovery School District reserves the right to use any unused or vacant portions of the Lease Property not used by Lessor for any purpose not inconsistent with the provisions of La. R.S. 17:1990. Lessor, in its sole discretion, may require Lessee to reconfigure its use of space to maximize the capacity of the Property for educational purposes. In the event that the Lessor uses any portion of the Leased Property during the term of this Lease Agreement, the insurance premiums mandated under this Lease Agreement shall be prorated accordingly.

In determining unused portions of the Leased Property, the Property for instructional activities will be examined and all student-teacher ratios shall be reasonably related to standard educational objectives. Lessor, in its sole discretion, shall have the option to require Lessee to maintain a maximum class size as defined by La. R.S. 17:151 and R.S. 17:174.

17. LESSOR'S RIGHT OF USE LEASED PROPERTY

Lessor reserves the right to use portion of the leased Property provided that such use shall not interfere with the educational activities of Lessee. Lessor specifically reserves the right of use to any functional kitchen facility in the leased Property. In the event that Lessor exercises this option, the terms of such use shall be specified in a separate Memorandum of Understanding between Lessor and Lessee.

18. DEFAULT ON PAYMENTS

Lessee agrees that failure to make any payments, including payment of utilities, as described herein may result in an agreement between Lessor and Lessee's chartering authority to withhold equivalent amounts from Lessee's monthly MFP allocations.

19. REMEDIES FOR DEFAULT

Exclusive jurisdiction and venue for any action brought between the parties arising out of this Lease Agreement shall be the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana or Civil District Court, Parish of Orleans, State of Louisiana.

20. NON-ASSIGNABILITY

No right or interest in this Agreement shall be assigned or delegated to anyone on behalf of the Lessee without the prior written consent of the Lessor. Failure to comply with this provision shall be grounds for immediate termination of this Agreement.

21. TAXES AND FEES

Lessee shall be responsible for any and all taxes and/or fees that might be due and owing as a result of its operations within the leased Property, and shall be identified under Federal Tax Identification Number _____.

22. RIGHT TO AUDIT

Lessee agrees that the Department of Education's Internal Auditors, the Legislative Auditor of the State of Louisiana, the Office of the Governor, Division of Administration's auditors and/or other auditors representing the State or Federal government shall have the option to audit all accounts or records of Lessee which relate to this Contract. All copies of audits must be forwarded to the Department's Internal Audit Section.

23. NOTICES

Any notice required or permitted under this Agreement shall be in writing and shall be effective immediately upon personal delivery, subject to verification of service or acknowledgement of receipt, or three (3) days after mailing via Certified Mail, receipt requested, to the following addresses:

LESSOR

Kelvin Adams
Chief of Staff
Recovery School District
1641 Poland Avenue
New Orleans, LA 70117

LESSEE

Elsie Rose, President
Algiers Charter School Association, Inc.
6120 Kingston Court
New Orleans, LA 70131

With Copy to:

Mark R. Beebe
Counsel
Adams and Reese LLP
4500 One Shell Square
New Orleans, La. 70139

Lessee shall immediately inform Lessor of any changes in personnel or address for the purpose of sending required notices.

24. TERMINATION

Lessor may terminate this Lease Agreement immediately if Lessee or Lessee's employees or contractors engage in any unlawful activity on or near the leased Property.

Lessor may terminate this Lease Agreement if Lessee engages in any uses of, or activities on, the leased Property not connected with the purposes of conducting classes and activities incidental to the lawful operation of the school and consistent with the mission and purpose of

the Charter School, or if Lessee materially breaches this Lease Agreement in any manner whatsoever.

Lessor may terminate this Lease Agreement for cause based upon the failure of Lessee to comply with the terms and conditions of this Agreement, provided that the Lessor shall give, in writing, notice specifying the Lessee's failure and Lessee does not correct the alleged failure within fifteen (15) days of receipt of the notice specifying the failure.

25. DISCRIMINATION CLAUSE

Lessee agrees to abide by the requirements of the following, as applicable:

- * Title VI and VII of the *Civil Rights Act of 1964*, as amended by the *Equal Opportunity Act of 1972*.
- * *Federal Executive Order 11246*.
- * *Federal Rehabilitation Act of 1973*, as amended.
- * *Vietnam Era Veteran's Readjustment Assistance Act of 1974*.
- * *Title IX of the Educational Amendments of 1972*.
- * *Age Act of 1975*.
- * *Americans with Disabilities Act of 1990*.

Lessee agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities.

Any intentional acts of discrimination committed by Lessee, or failure to comply with the above statutory obligations when applicable, shall be grounds for termination of this Lease Agreement.

26. WAIVER

The Lessor and Lessee agree that either party's failure to insist on strict performance of any term or condition of this Agreement shall not constitute a waiver of that term or condition, even if the party accepting or acquiescing in the non-conforming performance knows of the nature of the performance and fails to object it.

27. SEVERABILITY

The provisions of this Agreement are severable. Any terms and/or conditions that are deemed illegal or invalid shall not affect any other term or condition of the Agreement.

28. ENTIRE AGREEMENT

All terms and conditions agreed upon between the parties are contained herein, and no verbal commitments, except those reduced to writing in this Lease Agreement, have any binding effect. Any amendments to this Lease Agreement must be reduced to writing and signed by both parties.

[The Remainder of This Page is Intentionally Left Blank.]

THUS DONE AND SIGNED on the day, month, and year first written below.

This Lease Agreement is signed in duplicate original.

**DEPARTMENT OF EDUCATION,
RECOVERY SCHOOL DISTRICT**

By: _____
Paul G. Pastorek, State Superintendent of Education _____ Date _____

Witness _____ Date _____

By: _____
Recovery School District _____ Date _____

Witness _____ Date _____

By: _____
President, State Board of Elementary and Secondary Education _____ Date _____

Witness _____ Date _____

ALGIERS CHARTER SCHOOL ASSOCIATION, INC.

By: _____
Elsie Rose, President _____ Date _____

Witness _____ Date _____

APPENDIX C

TYPES OF CHARTER SCHOOLS IN NEW ORLEANS

TYPE	OPERATED BY	PARTIES TO CHARTER AGREEMENT	FACILITIES ARRANGEMENT*
1	Charter	Charter – OPSB	New school owned by OPSB, occupied by Charter
2	Charter	Charter – BESE	New or conversion of an existing school owned by BESE, occupied by Charter
3	Charter	Charter – OPSB	Existing school owned by OPSB, occupied by Charter
4	OPSB	OPSB – BESE	New or conversion of an existing school owned by OPSB, occupied by an OPSB Charter
5	Charter	Charter – BESE**	Existing school owned by OPSB, managed by RSD, leased to Charter

* This column indicates typical facilities arrangements, though Charters may also independently lease facilities from third parties.

** Charter may be transferred back to OPSB from BESE if certain performance targets met.

APPENDIX D

SELECTED EXCERPTS FOR REFERENCE

Statutes

Louisiana's Charter School Demonstration Programs Law [La. R.S. §§17:3971-4001]

- §3973(2)
- (a) "Charter school" means an independent public school that provides a program of elementary or secondary education, or both, established pursuant to and in accordance with the provisions of this Chapter to provide a learning environment that will improve pupil achievement.
- (b) Charter schools shall be one of the following types:
- (i) Type 1, which means a new school operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and a local school board. Within such type 1 charter schools, only pupils who would be eligible to attend a public school operated by the local school board within the same city or parish will be eligible to attend as provided in the charter.
- (ii) Type 2, which means a new school or a preexisting public school converted and operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and the State Board of Elementary and Secondary Education. Prior to the creation of such a charter to convert a preexisting school, it shall be approved by the professional faculty and staff of the preexisting school and by the parents or guardians of children enrolled in the school as provided in R.S. 17:3983(C). Within such type 2 charter schools, pupils who reside within the state will be eligible to attend as provided in the charter. Creation of a type 2 charter school shall comply with the provisions of R.S. 17:3983(A)(2)(a)(i).
- (iii) Type 3, which means a preexisting public school converted and operated as the result of and pursuant to a charter between a nonprofit corporation and the local school board. Prior to the creation of such a charter, it shall be approved by the members of the faculty and staff of the preexisting school who are certified by the state board and approved by the parents or guardians of children enrolled in the school as provided in R.S. 17:3983(C). Within such type 3 schools, only pupils who would be eligible to attend a public school operated by the local school board within the same city or parish, or pupils from the same area as those permitted to attend the preexisting school will be eligible to attend as provided in the charter.
- (iv) Type 4, which means a preexisting public school converted and operated or a new school operated as the result of and pursuant to a charter between a local school board and the State Board of Elementary and Secondary Education. Prior to the creation of such a charter to convert a preexisting school,

it shall be approved by the professional faculty and staff of the preexisting school and approved by the parents or guardians of children enrolled in the school as provided in *R.S. 17:3983(C)*. Within such Type 4 schools, unless an agreement with another city or parish school board is reached to allow students from outside the parish to attend the charter school, only pupils who would be eligible to attend a public school operated by the local school board within the same city or parish, or pupils from the same areas as those permitted to attend the preexisting school will be eligible to attend as provided in the charter.

(v) (aa) Type 5, which means a preexisting public school transferred to the Recovery School District pursuant to *R.S. 17:10.5* or *10.7* and operated as the result of and pursuant to a charter between a nonprofit corporation and the State Board of Elementary and Secondary Education, or between a nonprofit corporation and a city, parish, or other local school board or other public entity in the case of the renewal of a Type 5 charter of a school that has been transferred back to the jurisdiction of the local school board or other public entity pursuant to *R.S. 17:10.5(C)*. The chartering authority shall review each Type 5 charter proposal in compliance with the Principles and Standards for Quality Charter School Authorizing as promulgated by the National Association of Charter School Authorizers. Except as otherwise provided in *R.S. 17:10.7* or 1990, and notwithstanding the provisions of *R.S. 17:3991(B)(1)*, within such Type 5 charter school, only pupils who would have been eligible to enroll in or attend the preexisting school under the jurisdiction of the city, parish, or other local public school board or other public school entity prior to its transfer to the Recovery School District may attend. However, all such pupils shall be eligible to attend notwithstanding any other provision of this Chapter to the contrary. (bb) In addition to pupils who are eligible to enroll pursuant to the provisions of Subitem (aa) of this Item, any student who is eligible to participate in a school choice program established by the prior system shall be permitted to enroll in a Type 5 charter which has capacity for another student in the appropriate grade. Maximum capacity by grade shall be provided in the charter agreement. (cc) (I) No member of the State Board of Elementary and Secondary Education shall be a member of the governing or management board of any Type 5 charter school. No member of any city, parish, or other local public school board shall be a member of the governing or management board of any Type 5 charter school within the jurisdictional area of such city, parish, or other local public school board.

(II) No member of a governing or management board of any Type 5 charter school shall be an elected official as defined by *R.S. 42:1102(9)*. No member of such a board shall have been an elected official for a period of at least one year prior to appointment to such board.

§3982(B)

Local school boards shall make available to chartering groups any vacant school facilities or any facility slated to be vacant for lease or purchase at fair market value. In the case of a type 2 charter school created as a result of a conversion, all property within the existing school shall also be made available to the

chartering group under similar terms. If such facilities were constructed at no cost to the local school board, then such facilities including all equipment, books, instructional materials, and furniture within such facilities shall be provided to the charter school at no cost.

- §3983(A)(3)(c) Each proposal [for a charter school] received by the state board shall be carefully reviewed and shall be approved only after there has been a specific determination by the board that the proposed school will be operated in compliance with all applicable state and federal laws, rules, and regulations, that the accounting and financial practices to be used are sound and in accordance with generally accepted standards for similar entities....
- §3991(B) Each charter shall contain or make provision for the following....(5) A financial and accounting plan sufficient to permit a governmental audit....(15) Information concerning the school location and the adequacy of its facilities and equipment. Such information shall include a statement of the procedures to be followed and disposition of facilities and equipment should the charter be terminated or not renewed....(18) Types and amounts of insurance coverage provided.
- §3991(D) A charter school may negotiate with the local school board in whose jurisdiction it is located for use of facilities and the operation and maintenance thereof, for pupil transportation, and for other support services provided by the board to other public schools in the system
- §3991(F) Except for a type 4 charter school, a local school board shall not...interfere in any way with the operation and management of a charter school except as provided by the approved charter, the provisions of this Chapter, or other law applicable to the charter school or its officers or employees.
- 3991(H) Any assets acquired by a Type 1, 2, 3, or 5 charter school are the property of that charter school for the duration of that school's charter agreement. Any assets acquired by a Type 4 charter school are the property of the local school board. If the charter agreement of any Type 1, 2, 3, or 5 charter school is revoked or the school otherwise ceases to operate, all assets purchased with any public funds become the property of the chartering authority. Charter schools are to maintain records of any assets acquired with any private funds which remain the property of the nonprofit organization operating the charter school.
- §3996(A) Notwithstanding any state law, rule, or regulation to the contrary and except as may be otherwise specifically provided for in an approved charter, a charter school established and operated in accordance with the provisions of this Chapter and its approved charter and the schools' officers and employees shall be exempt from all rules and regulations of the state board and those of any local school board that are applicable to public schools and to public school officers and employees except for the following rules and regulations otherwise

applicable to public schools regarding: (1) Building maintenance....

§3996(B) Notwithstanding any state law, rule, or regulation to the contrary and except as may be otherwise specifically provided for in an approved charter, a charter school established and operated in accordance with the provisions of this Chapter and its approved charter and the schools' officers and employees shall be exempt from all statutory mandates or other statutory requirements that are applicable to public schools and to public school officers and employees except for the following laws otherwise applicable to public schools with the same grades:...(19) Public bids for the erection, construction, alteration, improvement, or repair of a public facility or immovable property, Part II of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950.

§3996(H) ...[T]he State Board of Elementary and Secondary Education shall adopt rules and regulations for prescribing forms and practices for budgeting, accounting, and financial reporting, both interim and annual, for Type 2 and Type 5 charter schools.

§4001(C)(1) The State Board of Elementary and Secondary Education shall administer the use of the monies appropriated from the [Louisiana Charter School Start-Up Loan Fund] and shall adopt rules in accordance with the Administrative Procedure Act.... Such rules shall also note that any loan funding may only be used to purchase tangible items such as equipment, technology, instructional materials, and facility acquisition, upgrade, and repairs.

Louisiana's Recovery School District Law (La. R.S. §17:1990)

§1990(B)(3) The [recovery] school district may require any city, parish, or other local public school board to provide school support or student support services for a school transferred from its jurisdiction including but not limited to student transportation, school food service, or student assessment for special education eligibility that are compliant with all laws and regulations governing such services. In such case, the [recovery] school district shall reimburse the actual cost to the system providing such services. If a dispute arises between the [recovery] school district and the system providing such services regarding the cost of such services to be reimbursed, the commissioner of administration or his designee shall determine the cost to be reimbursed.

§1990(B)(4)(a) The [recovery] school district shall have the right to use any school building and all facilities and property otherwise part of the school and recognized as part of the facilities or assets of the school prior to its placement in the school district and shall have access to such additional facilities as are typically available to the school, its students, and faculty and staff prior to its placement in the [recovery] school district. Such use shall be unrestricted, except that the [recovery] school district shall be responsible for and obliged to provide for routine maintenance

and repair such that the facilities and property are maintained in as good an order as when the right of use was acquired by the district. There shall be no requirement for the [recovery school] district to provide for the type of extensive repair to buildings or facilities that would be considered to be a capital expense. Such extensive repairs shall be provided by the governing authority of the city, parish, or other local public school system or other public entity, which is responsible for the facility.”

§1990(B)(4)(b)

(i) In the case of the transfer of schools pursuant to R.S. 17:10.7 [the OPSB transfer fits this description], the [recovery] school district may, at the discretion of the administering agency and notwithstanding the provisions of Subparagraph (a) of this Paragraph, acquire with the transfer of the schools all the rights and responsibilities of ownership regarding all land, buildings, facilities, and other property that is part of the school being transferred, except that the school district may not transfer the ownership of the land or usable buildings constructed on the land to another, other than in the manner and under the circumstances provided for in Item (iv) of this Subparagraph, save returning the land and such buildings to the stewardship of the prior system. The district may lease land or property, dispose of property other than the land as is necessary to properly manage the operation of the schools, rebuild school buildings, or renovate school buildings.

(ii) No building shall be destroyed pursuant to the authority of the school district unless the destruction of the building has been approved by the office of facility planning in the division of administration.

(iii) In the case that the rights and responsibilities provided for in this Subparagraph are acquired by the school district, the school district, through its administering agency, shall be the exclusive authority to receive, manage, and expend any and all state, local, or federal funding dedicated to or available for the purpose of repairing, renovating, or rebuilding, or building a school building or facility and any and all insurance proceeds attributable to damage done to any property, except that portion of such insurance proceeds used to pay debt owed by the prior system. A portion of all revenues available to the prior system which are dedicated to the repair, maintenance, or capital projects regarding a transferred school whether such revenue is available from tax proceeds, was borrowed, bonded, or was otherwise acquired shall be transferred by the system to the recovery district in an amount equal to the proportion that the number of schools transferred from such school system bears to the total number of schools operated by the school system during the school year immediately proceeding the school year in which the transfer occurred.

(iv) The school district may sell, exchange, or lease any property or building which the school district determines will not be used for providing educational services on or before August 29, 2006 to the governing authority of any independent secondary school which has operated a school approved by the

State Board of Elementary and Secondary Education, pursuant to R.S. 17:11, for not less than twenty-five years prior to August 29, 2005, in an area subject to an emergency declaration of the governor as a result of devastation resulting from a hurricane and which is in need of property or facilities in which to locate a school because its prior school building was rendered uninhabitable by the hurricane and cannot be restored to a habitable condition prior to the beginning of the next semester following the hurricane. However, the school district shall not exercise such authority to sell, exchange, or lease any property or building unless it first offers such property or building without cost to the local public school board to which the property belonged prior to its being under the control of the school district and such local public school board refuses at a public meeting to accept the return of the property or building. Property sold, leased, or exchanged under the authority of this Item shall be sold at a price or leased or exchanged based on a value that is determined by averaging the market value appraisals of three appraisers, one selected by the administering agency of the Recovery School District, one selected by the governing authority of the independent secondary school, and a third appraiser selected by the two appraisers selected by the school district and the independent secondary school. The costs of determining the value shall be borne by the independent secondary school. Property sold or exchanged under the authority of this Item shall remain the property of the governing authority to which it was sold or exchanged by the school district regardless of the return of any school under the jurisdiction of the school district to the city, parish, or other local public school system from which it was originally transferred. However, any property sold or exchanged by the school district as authorized in this Item shall, if ever offered for sale or exchange by the governing authority of the independent school, first be offered to the city, parish, or other local public school board to which the property belonged prior to its being under the control of the Recovery School District. The authority granted in this Item may be exercised without compliance with any bidding requirements otherwise required by law. Any proceeds resulting from a lease or sale as provided in this Item shall be directed to the city, parish, or other local public school board to which the property belonged, regardless of it being under the control of the Recovery School District.

Board to Improve Institutional Facilities; Apportionment of Funds

L.a. R.S.
§17:2151

The Louisiana State Board of Education shall construct, repair, equip and furnish necessary buildings and improve the facilities at the educational and charitable institutions of the state, whether such institutions are under its supervision or not.

Regulations

Louisiana Accounting and Uniform Governmental Handbook

LAC 28:XLI:101	Repairs and Maintenance Services—Expenditures for repairs and maintenance services not provided directly by LEA personnel. This expenditure includes contracts and agreements covering upkeep of buildings, upkeep of equipment, including computers and related technology, and portable building relocation expenses. Costs for renovating and remodeling are not included here but are classified under object 450 Construction Services.
Object Code 430	
Object Code 450	Construction Services—Expenditures for constructing, renovating and remodeling paid to contractors. This object code includes the installation of new phone lines or cable to provide Internet access. It is used only with functions 4500 Building Acquisition and Construction Services, and 4600 Building Improvement Services.
Object Code 700	Property—Expenditures for acquiring fixed assets, including land or existing buildings; improvements of grounds; initial equipment; additional equipment; and replacement of equipment.
Object Code 710	Land and Improvements—Expenditures for the purchase of land and the improvements thereon.... Also included are special assessments against the LEA for capital improvements such as streets, curbs and drains....
Object Code 720	Buildings—Expenditures for acquiring existing buildings.... Expenditures for the contracted construction of buildings, for major permanent structural alterations, and for the initial or additional installation of heating and ventilating systems, fire protection systems, and other service systems in existing buildings are recorded under object code 450 Construction Services...
Function Code 4500	Building Acquisition and Construction Services—Activities concerned with buying or constructing buildings.
Function Code 4600	Building Improvements Services—Activities concerned with building additions and with installing or extending service systems and other built-in equipment.

Louisiana Handbook for School Administrators

LAC 28:CXV:101	Building and Maintenance
§1501	A. The school site and building shall include adequate physical facilities and custodial services to meet the needs of the educational program and to safeguard the health and safety of the pupils in each LEA.

B. Sufficient classroom, laboratory, shop, office, storage, and meeting room space shall be provided for the number of students served and the activities conducted in assigned places.

C. Adequate facilities shall be provided for specialized services such as food services, counseling, library, and physical education.

D. School facilities and grounds shall be kept attractive, functional, and clean through regular preventive and corrective maintenance.

E. A site safety officer charged with the supervision of safe practice in storage, use, and distribution of all chemicals shall be designated in each LEA.

F. The LEA must assess the safety of the facilities and equipment in all schools, including the location, quantities, and states of all regulated hazardous substances.

1. A plan to redistribute the unwanted substances must be prepared and kept on file in the central office.

2. Remaining chemicals must be listed on an inventory system.

3. A copy of the inventory must be kept on site in each school, in the central office of each LEA, and at the local fire chief's office.

Policies

OPSB Policy Manual

Policy E500 Facilities, Capital and Maintenance Management

CAPITAL IMPROVEMENT

A. Capital Improvement Project (CIP) - A project, asset acquisition or the total replacement cost of a major functioning component or system that improves or expands an existing OPSB facility or creates a new OPSB-owned capital asset. An example of a capital acquisition would be capital outlay necessary to acquire property, or a donated building. An example of major capital replacement cost would be; the total replacement of a buildings HVAC system or roof replacement.

B. Capital Expenditure – is the increase or acquisition of an asset or INCREASE in the value of a particular asset.

C. Major Maintenance or Outlay as is necessary for the MAINTENANCE of a valued asset including the upkeep of the fixed assets in a fully efficient state. A significant repair to or replacement of a component of an OPSB facility usually with a cost of \$10,000 or greater per occurrence which does not extend the life of the facility.

- D. Routine Maintenance and Repair- A repair, restoration or replacement of an existing facilities element that usually has a cost of less than \$10,000 per occurrence. Maintenance activities may be performed on a preventive, routine, scheduled or emergency basis. All maintenance and repair activities must be performed in accordance with all applicable local, state and federal codes, ordinances, statutes and regulations, including proper procurement procedures, using AIA written specifications where applicable, and performed by a properly licensed, qualified individual. Preventive maintenance shall be included as a Charter responsibility regardless of the cost.
- E. Life Cycle Systems / Whole Life Costs – is a key component in the economic appraisal of a capital items such as a boiler, chiller, or roofing system. Those systems that have exceeded their useful life (womb to tomb), such as boilers, chillers, roofing systems, window systems, electrical distribution systems (bus panels) shall be identified as a capital expenditure.

Proposed E501 **Charter School Facility Management**

The OPSB shall make available to an approved charter operator any vacant school facility or any facility slated to be vacant for lease or purchase at fair market value, in accordance with state statute. Charter Schools (Charter) shall be solely responsible for routine and emergency repairs, maintenance, including preventive and major maintenance to the facilities owned by the Orleans Parish School Board (OPSB) which the Charter occupies or uses.

OPSB shall be responsible for capital improvement projects (CIP) it deems necessary. If Charter desires a capital enhancement to an OPSB facility that OPSB does not deem necessary, Charter may, with prior written OPSB approval, effect the improvement at its own risk and expense.

CAPITAL IMPROVEMENT

Capital Improvement Project (CIP) – A project that improves or expands an existing OPSB facility or creates a new OPSB–owned capital asset with a cost of \$50,000 or greater.

Major Maintenance – A significant repair to or replacement of a component of an OPSB facility with a cost of \$10,000 or greater per occurrence which does not extend the life of the facility.

Routine Maintenance and Repair – A repair, restoration, or replacement of an existing facilities element that has a cost of less than \$10,000 per occurrence. Maintenance activities may be performed on a preventive, routine, scheduled, or emergency basis. All maintenance and repair activities must be performed in accordance with all applicable local, state, and federal codes, ordinances, statutes

and regulations and performed by a properly licensed, qualified contractor. Preventive maintenance shall be included as a Charter responsibility regardless of the cost.

PREVENTIVE MAINTENANCE PROGRAM

Charter must develop and present for OPSB approval a Preventive Maintenance Program (PMP), developed in consultation with a licensed professional and in accordance with the manufacturer's specifications and requirements, in which corrective action is taken to ensure peak efficiency and minimize deterioration by regular and systematic inspections, adjustments, lubrication, replacement of components, repairs, as well as performance testing and analysis. The PMP shall be designed to maximize the usable economic life and the performance of all building components.

Charter must implement the PMP at its own risk and expense and provide on a quarterly basis a report detailing all activities performed as well as any deficiencies identified. Records regarding PMP activities, as well as all other maintenance and repair, shall be maintained by Charter and available for audit at the request of OPSB.

Failure to maintain an adequate PMP shall result in the Charter assuming financial responsibility for any capital improvement projects caused by its inadequate repairs, maintenance, and/or execution of the PMP.

Systems upon which preventive maintenance must be performed include, but are not limited to:

- HVAC systems
- Elevators, escalators and/or lifts
- Plumbing systems and fixtures
- Roofing
- Life Safety, Security, and all other electronic or mechanical systems
- Interior finishes including paint, flooring, woodwork, walls, and ceilings
- Doors, windows, and all related hardware
- Structural components
- Exterior finishes
- Exterior equipment and systems including parking areas, fencing, playground equipment, etc.

SEMI-ANNUAL FACILITY INSPECTION

A physical inspection of facilities to identify deficiencies in the PMP or other repairs as well as needed capital or major maintenance projects shall be performed by representatives of OPSB and Charter on a semi-annual basis.

All facility systems and components shall be inspected at that time.