Who Watches the Watchers? How States Evaluate Charter School Authorizers

Charter schools have thrust state boards of education into new roles. Some directly authorize charters, some do so only on appeal, and some do neither. This article examines a relatively recent addition to this task list: evaluation and oversight of charter authorizers, the entities charged with approving and monitoring charter schools.

The Authorizing Landscape

Each state decides who can fulfill the role of authorizer, responsible for creating and managing a portfolio of schools but not running them directly. Almost all states start with local school districts, but most have made other options available: higher-ed institutions like Central Michigan University and the State University of New York, large nonprofits in Minnesota and Ohio, and single-purpose statewide commissions such as the Colorado Charter Schools Institute and the DC Public Charter School Board, now found in 14 states. In 19 states, the state education agency (SEA) plays a role in authorizing, usually in combination with the state board of education (see box 1).

Oddly, early charter laws treated authorizing as an afterthought. Authorizers were the silent partner to charter-school contracts: They were to read applications, grant charters, and come back in a few years to decide on renewal. This absence of definition was one reason that a group of early authorizers got together in 2000 to found NACSA, the National Association of Charter School Authorizers, which went on to articulate principles and standards of effective practice, now incorporated directly or by reference in the laws of 18 states.¹

State-level Authorizing. Massachusetts was the first state to house authorizing in the state agency, with the state board weighing in on all high-stakes decisions, a system that has remained in place since 1993. Since then, other states including Connecticut, Arkansas, New York, Rhode Island, Arizona, and Louisiana have given the SEA and state board a leading if not exclusive role.

NACSA conducts annual surveys of charter authorizers and publishes results broken down by agency type. As a distinct group, here is how SEAs stack up:

- The 18 SEA authorizers constitute just 1.7 percent of the national total. But they have larger-than-average portfolios, and the majority of them oversee more than 50 schools each.
- SEA authorizers now account for about 20 percent of all charter schools in the United States. (That number gets a boost from the Texas Education Agency, with its 632 charters.)
- SEA authorizers have a substantially higher ratio of schools per staff member than other authorizer types, and their portfolios have been growing (table 1). With an average 5.8 FTEs per office, the offices that prepare state board decision materials may be understaffed for the volume of work they are handling.²

NACSA also asks whether authorizers use 12 “essential practices” that have been identified as critical to quality authorizing, ranging from published timelines for application submissions to formal renewal and revocation protocols. Averaging 10.5
on the 12-point scale, SEAs are roughly in the middle of the pack in deploying these essential professional practices (figure 1).

**Appeals.** The earliest form of accountability for charter authorizers was tapping a higher power to review and possibly overturn their decisions. Eighteen states allow state boards some form of appellate review over authorizer decisions to approve or renew charters. Ten states provide no explicit appeal path, and the rest fall in-between, allowing applicants to take their case to another authorizer or directly to court. Alabama, Nevada, and Illinois provide that a denied applicant can go next to the state’s charter schools commission. Florida, Pennsylvania, and Indiana all have special charter appeal commissions. Oklahoma’s state board hears appeals from the state’s single-purpose virtual charter school board.3

Colorado was one of the earliest states to enact appeals opportunities and uses a standard of review commonly seen in family law. The state board is charged with determining whether a district’s decision is “contrary to the best interests of the pupils, school district, or the community.”4 Though open to interpretation, this sets a high bar.

In Tennessee, when the state board receives an appeal of a new charter petition, it is required to do a *de novo* review and reach its own judgment about application worthiness.5

**The Path to Serious Accountability**

Early charter laws were all about schools, specifying their corporate form, their autonomy over staffing, budget, and curriculum; how they would be approved and renewed; how their funding would be calculated; and requirements for the size and composition of their governing boards. Yet no state created any serious guidance for evaluating how well authorizers met the challenge of monitoring these matters. States basically pointed at this or that institution and said “you get the job”—regardless of its interest in charter authorizing. Busy superintendents and school boards or overworked college administrators received one more burden, which some welcomed but many took on because state law required them to do so.

This “by-right” approach to designating authorizers, 90 percent of which are local school districts, created a roadblock to development of serious accountability systems. If a district is doing a lousy job of authorizing, what is the recourse? State administrators were often left to fend for themselves.6

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Box 1.

State agency and state board involvement comes in many flavors, among them the following:

- In Texas, the state board formerly was a direct authorizer; now it can only overturn a proposed approval by the state commissioner.
- **California’s** state board can directly authorize charters of “statewide benefit” to operate in multiple districts.
- **New Mexico** has no state board, but its Public Education Commission (which advises the state secretary of education) is also a chartering agency.
- **Oklahoma’s** state board approves charters that will serve youth in custody.
- **North Carolina’s** state board votes on charters after approval by a state-level Charter School Advisory Board.
- **New Jersey** has a state board but houses all chartering powers within the executive branch; the buck stops with a state commissioner appointed by the governor.
- A few states require signoff at both the local and state levels. These include **Connecticut, Alaska, Delaware, Iowa, Kansas, New Hampshire, Rhode Island, and Virginia.**
- **Georgia’s** state charter commission can only review applications turned down at the local level. Once it rules, the state board then has 90 days to review and approve or deny the petition.
- **New York State’s** Board of Regents must sign off on local-board approvals and issues all charters for the state, including those approved by the State University of New York. But if the regents decline a SUNY approval and the university’s trustees decide they want that school to open, the regents must issue a charter anyway.
- **Arkansas** moved most day-to-day authorizing duties away from the state board and into a new Charter Authorizing Panel (CAP) comprising the heads of SEA bureaus, but the state board retains final decision authority.

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takeover of its charter schools? Stripping the district of its powers, which would entail legal and political turmoil? Legislators were unwilling to venture there in the early days, so serious state-level evaluation was a moot issue.

A first step toward making authorizing an earned rather than categorical responsibility was taken in 2004 when Colorado established a Charter Schools Institute with statewide scope. Local districts could ask the Colorado State Board of Education for "exclusive chartering authority" within their attendance zones by demonstrating "a recent pattern of providing fair and equitable treatment" for their charter schools.6 Denver was grandfathered in due to its unique status under the state constitution, and more than 130 other Colorado communities now enjoy exclusive chartering authority.

A similar approach was tried when the Florida Schools of Excellence Commission was created in 2007. Its enabling statute required local districts to apply to the state board for "sole oversight" of charters within their boundaries. After the state board rejected all but three district applications, a group of districts sued. In 2008, the state court of appeals ruled the commission unconstitutional.7

Who Is Responsible? A more philosophical question has also helped stall authorizer accountability: If charter schools are autonomous, should their performance reflect in any way on the body that grants the charters? This point exposes a divide within the charter community itself. Some who favor a laissez-faire, hundred-flowers-blooming approach hold that the authorizer’s job is to approve the charter, get out of the way, and point a thumb up or down at the end of the contract term. And if schools fail—well, that’s their problem.

This attitude has been eroding since the early 2000s, when the charter sector began taking serious stock of its own performance, and leadership made a collective decision to work toward quality rather than shooting solely for growth. In NACSA’s Principles and Standards of Quality Charter School Authorizing (2004) and in Renewing the Compact (2005), a statement by the National Alliance for Public Charter Schools, the movement’s two leading organizations affirmed the centrality of choice but set out to ensure that parents would have high-quality options, not just a larger collection of mediocre ones.

For authorizers this meant owning accountability—not just for school outcomes, but also for their own craft. Their work would have a definable set of practices and skills, and they would become subject to scrutiny by the states that granted them the right to authorize.

Sunlight. State laws have always required a degree of transparency for charter schools, including annual financial audits and public hearings at renewal time. For authorizers, the requirements were less stringent. States asked for reports, but of the bean-counting sort: the number of schools opened and closed, the addresses of schools and contact information, and perhaps some already-available data such as school ratings. These requirements have been amplified in recent years as states have begun asking how well schools are actually performing.

In Illinois, for example, the statewide charter commission and other authorizers require

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*Substantially influenced by one ICB Authorizer with a very high schools per FTE ratio
Eleven states and the District of Columbia now feature formal processes for authorizer evaluation and accountability. Biennial reports. The state board then reports to the General Assembly every two years on charter performance, including comparisons to similarly situated schools, and makes suggestions for any needed regulatory changes.10

Direct Intervention. Although state boards have plenary power over public education, it has been relatively rare for them to intervene in the relationship between a charter school and its authorizer. One such case did take place in Missouri. Six St. Louis charters, all managed by for-profit Imagine Schools, had compiled dismal records of underperformance yet enrolled more than 3,800 students. Their authorizer, Missouri Baptist University, was slow to act but finally responded to pressure from state and local leaders, closing two schools in December 2011. In April 2012, the university relinquished its governing authority to the state board, and then, at the urging of then Education Commissioner Chris Nicastro, the state board promptly voted to close its remaining schools.9

Accountability Strategies

A complete system of authorizer accountability includes several components: annual reports establishing authorizing standards in law; a system for evaluating authorizers; and sanctions.10 The National Alliance’s recently revised model state charter law includes tough provisions for reviewing authorizer performance by a state-designated entity, holding that “all authorizers should be held accountable for their work.”11 Eleven states and the District of Columbia now feature formal processes for authorizer evaluation and accountability.

NACSA CEO Greg Richmond explains this trend: “I tend to encounter two arguments for authorizer accountability. One is the belief that authorizers are too hostile to charters, and the other is that authorizers are too lax. In states such as Florida and California, where districts have a monopoly on authorizing, charter school supporters push for authorizer accountability because they believe districts are hostile. In states like Ohio and Minnesota, even many charter school supporters believe that authorizing has been too lenient.”12

Leading states have adopted a number of strategies in response. Minnesota established the Minnesota Authorizer Performance Evaluation System (MAPES) in 2010. The first full-scale evaluation system, it required all incumbent authorizers to apply for permission to continue. Many took the opportunity to bow out of the business. Today, just three local districts remain as charter authorizers. (Minnesota abolished its state board in 1999, so the education commissioner is the sole decision maker for approving and renewing authorizers.)

Amendments to Indiana’s charter law adopted in 2011 give the state board a powerful transparency tool. When an authorizer renews (or
fails to close) a charter not meeting minimum standards, the state board can require it to appear at a hearing, with 30 days’ notice. This provision was recently invoked when Ball State University renewed Hoover Academy Virtual, which had compiled five “F” grades in the state accountability rankings. Although the state board can close a school or transfer it to another authorizer, the board decided to wait until 2017 to review the renewal and so far has not taken any action against Ball State.14

Under legislation passed in 2012, Hawaii’s chartering operation moved out of the state education agency and under a new statewide commission. The state board evaluates authorizers and must approve new ones. There are no local district authorizers because the entire state is a single local education agency, but statute allows universities, nonprofits, and county agencies to authorize. None has applied so far, but activism is under way for a second authorizer. The state board is working its way through a series of rule makings to establish standards of approval.15

Washington’s charter law was originally passed in 2015, overruled by the state supreme court in 2015, then reinstated by the state legislature in 2016. The law created a statewide charter commission and also charged the state board with deciding whether local districts could join the ranks of authorizers. A detailed application adopted by the state board spelled out the requirements: a strategic vision for chartering; a plan to support the vision presented; evidence of budget and personnel capacity; and drafts of proposed application processes, performance frameworks, and renewal or revocation processes. Districts granted authorizing powers receive renewable six-year contracts. Amid the legal tumult, only one district has stepped forward so far; Spokane has approved two charters.17

Ohio boasts arguably the most comprehensive authorizer accountability system, although it got off to a rocky start when a state agency staffer decided to leave the generally low test scores of large virtual charters out of portfolio-performance calculations. The state board’s responsibilities range from approving guidelines governing entry of new authorizers to receiving results of evaluations conducted by the Ohio Department of Education. ODE’s review covers three areas: the academic performance of charter portfolios; compliance with applicable laws; and authorizers’ own “quality practices,” based on NACSA’s Principles and Standards.18

States allocate duties in various ways (table 2). In four states—Hawaii, Indiana, Ohio, and Washington—state boards participate both in

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n/a = not applicable
No one should be in the business of authorizing unless they have a real commitment to quality practice and the capacity needed for the work.

Look for This Idea to Spread

Creating a thoughtful authorizer accountability plan requires some real deliberation, not only about the usual questions of measuring and reporting performance, but also about what should be attributed to authorizing itself. This is especially tricky for authorizers with diverse portfolios. Will an authorizer be treated fairly, for example, if its portfolio includes dropout-recovery schools that don’t report strong numbers on a four-year graduation rate? These are discussions the state should have with its authorizers as it considers its course.

Once in place, these guidelines should be used to reinforce a central point: No one should be in the business of authorizing unless they have a real commitment to quality practice and the capacity needed for the work. Some states have found ways to ensure this. Minnesota did so in an environment where most authorizers were colleges and other nonprofits. Alabama, Washington, Colorado, and other states are doing it by requiring districts to affirmatively ask for the authority to charter schools.

Finally, states that have hesitated to enact authorizer accountability programs should note that the federal government is now offering a strong incentive. The Every Student Succeeds Act (ESSA) strengthens numerous aspects of the federal Charter Schools Program, which provides sizeable grants for startup and early implementation of charter schools. To obtain this funding, a state must now explain how it will provide oversight of authorizing, “such as by establishing authorizing standards that may include approving, monitoring, and re-approving or revoking the authority of an authorized public chartering agency based on the performance of the charter schools authorized.”

As this essay has sought to demonstrate, there are now models to look at with several years of implementation and plenty of “lessons learned” to ponder. Perhaps this additional carrot from the federal government will help more states focus on an important link in the chain of charter school accountability.

1Ohio, Wisconsin, Louisiana, Colorado, and Illinois mention NACSA specifically. Alabama, Delaware, Hawaii, Indiana, Maine, Minnesota, Mississippi, Nevada, New Mexico, South Carolina, Tennessee, Texas, and Washington require nationally recognized standards.
9Elisa Crouch, “Missouri Calls It Quits on Imagine Charter Schools in St. Louis” St. Louis Post-Dispatch (April 8, 2012).
12Greg Richmond, email to author, October 5, 2016.
13Indiana Code, Title 20, Article 24, Section 13, http://iga.in.gov/legislative/laws/2016/ic/titles/020/articles/024/chapters/2/2/.