

School Health and Safety For All

An Analysis of Illinois Charter School Health and Safety Requirements

By Amanda Kim, J.D. and Amy Zimmerman, J.D.



Should children's health and safety be optional?

We don't think so. — Chicago Medical-Legal Partnership for Children

The growing number of charter schools in Illinois and across the country has highlighted the need to ensure consistent policies across all publicly funded schools. When parents make the decision to enroll their child in a charter school over a public school, they deserve to know that their child's health and safety are being protected in the exact same manner that they would have been at a public school. Unfortunately, this is not the case in Illinois. Under Illinois law, charter schools are exempt from the vast majority of public school health and safety laws – even though charter schools are publicly financed. Should children's health and safety be optional? We don't think so. This report (i) analyzes the state of the law; (ii) highlights Chicago Public School's health and safety policies that go beyond state requirements, but are nonetheless unenforceable by the Illinois State Board of Education (ISBE) as to charter schools; and (iii) makes concrete suggestions on how to guarantee that student health and safety is a requirement for all publicly funded schools.

Introduction

Effective and well-coordinated school health, wellness, and safety policies play a crucial role in children's wellbeing and academic success.¹ Children with chronic health conditions are particularly affected by school policies guiding the management of their conditions. Successful school approaches to managing chronic conditions can significantly influence health and academic outcomes in such children, leading to, among other things, better attendance, improved alertness and physical stamina, fewer symptoms and activity restrictions, and fewer medical emergencies.² Given that as many as 26% of children in the US are affected by one or more chronic medical conditions,³ the importance of school policies that successfully address the needs of these children cannot be overstated.

Despite the evidence for the importance of school policies in influencing children's health, charter schools in Illinois are effectively exempt from many of the minimum health and safety requirements applicable to public schools in Illinois. This is particularly disturbing given the large number of students attending charter schools in Illinois. In

Illinois, 148 charter school campuses currently serve more than 59,000 students.⁴ In Chicago alone there are over 50 charters comprising 134 campuses, and charter students make up 14% of the Chicago Public Schools system overall.⁵ As part of this report, the Chicago Medical-Legal Partnership for Children compiled a list of Illinois health and safety laws and regulations generally applicable to public schools and compared this with the subset list of those specifically applicable to charter schools. We found that of the 77 health and safety-related provisions in the Illinois School Code and/or standalone laws identified, only 8 (or 10%) are expressly applicable to all charter schools. Among the health and safety laws that charter schools are not currently required to comply with are those relating to the management of common chronic conditions such as asthma and food allergies.

Exempting charter schools from school health and safety laws goes far beyond the original intent of charter schools independence given that the legislative purpose of enacting the Charter Schools

¹ Chriqui J, et al. *School District Wellness Policies: Evaluating Progress and Potential for Improving Children's Health Five Years after the Federal Mandate*. Brief Report. Robert Wood Johnson Foundation. February 2013; Vol 3.

² *Students With Chronic Illness: Guidance for Families, Schools, and Students*. Journal of School Health. April 2003; 73(4):131-132.

³ Van Cleave J, Gortmaker SL, Perrin JM. *Dynamics of obesity and chronic health conditions among children and youth*. JAMA. 2010;303:623-630.

⁴ Illinois Network of Charter Schools, *Charter Enrollment Growth*, https://www.incschools.org/tableau/?post=32&type=enrollment_facts&index=1-1. (Last retrieved: 1/22/2015).

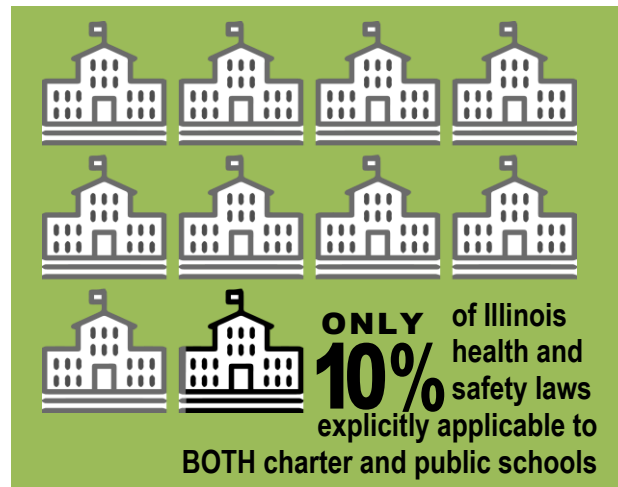
⁵ As of the 2013-2014 school year. Information available at Illinois Network of Charter Schools website: <https://www.incschools.org/about-charters/get-the-facts/> (Last retrieved: 1/27/2015).

Law is curricular and pedagogical in nature. As explicitly set forth in the Charter Schools Law, the intent of the Illinois legislature in authorizing charter schools was to “create a legitimate avenue...to take responsible risks and create new, innovative, and more flexible ways of educating children within the public school system.”⁶ While the overall purpose of granting charter schools the flexibility to diverge from many of the regulations governing public schools is logical in the realm of curricular innovation, health and safety is an entirely different domain.

Charter School Health and Safety Requirements in Illinois: A Patchwork System

In an effort to understand the reasons behind this regulatory gap, the Chicago Medical-Legal Partnership for Children analyzed the various legislative and regulatory pieces comprising charter school health and safety requirements in Illinois. While there are multiple factors contributing to the current state of affairs, the primary underlying issue appears to be ambiguous wording within the Charter Schools Law that has led to the development of a patchwork system of regulatory applicability.

Regulations regarding school health and safety policies in Illinois are found in various sections of the Illinois School Code, including the Charter Schools Law, as well as one stand-alone act.^{7, 8} While the language of the Illinois Charter Schools Law states that charter schools must comply with “all *applicable* health and safety requirements applicable to public schools”⁹ in Illinois, charter schools are also explicitly “exempt from all other State Laws and regulations in the School Code governing public schools” except for a few specifically enumerated acts and provisions within the Charter Schools Law.¹⁰ This somewhat contradictory statutory wording has led to a rather confused regulatory framework governing charter school health and safety policies. Although charter schools are required to comply with “all applicable” health and safety laws, the Illinois State Board of Education (“ISBE”) has never specifically identified which health and safety laws would fall under this rubric. Furthermore, it is unclear that ISBE even has



the statutory authority to determine which health and safety requirements are “applicable.”

Under the current system, each individual charter school covenants to comply with certain health and safety requirements, if any, in its charter agreement with the corresponding local board of education. For example, the template charter agreement in District 299 (Chicago), includes as an appendix, a list of health and safety requirements that charter schools would agree to abide by as a condition of their charter.¹¹ However, this list contains only an extremely small subset of health and safety laws otherwise applicable to public schools in Illinois. Additionally, upon review, the Chicago Medical-Legal Partnership for Children has found that in practice, some current charter school agreements in Chicago may not even include this very minimal list.

In recognition of the insufficiency of the current state of affairs, since late 2013, ISBE has been working on developing a list of health and safety requirements applicable to charter schools and has solicited both public and charter school input, (the “ISBE List”). This *draft* list, while not entirely comprehensive, would nevertheless be a vast improvement over the current state of affairs by more than **quadrupling** the number of applicable health and safety regulations and laws that are identified in either the Charter Schools law or the appendix list in the CPS template charter agreement. However, given the

⁶ 105 ILCS 5/27A-2.

⁷ Care of Students with Diabetes Act, 105 ILCS 145 et seq.

⁸ The main source of charter school regulation comes from Article 27A of the Illinois School Code (105 ILCS 5/27A), otherwise known as the Charter Schools Law. Most health and safety laws explicitly applicable to charter schools are enumerated within the Charter Schools Law (105 ILCS 5/27A-5(g)).

⁹ 105 ILCS 5/27A-5(d), emphasis added.

¹⁰ 105 ILCS 5/27A-5(g).

¹¹ This list is a combination of the statutorily enumerated laws applicable to charter schools as well as several additional provisions within the School Code. While in the template charter agreement, this list is titled as the “State Board List of Health and Safety Laws Applicable to Charter Schools,” based on discussions with both ISBE and CPS, we have determined that the list did not originate from ISBE and is only binding on those individual charter schools that agree to it during their charter agreement negotiations. See Chicago Public Schools, “[Template:] Grant of Charter and Charter School Agreement,” p. 30, available at <http://www.cps.edu/NewSchools/Documents/CharterSchoolAgreement.pdf>.

ambiguity of ISBE's authority within the present statutory scheme, the ISBE List has not been finalized and has been presented as explicitly non-binding. ISBE has provided the ISBE List to local school districts as solely a "recommendatory" list to inform school boards during charter negotiations. However, this places the burden of expanding charter school health and safety policy applicability on local school districts, who must individually negotiate any health and safety requirements with each new charter school, each school up for charter renewal, and with each renewal thereafter, a situation that seems both inefficient and prone to inconsistency.

As outlined above, currently charter schools are explicitly exempt from all laws and regulations governing public schools aside from the narrowly carved out exceptions in the Charter Schools Law, such sections of the School Code that specifically reference charter school applicability, a stand-alone act, and whatever specific provisions local school boards might manage to negotiate with individual charter schools. This patchwork approach to regulating charter school health and safety policies has led to the present situation in which charter schools are not required to comply with the great majority of the minimum health and safety standards applicable to public schools. Given the evidence for the importance of school policies in influencing children's health and the large and growing number of charter schools and students in Illinois, the current circumstances are particularly troubling.

Local School District Health and Safety Policies: A Comparison with Chicago Public Schools

While Illinois law imposes minimum health and safety standards on public schools, local school districts, in order to better serve local needs as well as in recognition of the importance of well-developed school health and safety policies, may regulate health and safety beyond the requirements of state law. In particular, health and safety policies adopted by Chicago Public Schools ("CPS") in recent years reflect a growing recognition of how important it is for schools to effectively and systematically coordinate

student healthcare issues. Many CPS policies, particularly in health and wellness, currently go beyond the requirements of Illinois law, providing additional protections to students with health-related needs that are more in line with accepted best practices. In order to evaluate whether Chicago-area charter schools provide health and wellness protections to its students that are comparable to those provided by CPS, in 2013 and 2014 the Chicago Medical-Legal Partnership for Children submitted requests under the Freedom of Information Act to 25 different charter schools and charter networks in Chicago (comprising 97 school campuses) requesting public records relating to each school's health, wellness, and disciplinary policies.¹² Sixteen of the charter schools (representing 68 school campuses) were responsive, and fifteen (67 campuses) produced documents.¹³

CPS provides additional protections beyond the requirements of Illinois law in many key health and wellness policy areas and while resources are available to charter schools to implement these policies, CPS does not have the authority to require that charter schools use them. For purposes of this report, the Chicago Medical-Legal Partnership for Children specifically examined five areas most related to management of common chronic conditions: food allergy management, asthma management, annual medical information requests, self-administration of asthma medication, and self-administration of Epi-Pens. We also examined concussion management policies, as that is an area that has been receiving greater attention in many states in recent years.¹⁴ We analyzed the health and wellness policies of the responding charter schools to evaluate whether and to what extent the charter school policies provided protections in these policy areas that are comparable to those afforded by CPS policies. The results of these analyses¹⁵ are summarized in the following table.

¹² While CMLPC requested information from charter schools on health, wellness, disciplinary, and safety policies, for purposes of this report, we are focusing on comparison of health and wellness policies.

¹³ The substance of our inquiry and the summary of policies from charter schools are from those schools that provided actual copies of the requested health and wellness policies. A couple schools that claimed general compliance with CPS policies, upon inquiry did not specify which CPS policies they were in compliance with and failed to provide written policies or other documentation to that effect.

One school claimed general compliance with CPS policies but failed to provide any documentation at all.

¹⁴ See Center for Disease Control and Prevention, "Get a Heads Up on Concussion in Sports Policies," available at: <http://www.cdc.gov/concussion/policies.html>. (Last retrieved: 2/14/15).

¹⁵ The charter school health and safety policies are presented as they were provided to us at the time of our FOIA requests.

POLICY AREA	ILLINOIS LAW	CPS POLICY	CHARTER SCHOOL POLICIES
FOOD AND ALLERGIES	<p>Discretionary adoption of best practices outlined in the ISBE/IDPH Food Allergy Guidelines.ⁱ</p> <p>Schools "must permit" self-administration of Epi-Pens if (1) written medical authorization and (2) a written statement with certain information is provided.ⁱⁱⁱ Charter schools are exempt from this requirement. Illinois law is silent with respect to whether direct supervision is required.</p>	<p>CPS's 2011 "Food Allergy Management"ⁱⁱⁱ policy affirmatively adopts recommendations in the ISBE/IDPH Guidelines. In particular, CPS emphasizes <i>school-wide</i> evaluations of allergens and preventative measures to reduce allergen exposure risk.</p> <p>CPS's 2012 "Administration of Medication Policy"^{iv} permits students to self-administer Epi-Pens as long as there is proper authorization and certain information is provided.</p>	<p>44% of the responding charter schools did not report any policies regarding food allergies.</p> <p>25% of the responding charter schools do not report allowing any self-administration of Epi-Pens. Only 31% of the responding charter schools report adopting CPS policy regarding self-administration of Epi-Pens.</p>
ASTHMA	<p>Illinois law does not require use of asthma action plans and schools are not required to train personnel regarding asthma (although schools are required to provide training regarding ADHD, diabetes, food allergies, and HIV/AIDS).</p> <p>Schools "must permit" self-administration of inhalers if (1) written authorization and (2) Rx label with certain information is provided by parents/guardians.^{vi} Charter schools are exempt from this requirement. Illinois law is silent with respect to whether direct supervision is required.</p>	<p>CPS's 2012 "Asthma Management Policy"^v requires schools to request an "Emergency Asthma Action Plan" from each student with asthma. CPS's 2012 "Administration of Medication Policy"^{vi} requires schools to train staff regarding asthma management and prevention at least every two years.</p> <p>CPS permits students to self-administer asthma inhalers without supervision as long as there is proper authorization and certain information is provided.^{viii}</p>	<p>57% of the responding charter schools do not reference requests for asthma action plans at all. Only 31% of the responding charter schools report following CPS's "Administration of Medication Policy" and the training requirements therein.</p> <p>Only 38% of the responding charter schools report allowing self-administration of asthma inhalers without supervision. The remaining responding charter schools report having policies that either limit self-administration of asthma inhalers to "necessary" or "emergency" situations or do not allow students to self-administer unless under direct supervision, or both.</p>
TRAUMA & HEAD INJURY	<p>Schools must adopt a concussion/head injury policy in compliance with the Illinois High School Association (IHSA) protocols and policies, which requires that any athlete exhibiting concussion signs be immediately removed from a game and not return to play on the same day unless cleared by an appropriate health care professional^x and if not cleared on the same day, not return to play or practice until written clearance is provided from a licensed health care professional.^{xi}</p> <p>Following an apparent concussion, a Special Report must be filed with IHSA.^{xii}</p> <p>Information on concussion policies must be provided in written instrument signed by student athlete or guardians before participating in practice or competition.^{xiii}</p> <p>Educational materials on concussions from IHSA must be used to educate coaches, student athletes, and guardians about concussions.^{xiv} Charter schools are exempt from this requirement, unless they are voluntarily members of IHSA.</p>	<p>CPS affirmatively adopts IHSA concussion protocols and policies and goes beyond those requirements as follows^{xv}:</p> <p>CPS requires written clearance from a licensed health care professional to return to play even on the same day.</p> <p>CPS requires that an athlete exhibiting concussion signs be taken to an appropriate medical evaluation and care facility if a health care professional is not immediately available at the athletic event or practice.</p> <p>CPS requires that written verification of concussion policy fact sheet receipt be obtained from the student athlete/guardian on an annual basis.</p> <p>CPS requires coaches to complete a concussion awareness training program prior to the beginning of each sports season.</p>	<p>Although many charter schools are IHSA members, only one of the responding charter schools reports having a concussion policy which is compliant with IHSA protocols, but it does not provide as many protections as CPS policy.</p>
GENERAL	<p>Illinois law does not require schools to request medical information from students beyond the Certificate of Child Health Examination Form required in kindergarten, 6th grade and 9th grade (or upon enrollment).</p>	<p>CPS policies provide for annual requests to all students for medical information regarding various conditions that might require treatment during school hours.^{xvi}</p>	<p>Only 6% of the responding charter schools report requiring annual requests for medical information comparable in scope to CPS policies.</p>

- i Illinois State Board of Education and Illinois Department of Public Health, *Guidelines for Managing Life-threatening Food Allergies in Illinois School*, available at http://www.isbe.net/nutrition/pdf/food_allergy_guidelines.pdf.
- ii Chicago Public Schools, "Food Allergy Management", Effective 1/26/11, available at: <http://policy.cps.k12.il.us/download.aspx?ID=254>.
- iii 105 ILCS 5/22-30.
- iv Chicago Public Schools, "Administration of Medication Policy", Effective 1/25/12, available at: <http://policy.cps.k12.il.us/download.aspx?ID=5>.
- v Chicago Public Schools, "Asthma Management Policy", Effective 1/25/12, available at: <http://policy.cps.k12.il.us/download.aspx?ID=259>.
- vi Administration of Medication Policy, *supra* note iv.
- vii 105 ILCS 5/22-30.
- viii Asthma Management Policy, *supra* note v.
- ix While both the 2013 and 2014 information requests that OMLPC made to charter schools asked for copies of all health and wellness-related policies (which would include concussion policies), concussion policies were specifically requested only in the 2014 information request.
- x An "appropriate health care professional" is a certified athletic trainer or an IL licensed physician.
- xi 105 ILCS 5/10-20.54; see also Illinois High School Association, *Concussion Management*, available at <http://ihsa.org/Resources/SportsMedicine/ConcussionManagement/SchoolResources.aspx>. (Last retrieved: 2/5/2015).
- xii *Id.*
- xiii *Id at note xi.*
- xiv *Id at note xi.*
- xv Chicago Public Schools, "Chicago Public High Schools Athletic Association Constitution and Bylaws", Effective 8/24/11, available at: <http://policy.cps.k12.il.us/documents/601.8.pdf>.
see also Chicago Public Schools, "Concussion Management Policy", Effective 7/24/11, available at: <http://policy.cps.k12.il.us/download.aspx?ID=258>.
- xvi Administration of Medication Policy, *supra* note iv.

In all six policy areas analyzed, a great majority of the responding charter schools either do not have any policies addressing the area (or did not provide written policies addressing the area), or have policies that do not provide as much protection as corresponding CPS policies. In certain policy areas (*i.e.*, self-administration of asthma medication/Epi-Pens), the majority of responding charter schools had policies that did not even provide the minimum protections required of public schools by Illinois law. None of the responding charter schools report having health and wellness policies that provide *greater* protection than corresponding CPS policies. To the extent that a few charter schools have policies in a particular area that are “comparable” to CPS policies, many of those schools appear to have specifically adopted the relevant CPS policy, and have been offered additional support and resources from CPS to do so. In addition, there was a great deal of variability in the quality of the charter school policies analyzed. While a few of the responding charter schools have developed relatively thorough and comprehensive health and wellness policies, others appeared to have merely added a couple of paragraphs to their student handbook.

Discussion and Recommendations

Given the impact that effective school policies can have on children’s medical and academic outcomes, the fact that the great majority of the minimum health and safety regulations applicable to public schools are optional for Illinois charter schools is troubling. Additionally, as shown above in our analysis of Chicago-area schools, the discrepancy between public schools and charter schools in the same locality can be even starker when local school boards respond to evolving best

practices to offer additional protections in health and safety beyond minimum Illinois requirements.¹⁶ As detailed above, it appears that the crux of this regulatory gap is the ambiguous wording of the health and safety requirements in the Illinois Charter Schools Law and the patchwork regulatory framework that has emerged as a result. In light of our discussion and findings in this report, we recommend the following:

1. *Charter Schools Law be amended to require that charter schools follow all health and safety laws (rather than “all applicable”) applicable to public schools.¹⁷ This would be the simplest way to address the insufficient and inefficient regulatory framework governing health and safety in charter schools, bringing charter schools in line with the current minimum health and safety practices in Illinois. It would also mean that instead of having to attempt to apply regulations to charter schools in a piecemeal and post hoc fashion as school health and safety standards evolve, charter schools would automatically be subject to any developments in Illinois school health and safety practices as they arise. This would ensure that baseline health and safety protections afforded to children remain consistent across all publicly funded schools in Illinois.¹⁸*
2. *Charter schools be required to adopt the health, safety and wellness policies of their local school district. Local school boards are better at recognizing local needs and are often quicker to adopt and expand on developments in school health and safety best practices. As we have*

¹⁶ Another consideration to take into account is the fact that charter schools in the Chicago area enroll a smaller proportion of students with disabilities requiring intensive school supports than do neighborhood public schools. While the causes of this enrollment pattern are likely manifold, one potential factor is that parents of children with intensive support needs may become discouraged by the relative lack of health and safety support policies at charter schools and enroll their children elsewhere. Bringing charter schools in line with health and safety requirements at local public schools could lead to changes in enrollment patterns as parents see more comprehensive health and safety policies being implemented at charter schools. See Waitoller, et al. *A Longitudinal Comparison of Enrollment Patterns of Students Receiving Special Education Services in Chicago Charter and Neighborhood Public Schools*. Research Report: Collaborative of Equity & Justice in Education. May 2014.

¹⁷ This recommendation would amend 105 ILCS 5/27A-5(d) to: “(d) A charter school shall comply with all applicable health and safety requirements applicable to public schools under the laws of the State of Illinois.” By comparison to Illinois, there are other states with charter laws with explicit and unambiguous language requiring charter schools to comply with health and safety laws. New

York’s charter schools law, for example, requires that all charter schools “meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided” (N.Y. EDN Law §2854-1(b)).

¹⁸ In November 2014, rulemaking changes were introduced to 23 Ill. Reg. 650, that, among other things, lay out the required procedures local school boards must follow in authorizing charter schools. Among these changes is the addition of an Appendix of principles and standards for charter school authorization. Included in this Appendix is language stating that charter school contracts should “clearly...state the statutory, regulatory and procedural terms and conditions for the school’s operation, including a *clearly defined list of all health and safety requirements applicable to all public schools* under the laws of the State of Illinois” (emphasis added). This language puts the onus on charter school authorizers (*i.e.*, local school boards) to follow these principles and standards as guidelines for authorizers. However, without statutory modification actually requiring charter schools to follow all health and safety requirements applicable to all public schools, there is no real way for charter school authorizers to effectuate these requirements. See 23 Ill. Reg. 650, Appendix A.

shown above, Chicago Public Schools in particular has gone beyond minimum Illinois requirements to provide greater health and safety protections to its students.¹⁹ Given that charter schools within any particular locality serve the same population as a local school district, it would seem reasonable that they should also follow the same health and safety policies adopted by its local school district. Charter schools would also benefit from being provided with district I.T. resources and records-keeping support to facilitate implementation of policies as well as from being included in district-sponsored trainings whenever possible.²⁰ This would also relieve local school boards from having to individually negotiate compliance with additional health and safety rules deemed of local importance with each grant of charter and charter renewal.

- 3. To the extent the Charter Schools Law is not amended to require charter schools to follow all health and safety laws otherwise applicable to Illinois public schools, we recommend that ISBE be given the statutory authority to determine a binding list of health and safety requirements that would be deemed “applicable” to charter schools. We further recommend that the process of determining and updating the health and safety regulations included in such a binding ISBE List be brought under the rules of the Illinois Administrative Procedures Act. This would allow for stakeholder and public input into the list as well as ensure that updates to the list are and remain binding on charter schools.*

Contact information of corresponding author:
Amy Zimmerman, J.D., Director,
Chicago Medical-Legal Partnership for Children
Phone: (312) 605-1963
Email: amy@aidslegal.com

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180 N. Michigan Ave. Suite 2110 Chicago IL 60601
Phone: (312) 427-8990 | Web: aidslegal.com/cmllpc
Facebook: [fb.me/AIDSlegalcouncilofchicago](https://www.facebook.com/AIDSlegalcouncilofchicago)
Twitter: [@aidslegal](https://twitter.com/aidslegal)

¹⁹ Although beyond the scope of this report and our analysis, we note that in examining CPS health and safety policies, there were many policies regarding school staff training with regard to chronic illnesses, including asthma, diabetes, allergies, and concussion. It would behoove all charter schools to require similar training of their staff as part of well-managed and coordinated health and safety practices. Requiring charter schools to follow local school district health and safety policies would accomplish this efficiently and effectively.

²⁰ Charter schools in the Chicago area have shown historically that they are not unwilling to bring their health and safety practices in line with CPS standards

and policies. As discussed above, some charter schools have adopted certain CPS health and wellness policies as their own. In addition, all of the responding charter schools have opted to participate in the CPS Epi-Pen initiative, whereby schools maintain a stock of Epi-Pen injectors on school grounds for emergency use. While this is encouraging, as charter schools are not required to follow local school district health and safety policies, opting out is always a possibility and the issue of great variability in health and safety protections provided to children from school to school (or even from year to year) remains.