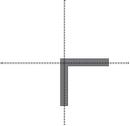
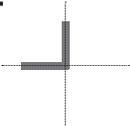




at the Center on **Reinventing** Public Education



HOLDING CHARTER AUTHORIZERS ACCOUNTABLE:
WHY IT IS IMPORTANT AND HOW IT MIGHT BE DONE



by Robin J. Lake

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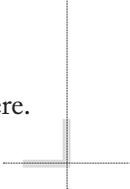


ABOUT NCSRP

The University of Washington's National Charter School Research Project aims to bring rigor, evidence, and balance to the national charter school debate. Its goals are to 1) facilitate the fair assessment of the value-added effects of U.S. charter schools, and 2) provide the charter school and broader public education communities with research and information for ongoing improvement.

NCSRP intends to identify the root causes, illuminate complexities, and move beyond polemics to elevate the level of the discussion around each problem, without making specific arguments for or against any position in the debate.

For more information and research on charter schools, please visit the NCSRP website at www.crpe.org/ncsrp. Original research, state-by-state charter school data, links to charter school research by other groups, and more can be found there.



“One of the central characteristics of most professions—exemplified best by medicine—is that their practitioners employ tools that can inflict great harm as well as good. In this critical respect, government regulators are very like professional practitioners. Whereas incompetent physicians mount intrusive assaults on the body of the individual person, the incompetent regulator can mount an assault on the body politic.”

Bardach and Kagan, 1982¹

INTRODUCTION

A compelling early argument for charter schools was the proposition that the independent public schools would be held to higher accountability standards than other public schools. Few advocates, however, contemplated the possibility that the agencies empowered to authorize and oversee charter schools would not actually fulfill their responsibilities to screen out unqualified applicants or shut down low-performing schools. Unfortunately, this has too often proven to be the case.

There *are* excellent authorizers, and one group, the National Association of Charter School Authorizers (NACSA), is working hard to raise standards of authorization everywhere. Nonetheless, irresponsible authorizing—allowing unqualified people to open schools and doing little about bad schools—may prove to be the Achilles heel of the charter school movement. That is because charter schools were intended not only as a way to create new public schools but also as a mechanism for continuous improvement of the stock of schools by intervening in or closing low-performing ones. Obviously, the existence and persistence of low-performing charter schools is the primary contributor to uneven charter school quality. In the end, if the charter school movement fails to prove itself as a viable source of higher quality public schools, bad authorizing and oversight will probably be a major reason.

A critical question, then, is why charter school authorizers, 85 percent of which are local school boards,² are not subject to any real consequences for poor oversight of charter schools (and for that matter the traditional public schools they have overseen for decades)? This paper takes on the question of whether and how school authorizers should be held accountable for their own performance. I present reasons why scrutiny and accountability are needed not only for schools but also for chartering agencies, identify what types of accountability are present now, and offer ideas for how accountability could be improved via private and government initiative. I conclude that it is past time for increased scrutiny of charter authorizer practice, even if it means challenging long-standing traditions of local school board control.

WHY ACCOUNTABILITY FOR CHARTER SPONSORS?

The crucial difference between charter schools and private school vouchers is government oversight. The charter authorizer, or sponsor, is meant to be the regulatory valve that screens out incompetent applicants and closes down low performers in order to ensure that parents have a quality pool of charter schools from which to choose. In that sense, it is almost too obvious to state that sponsoring, along with school-level leadership, is one of the two most important factors determining the quality of any group of operating charter schools.



Still, many media reports and policy debates about low-quality or even scandalous charter schools miss this critical factor. Andrew Rotherham's analysis of the California Charter Academy (CCA) describes how most observers mislaid blame in the disastrous closure of more than 60 California campuses, ignoring the seemingly negligent role of CCA's authorizers—local school districts.³ In this case, local school boards chartered schools outside their boundaries and then provided little oversight. Media reports of charter school “blow-ups” like CCA rarely include scrutiny of agency oversight lapses. This is perhaps because juicy scandals, like another charter school in California that was accused of having terrorist links, simply attract more readership than reports on bureaucratic failures.⁴ Legislators, too, have so far centered accountability attention on the schools themselves, showing more interest in enacting new regulations that should apply to charter schools than in paying attention to whether current government oversight is functioning as planned.

As Bryan Hassel and Megan Batdorff concluded, the majority of authorizer decisions to deny charter applications or revoke existing charters seem to be well founded.⁵ When decisions are made carelessly or with hostile intent, however, the bad results affect students' lives and sully the charter school movement's overall record. Opponents seize on anecdotes like the California Charter Academy's demise as a reason to impose new regulations or oppose lifting the cap on the numbers of charter schools. Poor charter authorizing clouds the question of whether the policies allowing charter schools can lead to better schools. Authorizers are supposed to offer schools a demanding bargain—greater flexibility for clearer accountability based on performance. If authorizers offer some other bargain—e.g., less flexibility or no accountability—we will never know whether chartering works as intended.

Authorizers are rarely as negligent as those in the CCA case, but some are overly tolerant, allowing sub-par school founders to start schools or failing to close down poor performers due to political pressures. As GAO's analysis of the elected DC school board

shows, board members pressured district administrators to approve applications from well-connected community groups that did not pass muster on paper.⁶ Pressure from parents has more than once kept open a school that authorizers planned to close. On the other side of the coin, school boards that would rather not issue any charters often feel pressured to do so, but some then try to give schools less money than they are entitled to, or harass them with extra regulations and inspections. Even pro-charter oversight agencies can build up unreasonable levels of regulation over time; like other government agencies, each time they encounter a “bad apple,” authorizers tend toward regulation and away from case-by-case judgment.⁷

Sometimes, authorizers are simply opportunistic or even hostile. Because school groups seeking charter status often have no option but to negotiate with an unfriendly local school board, these agreements often include unreasonably high oversight fees, overly burdensome regulation, and other disadvantageous terms.

There is usually little or no recourse for such schools. Other than seeking out another sponsor or pursuing a costly appeal process (in states that allow them) nobody is looking over the shoulders of charter school sponsors to see that they are playing by the rules.⁸ The result is charter schools that are often under-resourced and burdened by costly reporting or hostile political game-playing, making higher achievement and growth an uphill battle. Management companies cite hostile sponsor politics and over-regulation as a primary barrier to their expansion.

IS IT TIME FOR MORE SCRUTINY OF AUTHORIZERS?

There are plenty of reasons that the answer to this question should be “Yes, it is past time.” Charter laws represent new ways for states to fulfill their responsibility for educating all children. States have chosen to try this new method of providing schools, but they

remain responsible for the results. Since no approach to schooling is a sure thing, the state has a responsibility to ensure high-quality public oversight. Even in strong “local control” states, if the local school board or another chartering agency puts children at risk by neglecting its oversight duties, responsibility falls back onto the state.

State charter school laws themselves usually give at least implied oversight responsibility to state agencies, often in vague language authorizing the state education agency to “make rules to implement the Act.” Federal funds flowing to charter schools often come with accountability requirements, such as the interventions for poor performance linked to the *No Child Left Behind* Title I funds.

Charter school advocates should be concerned that the movement will suffer politically from uneven quality and scandals due to lax authorizing. Thoughtful, responsible chartering is in advocates’ interest. This is a new realization: in the past charter advocates characterized a “strong” law as one under which it was easy to get a charter and authorizers had few powers. A new definition of a strong charter law may be one that couples demanding but navigable routes to chartering with effective checks on quality authorizing.

A trend toward state laws that create multiple authorizers, many without elected boards (Minnesota and Ohio even allow private non-profit organizations to charter schools), may increase the importance of public or private oversight of charter authorizers to reassure the public. *If done well*, authorizer oversight could provide an additional public accountability function in this unusual governance arrangement. Creating a marketplace of charter authorizers has real advantages. Most importantly, a school board is less likely to arbitrarily turn down a sound charter application if it has reason to expect that the school will end up operating in its locality anyway.

However, creating a large number of authorizers opens up the question: who is responsible if there is no good school alternative for certain students? State oversight could address this issue as well by requir-

ing charter authorizers to request proposals for new charter schools to serve neglected neighborhoods or grade levels (e.g., high schools) where few alternatives are available.

Pressure from the state to take chartering seriously—especially if it comes in the form of a threat to withdraw an authorizing agency’s authorities or curtail its powers—might also give charter authorizers important new leverage over the schools they oversee. Many authorizers complain, for instance, that short of threatening to revoke a charter, they do not have much power to intervene in a struggling school. Accountability pressure on authorizers could allow them to point to a third party’s scrutiny as justification for necessary interventions. External accountability might also give authorizer staff the ability to counter board or other political pressures that the staff know are not in the best interests of students, such as approving applications from vocal community groups that do not meet the agency’s approval standards.

In the end, approving and overseeing public schools, whether via chartering or through school districts’ traditional approach of direct management, should be like having a driver’s license: it is a conditional privilege and responsibility, not a right. Similarly, a public school should not be assumed to be immortal. It, too, has a conditional license, whose renewal should depend on performance.

No Child Left Behind and other efforts to focus public school accountability squarely on performance underscore the importance of getting charter school accountability right. First, under NCLB sponsors are supposed to hold charters accountable for Adequate Yearly Progress (AYP). Second, good charter school oversight can serve as a model for how all public schools can be overseen appropriately. NCLB, for example, expects districts to “intervene” in faltering schools in ways akin to sponsors’ duties to monitor and intervene in charter schools.



WHAT IS HAPPENING NOW?

Recognizing the need for improved consistency and quality in charter oversight, authorizing agencies themselves have worked for improvements, but the resulting guidelines for best practice are new and not widespread. Until a professional authorizer association was formed in 2000, charter authorizers rarely even shared oversight strategies. NACSA began mainly as a forum for those in charge of charter school oversight to trade stories and strategies through conferences and meetings. Early philosophical divisions prevented the group from making public statements about best practices. Over time, however, NACSA has become increasingly willing to lead the formation of professional consensus around good practices through its “Principles and Standards for Quality Charter School Authorizing.” Individual state associations have also produced guidelines for quality authorizer practice (e.g., in Minnesota and Ohio).⁹ These efforts represent a growing industry consensus, but the principles and standards vary in specificity and to what degree they should be considered “minimal standards” as opposed to “best practices.” For these reasons they would be difficult to enforce. While many authorizers are voluntarily adopting the NACSA standards, many still are not.

State charter school associations have increasingly recognized that bad charter schools create problems for good ones, and they have begun to demand more rigorous proposal review and oversight. The New York Charter School Association publicly backed a decision by the State University of New York to close down a New York City charter school despite strong parent protests. The California Charter School Association has also gone on record in favor of some prominent closures. Several states have formed charter school authorizer associations that provide training and guidance on quality charter sponsoring and oversight. Even the National Alliance for Public Charter Schools, an advocacy organization, has adopted a statement in support of quality authorizer practice and suggests that states use the NACSA principles as an evaluation guide.¹⁰

Governors and state superintendents of public instruction have thus far adopted a laissez-faire attitude towards authorizers. With some exceptions, irresponsible authorizing is tolerated as a consequence of local control, especially in states with a strong tradition of a limited state role in public education. State agency reports rarely chastise authorizers for their role in charter school quality. Ohio is a notable exception. After a critical report from the state’s Legislative Audit Agency blamed the State Board of Education for poor oversight, legislators stripped the board of its authority to sponsor charter schools directly.¹¹ It now acts as an “authorizer of authorizers,” and has drafted the nation’s first application approval processes and performance requirements for authorizing agencies.¹² Minnesota has at least some state oversight of authorizers, requiring training sessions and a readiness review by the Minnesota Department of Education and the Minnesota Sponsors Assistance Network before new charter schools may open.

WHAT CAN HAPPEN IN THE FUTURE?

Any effort to craft an accountability system for charter authorizers should be approached cautiously. Just as any new medicine brings the risk of negative side effects, new accountability pressures on charter authorizers could prove disastrous if done poorly. Authorizing cannot be made a no-win situation, lest agencies conclude they need to reject any original or unusual proposals, or decide to abandon chartering altogether. This is especially important for school districts, which could easily decide that chartering schools exposes them to much more criticism than operating their own schools, even if charters are as good as or better than the schools they now offer. The answer for school districts is that they must be held accountable for the performance of all their schools, no matter who runs them. The federal *No Child Left Behind* law makes this more likely in the future, but does not guarantee it.

The following sections outline a range of possible mechanisms and consequences that might improve

charter authorizer practice through accountability. Each section includes a discussion of the strengths and weaknesses of each approach. The paper concludes with a set of criteria and guidance to help policymakers avoid creating more problems than they solve with oversight accountability.

The options presented here fall into four categories:

- ▶ First, a state can increase accountability by forcing authorizers to provide more **information and transparency**;
- ▶ Second, states can increase accountability by focusing on **process or management reviews**;
- ▶ Third, states can increase accountability by focusing on **outcomes**; and
- ▶ Fourth, states can increase accountability by creating a **marketplace of competing** authorizers. Because there is so little field experience from public education on this topic, we looked mainly to other industries or governmental experiences for ideas and for evidence about how different approaches might work.

1. INFORMATION AND TRANSPARENCY

Mandatory disclosure (transparency): Finding ways to make authorizer actions more transparent is recommended by Hassel and Batdorff as a way to shine light on authorizer actions and basically shame those agencies into better practice. Possibilities include requiring chartering agencies to adopt and publish formal policies on approval, oversight, financing, and revocation. Surprisingly few authorizers do this. Greater transparency is a potentially useful way to bring increased scrutiny on authorizers without exciting strong opposition from them. Hassel and Batdorff give the following examples of information that should be made public:

- ▶ Comprehensive lists of charter school status, including charters that have been renewed, not renewed, or revoked, as well as those never approved in the first place;
- ▶ Descriptions of what expectations were set in schools' charters;

- ▶ Lists of information gathered on schools' performances;
- ▶ Summaries of the formal reasons for authorizers' high-stakes decisions (i.e., whether to renew, not renew, or revoke).

Certainly, a basic list of information like this should be publicly available, and there would be an immediate gain just by authorizers knowing that someone might review the information. However, the positive effect would depend on 1) honest explanation of authorizer decisions, and 2) people paying attention to what is made public and assessing authorizer quality. Both of these propositions seem unlikely. States would also have to exercise restraint in setting up a list of mandated disclosure, or risk creating a new level of burdensome reporting requirements. For these reasons, mandated disclosure may not be a sufficient accountability mechanism, but it is probably a good place to start.

School ratings: Allowing charter schools to rate authorizers anonymously on whether they are holding up their end of the contract could provide another level of transparency and incentive for authorizers to keep regulations and service/oversight fees in check. Media and public pressure would be the primary consequence for poor ratings, but states might also consider allowing charter schools overseen by agencies with poor ratings to switch authorizers if the receiving authorizer agrees. This approach to accountability would rely on schools' subjective ratings of their authorizers, and it could create the opportunity for disgruntled school leaders to collude against their authorizers in order to shift blame for poor performance. It could also create an incentive for authorizers to serve schools' interests at the expense of their responsibilities to students, leading to low standards and expectations. For these reasons, a school ratings system either should not have high-stakes consequences for authorizers, or it should be used only in combination with more objective measures of quality.

Authorizer "report cards": States could make authorizer results more apparent by aggregating results



of charter schools by authorizer and publishing reports comparing the overall performance of each authorizer's schools to other authorizers, the state as a whole, and perhaps to other schools with similar demographics. If not done carefully, such reporting could have the effect of deterring sponsors from taking on schools that are going to have trouble succeeding because of the highly challenging population they are seeking to serve, e.g., dropout recovery schools, or schools for disabled kids. Still, this is an easy, inexpensive, and objective way to achieve greater transparency and incentives for quality oversight.

2. PROCESS OR MANAGEMENT REVIEWS

Independent/third party reviews (inspect the inspectors): Periodic performance audits of charter school authorizing offices could be performed by some organization in order to review sponsor actions/decisions. Such reviews may serve as incentive for good, defensible practice. If they were done only periodically and randomly (akin to a bank or IRS audit) they need not create burdensome time commitments for auditors. The review might even conclude with ratings of the authorizer's practices, analogous to those done for states in the Fordham Institute study of charter authorizing.¹³ Authorizers should get a positive inspection report if they meet minimal standards, but the process might identify exemplary practice as well and highlight opportunities to improve.

For credibility and usefulness, this function should be performed by a specialized organization that develops significant expertise on good authorizing practice, either within a state or across states, and that fully understands the intended purpose of charter schooling. It is difficult to imagine a state agency fulfilling that purpose. An independent inspectorate could be modeled after one such as SchoolWorks, an organization that reviews charter school practices in Massachusetts and New York.

To establish consequences, states might require authorizers to be accredited by the inspectorate in order to sponsor new charter schools. For a less punitive approach, states might offer financial incentives in

the form of dissemination or discretionary grants for agencies that gain accreditation, along the lines of national board certification for teachers.

An alternate approach, proposed by Dean Millot, is to use judicial review as a mechanism to protect against arbitrary authorizer decisions. Millot's idea is for states to establish one statewide appeals body that would essentially act as a court, writing decisions in such a way as to guide the future actions of authorizers. The appeals agency (perhaps the state education agency or board) would be guided by legislatively defined criteria and state administrative review codes, and when it found a school should have been granted a charter (or another high stakes decision), it would send the case back to the authorizer with instructions on how to resolve it. Decisions would be made known to all authorizers so they would have reason to avoid denying charters that they would later be forced to authorize.

The advantage of this approach is that it establishes a legally driven body of practice and carries the state's authority. Critics worry, though, that it would create too legalistic an approach, driving professional judgment and voluntary partnership out of the authorizer-school relationship by forcing hostile districts to approve and oversee charter applications with apparent merit. An applicant appeal process does not allow for the review of more mundane authorizer tasks, such as monitoring and compliance, but a freestanding state regulatory review committee could serve that purpose, weighing the costs and benefits of oversight practices and new state regulations.

Objective "standards of care": Objective minimum oversight requirements would help take the subjectivity and politics out of process reviews. Like those established in the medical or legal professions, states could establish "standards of care" for charter authorizers based on professional consensus of experts or scientific evidence and not necessarily the majority opinion. The standards would have to be unique to each state regarding legal requirements, but an organization such as NACSA would probably be the primary source for professional consensus, at least until

empirical evidence accrued. To address the problem of irresponsible authorizing, the goal would be clear minimal benchmarks for responsible authorizing. The challenge would be defining “reasonable care” or minimally competent practices, not an expansive list of best practices.

Any new professional practice standards should be informed by evidence (e.g., new research) and adjusted regularly based on lessons learned from mistakes or advances in knowledge. These standards could be used by third party reviewers or state agencies for a variety of purposes, such as informing accreditation. State action based on failure to meet standards of care or performance agreements could include mild or moderate sanctions, such as tighter regulations and reporting requirements or loss of ability to apply for state grants, or more severe consequences like revocation of chartering authority for those found negligent in oversight practice.

3. OUTCOMES

Performance goals for authorizers: Legislatively mandated performance outcomes for charter authorizers could be set as common statewide requirement (e.g., schools authorized by Agency “X” must improve by “Y” amount each year). There could be sanctions for agencies that continue to approve schools that fail to perform on a simple but fair measure. The AYP standard is an obvious candidate here.

Alternately, goals might be individualized based on unique agency goals (e.g., Agency “X” will reduce drop-out rates by “Y” percent.) This approach could be defined as something like a charter agreement for charter authorizers, defining performance goals, perhaps in exchange for greater autonomy. Maybe districts would be able to earn freedom from regulation in exchange for excellent chartering results. Either approach would need to be quantifiable and tied to consequences in order to be viable. Potential consequences are discussed below.

The advantage of this approach is that it creates strong incentives for charter authorizers to care about school

performance, not just process, and makes it clear that authorizers have a critical role to play in school achievement. Done creatively, it could also define new positive incentives for good authorizing, such as greater freedom from bureaucracy, and establish a transparent oversight agency compact between states and charter authorizing agencies. Potentially serious challenges include trying to fairly define an authorizer’s school portfolio performance, in the same way that fair appraisal of individual school performance is technically difficult and inherently politically unstable. This approach also takes on local control traditions most directly, by assigning performance expectations to districts and other agencies that have historically been exempt from such scrutiny.

Consequences for failing to meet performance standards would include a range of options similar to those previously contemplated under “standards of care.”

4. CREATE COMPETING MARKETS VIA MULTIPLE AUTHORIZERS

Withdraw the exclusive right for local school boards to act as charter authorizers: Local school boards are somewhat unique when it comes to authorizer accountability. With notable exceptions (e.g., Chicago, New York City, and Milwaukee), they are the most likely to think of charter approval and oversight as a sideline function, most likely to be reluctant or even hostile authorizers, and, as locally elected officials, most likely to enjoy deference from state agencies. The following consequences specific to school boards could leverage broad oversight improvement. All of them involve withdrawing a board’s exclusive right to oversee schools.

States could consider creating competing sponsoring agencies that can charter nearby schools, thereby setting up direct competition for market share in districts that fail to take their chartering responsibilities seriously. In Colorado, for example, a district can lose its exclusive chartering authority if it behaves badly (e.g., by refusing to consider new charter applications), and charter applicants can approach the statewide Charter Schools Institute for a charter instead.



States could also consider making it possible or easier for existing district schools seeking to convert to charter status to petition authorizers other than their own district, in cases when their local school board is found to be a hostile or negligent charter authorizer. Under this scenario, a school board would have the incentive to meet community demands for new charter school options or risk losing a much more significant number of existing district schools to competing authorizers.

As discussed more generally above, states might choose to completely revoke an irresponsible district's right to authorize charters and move oversight responsibility of existing charters under the district's purview to another authorizer.

For school district charter authorizers, however, states could go even further to send a very strong message that charter and non-charter public school students deserve responsible oversight: an incompetent record of charter oversight could also lead to decertification of the local board. Although this would be intensely controversial, it would fundamentally challenge the notion that "local control" means that local officials can have low standards for public schools in their charge.

It is important to note that alternate authorizers should not be viewed as a panacea. Such a marketplace can create perverse incentives if authorizers come to see fee-paying applicants as sources of income or clients. But those incentives can exist when districts have authorizing monopolies as well. Further, some districts have proven themselves model charter authorizers. The goal should not be to move away from districts as authorizers, but to align incentives and safeguards to promote high-quality oversight wherever it takes place.

SUMMARY

This paper defines a range of approaches and consequences states could pursue to improve authorizer accountability. They are summarized below.

Approaches:

- ▶ Information/transparency
- ▶ Process reviews
- ▶ Performance standards
- ▶ Introduction of competition (markets)

Consequences:

- ▶ Public pressure/peer pressure
- ▶ Sanctions/intervention
- ▶ Revocation

The risk of negative side effects increases as one moves down the list of consequences. Any new authorizer accountability policies could create the following pathologies:

- ▶ Assessments/reviews by bureaucrats who do not understand or support the purpose of chartering;
- ▶ Excessive new oversight responsibilities that overburden state agencies;
- ▶ Authorizer accountability policies that discourage sponsors from taking reasonable risks for the sake of innovation; and
- ▶ Severe consequences tied to highly subjective measures.

Some forms of consequences could fail due to:

- ▶ Weak follow-up/implementation by state officials; or
- ▶ A dearth of alternative, capable authorizers.

Because most of these approaches have not been tried, it is an open question whether the risks of any one approach is worth the potential gain. One reasonable position is to start with the least intense approach—mandated disclosure—and see if the improvements are sufficient to protect students and the integrity of the charter school experiment. If not, other approaches should be tried.

The charter school movement is best known for redefining school-level regulation. In the end, however, it

may be that charter schooling's most significant contribution to public policy is to finally draw the state into the question of how much and what kind of local oversight is required to maximize the effectiveness of public schools, and to serve as a forerunner/prototype for NCLB-era results-based school accountability in general.

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