



# NATIONAL CHARTER SCHOOL LAW RANKINGS & SCORECARD 2018

THE ESSENTIAL GUIDE  
FOR POLICYMAKERS  
& ADVOCATES



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# NATIONAL CHARTER SCHOOL LAW RANKINGS & SCORECARD—2018

THE ESSENTIAL GUIDE FOR POLICYMAKERS & ADVOCATES

THE CENTER FOR EDUCATION REFORM

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# SUMMARY

Charter schools are public schools of choice. The simple and original principle of charter schooling is that charter schools should receive enhanced operational autonomy in exchange for being held strictly accountable for the outcomes they promise to achieve. When charter school laws honor this principle, innovative, academically excellent charter schools flourish. In turn, schools that fail to produce strong outcomes close.

**In 2018, there are almost 7,000 charter schools serving more than 3 million students in 44 states across the nation.** More than 500,000 individual students are on charter school waiting lists across the country.

**Charter schools nationally serve more minority students and more economically disadvantaged students than their district counterparts.** Individual charter schools are more likely than district schools to serve concentrations of students who live in poverty.

Since the first charter schools were established in the 1990s, the movement has spread to every corner of the country, with concentrated growth in the nation's largest urban centers. Over time, demand for charters has skyrocketed, despite setbacks deriving from weak charter school policies, overregulation, and false perceptions of charter schools promulgated by opponents of school choice.

One of the reasons parents and students seek charters is because, when they work, they offer options that are distinct from those found in most traditional school districts. The innovations that charters are best known for are extended school days and years and, in some places, one-to-one tutoring. But charters innovate in many other ways as well: from developing unique approaches to teacher training to pioneering tools for personalized learning, many innovations that are now accepted as common were born in the charter sector.

Charter schools are popular and innovative. They are also effective. Gold standard (randomized control trial) research finds that many charter schools are closing achievement gaps that once seemed intractable.

**A 2005 study found that charter middle schools in Chicago closed “just under half of the gap between the average disadvantaged, minority student in Chicago Public Schools and the average middle-income, non-minority student in a suburban district.” Studies out of Boston show that “Charter school attendance has large positive effects for math and English state exam scores for special needs students” and that “attendance at one of Boston’s charter high schools increases pass rates on the state graduation exam, facilitates “sharp gains” in SAT math scores, and doubles the likelihood that students will sit for Advanced Placement examinations.”**

And charters aren't only successful in urban centers. They are making a difference nationwide: **A study of charter middle schools in fifteen states found a “statistically significant and positive impact for low-income and low-achieving students in math.”**

Despite this evidence of success, misconceptions about charter schools persist. In 2017, The Center for Education Reform (CER) compiled some of the most common myths about charter schools in the U.S. and countered them with facts (*see next page*).

Knowing these facts about charter schools is critical to understanding how to improve educational options for more children in the U.S. More importantly, understanding how to create strong charter public schools will ensure that more students have access to high-quality school options.

Charter school success depends on the policy environments in which charter schools operate. Some state laws and regulations encourage diversity and innovation in the charter sector by providing multiple authorizers to support charter schools and allowing charters real operational autonomy. As Michael Q. McShane has pointed out, **where diversity exists, charter schools have the opportunity to innovate.**

Too many states, however, hamper charter schools with weak laws and needless regulations. These make it difficult to distinguish charters from their district counterparts. Most states fund charter schools at only a fraction of what district schools receive, and a large number don't allow charter schools access to the same tax bases that support district schools. Where this is the case, charter schools become a line item in state budgets, vulnerable to political whims.

Weak charter school laws have proven that when we apply the same old rules to district and charter schools, we get more of the same. Overregulation and underfunding force charters to behave as district schools by another name. **Wouldn't it make more sense to allow charters the room to innovate and succeed so that they could, in turn, help district schools subvert the status quo?**

Since 1996 CER has researched, analyzed and ranked state charter school laws in an attempt to demonstrate how weak charter school laws create weak charter schools. These findings consider not only the content of each law, but also how the law impacts charter schools on the ground: How robust is the charter sector in each state? How diverse are the schools? To what extent do burdensome regulations prevent charters from doing anything meaningfully different?

As in years past, the national rankings carefully consider the impacts of overregulation, particularly on innovations in teaching and learning. And this year's National Charter School Law Rankings & Scorecard goes a step further, providing case study examples of how regulations and other aspects of poorly conceived charter school policies impact charter operators and students. In addition to these case studies, CER also provides model legislation for policymakers to consider when crafting or amending charter school laws and regulations.

With this important guide, there is evidence-rich feedback and guidance to policymakers. With feedback and guidance, change is possible.

### — MYTH —

- Charter schools represent the “privatization” of education.
- Charter schools are unaccountable to the public.
- Charter schools “cream” the most able students.
- Charter schools produce “mixed” or “poor” academic outcomes.
- Charters schools “drain” resources from districts.

### — FACT —

- Charter schools are public schools of choice.
- Charter schools are held to a higher standard of accountability than district schools, in exchange for certain autonomies.
- Charter schools serve more poor, minority and economically disadvantaged students than district schools.
- Gold standard research shows that charter schools produce superior academic outcomes, especially in urban centers.
- Charter schools operate on smaller budgets than district schools, and they do more with less.



# NATIONAL CHARTER SCHOOL LAW RANKINGS & SCORECARD—2018

## THE ESSENTIAL GUIDE FOR POLICYMAKERS & ADVOCATES

The first charter schools opened more than 25 years ago. CER’s leadership was at the table since the inception and participated first hand in the development and vision for chartering. Those who conceived the idea of “chartering schools” were committed to enhancing choice for families and providing flexibility for school operators in exchange for accountability for results. They envisioned that the right balance of autonomy and accountability would lead to more innovative curricula, pedagogy, and school structures and better educational experiences for students.

In some places, charter schools have fulfilled that vision. They have been tools for innovation and reform, providing families who haven’t previously had options with excellent alternatives to traditional schools. In other places, charter schools have struggled to differentiate themselves. Why have charters delivered on their promise in some places but not others? The answer: Because states take radically different approaches to chartering.

The states and cities with the most innovative, high performing charters are those that protect the main principles of charter schooling—autonomy in exchange for accountability—with strong laws and sound implementation of those laws. The places where charters have struggled are those where policymakers have only reluctantly and half-heartedly committed to the idea of chartering schools. They have created laws that make it difficult for charters to behave differently from their district school counterparts or they have allowed charter school authorizers to circumvent the law, in practice.

## PURPOSE

*Since 1996 CER has ranked state charter school laws to provide feedback and guidance to policymakers. With feedback and guidance, policymakers can better understand how charter school laws and the regulatory environments in which charters exist hamper or hinder charter quality and the expansion of high quality schools.*

Over the years, other pro-charter organizations have developed their own methods for assessing charter school laws. The main difference between this national analysis and those of other national groups—even those that are pro-charter—is that our research *evaluates the quality of each law and considers how the implementation of each law impacts charter schools and charter growth in each state*. Over the past 22 years, CER has observed that there are important differences between the language of state laws and the behaviors of stakeholders on the ground.

These differences matter now more than ever. After a period of slow but steady growth in the last decade, the expanding charter school movement came to a near halt in 2017. This decline is occurring despite an increase in demand for charters. In some communities, tens of thousands of students languish on charter school waitlists. As policy prevents these students from accessing high performing schools, achievement gaps persist and scores on the National Assessment of Educational Progress (NAEP) or the Nation’s Report Card as it’s commonly known, along with international examinations have declined.

The same states and urban centers with comparatively sound policies continue to do good work, but too many of them struggle to meet demand for better schools because of charter school caps and inequitable funding practices. Unfortunately, only a few states have improved charter school laws by allowing additional authorizers or making small adjustments to how charter schools are funded.

In 2017, Kentucky became the 44th state to pass a charter school law. Theoretically, this should contribute to the growth of the national charter school sector. Unfortunately, as our CEO Jeanne Allen explained in the *Courier-Journal*, Kentucky’s law is unusually limited and thus weak and unlikely to foster a strong charter sector. It puts power primarily in the hands of school districts (with some geographic exceptions) and needlessly regulates the autonomy that prospective charter operators should have. In fact, some of Kentucky’s regulations are likely to prevent the establishment of charter schools in the first place.

Another impediment to charter growth is the way in which most state officials view charter schooling. Even “pro-charter” policymakers too often see charters and other choice strategies as mechanisms for education reform and no more. They create laws and regulations that focus on leveraging charters only in low-performing areas. This forecloses the ability of small, innovative operators to start charter schools and gives an advantage to established, often large, charter management organizations (CMOs).

Leveraging charters in this way is not a bad thing, and many large charter organizations are making important differences for students who have not traditionally had access to good schools. They are “reforming” the schools that have failed too many Americans.

But charter schooling is about *education reform and more*. It is about students, and parents, and choice. It is about flexibility and innovation. It is also about accountability for outcomes rather than inputs. And today, in a world where personalized learning is vital to ensuring every student has the agency to chart their own course, chartering is also about transformation: The transformation of how students encounter content and the pace at which they can move, which transforms the learning experience more broadly.

A philosophy of charter schooling that favors the status quo over educational transformation leads to technocratic policies that prescribe what charter school operators can and cannot do, which deters innovation. It leads to a highly regulatory environment that is antithetical to the concept of charter schooling.

Some observers have termed this phenomenon “regulatory reload.” Across the national charter sector there is widespread evidence of creeping regulatory intrusion in decisions about academic programming, curriculum, discipline, and teacher qualifications. Policymakers are no longer able to tell the difference between policies that advance the cause of effective charter schools and those that strangle them.

CER’s rankings carefully consider the impacts of overregulation, particularly on innovations in teaching and learning. And this year’s rankings go a step further, providing case studies showing precisely how regulations and other aspects of poorly conceived charter school policies impact charter operators, students, and families day-to-day. The cases presented here are important because they are not unique: They are examples taken from single schools or locales that illustrate what is happening in communities nationwide.

Finally, we offer here a model charter school law produced in cooperation with the American Legislative Exchange Council (ALEC), the nation’s largest membership organization of state lawmakers committed to the principles of freedom and limited government. The model law provides language that legislators can use to ensure that states don’t set charter schools up to fail before they start. Laws are only the first step in growing a successful state charter sector: Implementation matters. But, without the right start—language that provides real autonomy in exchange for accountability for outcomes—charter schools don’t have a chance.

Federal, state, and local policymakers should read the rankings, case studies and model legislation with an eye to understanding how well-intentioned policies can go awry. Recognizing the features of a strong charter school law is important, but it is equally important to analyze the impacts of a weak charter school law.



# METHODOLOGY

Since 1996, CER's has ranked state charter school laws according to criteria that pioneers of the charter school movement identified. Each year the rankings have dissected the components of individual laws to understand overall strengths and weaknesses. They have also provided evaluations of how laws are impacting the quality and growth of charters in real time.

This publication presents the states from those with the strongest grades to those with the weakest. It is important to note that while states that receive "A" grades have strong laws, most still have room to improve; even the best laws and policy environments need work. Our rankings award the strongest laws "A" grades in order to provide analysts and policy-makers with a tool that is unique in the field.

The methodology corresponds to the core principles of chartering. CER assesses the extent to which each state's charter school law:

- Enables citizens to create schools that are independent from traditional school bureaucracies in oversight and operations
- Provides schools wide latitude to operate and innovate without onerous administrative rules and regulations, which dictate what they can do and how they can do it
- Gives parents numerous, meaningful school options, allowing them to provide their children with an education tailored to individual needs

The rankings are reported in four categories: "authorizing," "growth," "operational autonomy," and "funding equity."

## AUTHORIZING

Multiple authorizers are critical to strong charter school laws, but just as critical is the independence of those authorizers. In 2015, CER identified a new trend called "über authorizing," newly created regulatory bodies that essentially "authorize the authorizer."

Über authorizers typically have great latitude to regulate and revise rules, and they are often state bureaucracies. States are creating über authorizers in the name of establishing additional standards for quality. But, rather than guarantee quality, über authorizers strip school operators of autonomy and strip authorizers of their independence. In the end, über authorizers subvert charter schooling because they empower bureaucracies to make decisions that parents can make better. They decide which schools can be established and how they will operate. They confuse accountability with regulation and force charters to behave in the same ways as district schools, which charters were intended to replace.

States that ensure independence for authorizers score higher in the rankings than those who do not.

## GROWTH

Policies that make it difficult for operators to establish charter schools, such as charter school caps, limit opportunity for families. Often, bureaucracies and policymakers advertise policies that limit charter school growth as mechanisms for accountability. However, charter school

accountability is best exercised when charter schools close because they fail to fulfill the terms of their contracts by fair and objective measures.

For decades, researchers and policymakers have questioned the capacity of the charter school movement to “scale.” Some excellent charter operators have answered this question by replicating their offerings community-wide, statewide and, in some cases, nationwide. But this isn’t the only type of scale that is important.

Strong charter school laws encourage the replication of successful school models, but they don’t limit charter school growth to these “proven providers.” Policy must also focus on enabling new and innovative operators to enter the scene, providing new ideas and options for families. Those who many now consider to be “proven” were once new and unproven.

CER’s rankings consider not only whether a state’s law encourages growth but whether growth is happening, in practice.

## **OPERATIONAL AUTONOMY**

At the beginning of the charter school movement, it was easy to view laws as either encouraging or limiting charter school freedoms. Increasingly, charter school laws are becoming more complex. They not only stipulate whether and the degree to which charters are free from state and local laws; they also stipulate conditions for charter school creation and operation. States that permit charter schools real operational autonomy—giving them blanket waivers from the rules that govern district schools—see more innovation (curricular, pedagogical, technological) in their charter sectors than those that do not. States that grant charters real operational autonomy also see greater diversity among charter school offerings.

Critics of charter schools like to point out that charters haven’t delivered on the promise of innovation. Much of the potential to innovate (or not) derives from state laws. But innovation isn’t the only thing that chartering promised. The pioneers of the charter school movement promised parents’ choices.

Having diverse schools to choose from—real choices among different offerings—engages parents and drives more innovation. And innovation doesn’t always have to be something “new.” In some cases, innovation means going “back to basics,” offering students who want a more “traditional” education a more “traditional” option. Consumer demand and innovation—in all its forms—go hand-in-hand.

In the rankings, “operational autonomy” includes the extent to which charters are, in practice, free from the typical regulations (length of school day, collective bargaining units, teacher certification rules) that typically govern district schools. It also includes whether or not states allow for online or blended learning, single-sex schools, or alternative schools enabled to deliver alternative assessments.

## **FUNDING EQUITY**

Even when a law allows for independent authorizers, real autonomy for schools, and enables growth in the charter sector, it can prohibit quality and growth by depriving charter schools of even baseline funding. Too many states fund charter schools at levels dramatically lower than their district counterparts.

Many laws contain complex funding formulas and language that leaves charter school funding open for interpretation. Still others make charter schools dependent upon hostile district authorizers or annual state budgets for funding. Finally, the vast majority of states provide charter schools with little or no per-pupil facilities funding and too few states provide other mechanisms for charters to access and pay for buildings and the cost of operating buildings. This “facilities burden” drains charter school budgets and causes operators to spend money that should go to students, on rent payments and utilities.

CER’s rankings consider how states fund charter schools, how funding formulas impact schools in practice, and the extent to which facilities funding is available.

## **FLEXIBILITY IS FUNDAMENTAL TO CHARTER SCHOOL SUCCESS**

*Any solution starts with recognizing that charter schools can only reinvent public education if they operate outside of the traditional system. The best people to build great charter schools, district charter portfolios, and statewide charter sectors are visionary educators and reform-minded entrepreneurs passionate about enabling charters to fulfill their distinct missions. Now that the charter movement has come through 25 years of development, there are many such seasoned professionals with the real-world knowledge and field experiences to redesign reporting systems from the ground up. If done properly, these systems could free up precious resources to support higher levels of performance instead of removing the operating autonomy and flexibility so fundamental to charter success.*

**— Benjamin Lindquist, writing for the Thomas B. Fordham Institute**

# THE STATE LAWS

SCORECARD, ANALYSIS & CASE STUDIES

EXPERT RESEARCH & ANALYSIS  
PLUS CER'S LETTER GRADES  
FOR ALL 50 STATES & DC



Alabama’s charter school law is young—it was passed in 2015. Unfortunately, it’s not a strong law, and it receives a “D” in the rankings. The law provides for only one (state) authorizer. One charter school has opened in Alabama.

### FAST FACTS

- Law passed: 2015
- Number of charter schools: 1
- Estimated charter school enrollment: 300
- Virtual schools allowed
- Alabama caps the number of charter schools that can be authorized
- Charter schools can contract with EMOs and CMOs for management purposes

- Alabama earns 3 of 15 points for “authorizing.” Alabama school districts can register with the state to be charter authorizers. The Alabama Public Charter School Commission can authorize charter schools on appeal or in districts that choose not to register. While it is beneficial that the Public Charter School Commission is able to authorize charter schools on appeal, forcing charters to go through districts first greatly limits incentives for potential operators to apply for charters. Moreover, this layered (district and state) approach to authorizing subjects charters to additional, unnecessary, time consuming regulations.
- Alabama earns 3 of 15 points for “growth.” The law imposes a cap of ten new schools per year, which expires in 2020. There has been no growth in the charter sector since the Legislature passed Alabama’s charter school law.
- Alabama earns 12 of 20 for “operations.” Charters receive a blanket waiver from regulations that apply to district schools. However, the law also empowers the state Board of Education to write regulations specific to charter schools. This creates a political environment where charter schools can be subject to regulations that harm their ability to operate effectively, adversely affecting the student experience.
- Alabama earns 5 of 15 points for “funding equity.” Because the statute is new, it is unclear how Alabama’s charter provisions will be interpreted and implemented. The law calls for charter schools to be funded at parity with district schools and even calls for charters to receive local dollars (in addition to state funds). The law does not provide per-pupil facilities funds.

Alaska earns an “F” in CER’s charter school law rankings. Alaska’s law is very weak because it allows for only district authorizers and districts are also responsible for providing operational funding to charters. Charters have little autonomy in Alaska because of their dependence upon districts.

### FAST FACTS

- Law passed: 1995
- Number of charter schools: 29
- Estimated charter school enrollment: 6,600 (down 1 percent from 2016)
- Virtual charter schools allowed
- Alaska does not cap the number of charter schools that can be authorized
- Charter schools can contract with EMOs and CMOs for management purposes

- Alaska earns 2 of 15 points for “authorizing.” Only school districts can authorize charter schools in Alaska, though the state must approve districts as authorizers. One positive aspect of Alaska’s law is that a charter can appeal to the state if a district makes an arbitrary or unfair decision. Unfortunately, the state’s power to approve authorizers and hear appeals makes it an über authorizer. This is dangerous in that it can limit diversity an innovation in the charter sector.
- Alaska earns 11 of 15 for “growth.” While Alaska does not cap the number of charter schools that can be authorized, its regulatory environment has made it difficult for successful charter schools to expand. In recent years there has been little growth in the number of new charters opening and in student enrollment in charter schools.
- Alaska earns 4 out of 20 points for “operations.” In Alaska, charter schools are required to negotiate with school districts for the vast majority of their exemptions from regulations that typically apply to districts, including collective bargaining agreements This means that charters don’t always have the autonomy they need to differentiate themselves. When charters are not exempt from collective bargaining agreements, in particular, there is little difference between charters and district schools. Charter school teachers must be traditionally certified.
- Alaska earns only 1 of 15 points for “funding equity.” Districts provide charters with their annual budgets. The law states that a charter school’s budget must be equal to the per-pupil amount that the district receives, including state and federal categorical grants. However, the district can further deduct operational expenses and set administrative costs of up to 4 percent. Charter Schools receive no per-pupil facilities funding.

## WHAT REAL EDUCATION REFORM REQUIRES

*If education reform could be accomplished simply by identifying and closing bad schools while expanding good ones, everything could be fixed already without any need for school choice. We would just issue regulations to forbid bad schools and to mandate good ones. See? Problem solved. But real education reform requires using the power of choice and competition to provide incentives to create more good and to reduce bad. The whole problem with the high-regulation approach is that it falsely believes regulators can define, identify, and require good outcomes. If that were in fact possible, we would have already solved the problem and we could have done so without any school choice. The enduring troubles of the traditional public system tell me that is not possible.*

— **Jay P. Greene, University of Arkansas, Department of Education Reform**

Arizona has one of the strongest charter school laws in the country. It enables a wide, varied, and independent charter school sector. Arizona’s charter schools also have a lot of autonomy; the state scores higher than any other in the “autonomy” category.

The law also scores well because it allows for multiple authorizers, although there isn’t a wide variety of authorizers currently operating. An independent charter commission, the Arizona State Board for Charter Schools (established by law) and school districts authorize charter schools. The state has recently encouraged universities to partner to create charter schools, as is the case at Arizona State University.

### FAST FACTS

- Law passed in 1994
- 556 charter schools
- Arizona’s law has no cap on the growth of charter schools
- Estimated charter school enrollment: 185,900
- Virtual charter schools allowed
- Charter holders can contract with all education service providers

- Arizona earns 13 of 15 for “authorizing.” Arizona’s law allows for multiple entities to authorize charter schools: Universities, school districts, and the State Board for Charter Schools. In practice, however, the State Board authorizes the vast majority of schools. The Board is a strong authorizer and has historically granted schools autonomy and allowed the sector to grow. But having one authorizer limits the amount of charter schools that exist because there are fewer entities authorizing charter schools.
- Arizona earns 13 out of 15 for “growth.” While Arizona does not cap the number of charter schools that can be authorized, its charter sector has shown very little growth in recent years. The large number of schools that currently operate suggests that the market for charter schools in Arizona could be saturated; there is enough supply to meet demand.
- Arizona earns 18 of 20 for “operations” because its charter schools have a blanket waiver from all non-health and safety regulations that apply to traditional public schools. However, the State of Arizona and the Board have recently been requiring charter schools to comply with reporting requirements that constrain the ways schools can behave.
- Arizona earns 7 of 15 points for “funding equity.” Arizona’s law calculates a base support level for charter schools and provides equal access to all applicable categorical federal and state funding. But inequities in facilities funds and some federal funding disparities have resulted in school finance lawsuits in recent years

## ANALYSIS:

# THE GROWING CHALLENGE TO CHARTER SCHOOLS

*by Jeanne Allen, Center for Education Reform*

Once a grass roots education reform driven by parents and communities, in the past twenty years charter schools have expanded rapidly across the nation. That expansion has meant more and often better educational options for students and families. But it has come at a cost.

As the charter movement has grown it has been coopted by well-intentioned advocates, funders, and reform-minded members of the education establishment who have insisted upon systematizing and institutionalizing the sector at both the state and national levels. That institutionalization has come in the form of policy environments and onerous regulations that tightly prescribe the conditions under which charter schools can be established, exist, and grow.

As a result, a reform that once promised innovation and true choice for families has come to look more and more like the district school bureaucracies that founders of the charter school movement sought to escape. Rather than differentiated, charter schools and the structures for charter schooling in each state and locality have become similar. The institutionalization of the charter sector has occurred for a number of reasons, including:

- Competing understandings of the role that charter schools should play in education reform
- Pressure to “organize” charter schools around one vision in service of expanding the movement
- Pressure to replicate charter organizations based on narrow measures of success, such as test scores alone
- Pressure to close charter schools based on narrow measures of failure, such as test scores alone
- Growing numbers of state and federal regulations that restrict charter school autonomy, focusing on inputs and compliance as opposed to outputs and innovation

As the charter school movement enters its third decade, charter advocates and reform-minded individuals and organizations have a choice to make: Will we free up charter schools to once again become a grass roots movement or, as Al Shanker might have had it, a cause that arises from and is driven by each local community—a form of schooling that engages parents and students and empowers teachers and administrators?

Or, will charter schools continue to become just another way to “do” public schooling, providing the lucky with an opportunity to attend schools that look alike and produce high test scores but lack the freedom to do anything truly innovative for students?

With one of the weakest charter school laws in the country, Arkansas earns a “D” in the rankings. The state’s de facto single authorizer, cap on the number of open enrollment charter schools, and regulatory environment depress Arkansas’ score.

## FAST FACTS

- Law passed in 1995
- 58 charter schools
- Estimated charter school enrollment: 29,400 (up 24 percent from 2015-16)
- Arkansas caps the number of open enrollment charter schools
- Virtual charter schools permitted
- Charter schools can contract with EMOs and CMOs for management purposes
- A study by the University of Arkansas concluded that charter schools in Little Rock receive 38 percent less funding than traditional public schools in Little Rock

- Arkansas earns 4 of 15 for “authorizing.” The state school board authorizes open enrollment schools, and school districts authorize conversion charters. In both cases, there is only one entity that is able to authorize charter schools, and the law provides no route for charters to appeal arbitrary decisions.
- Arkansas earns 6 of 15 points for “growth” because the law caps the number of new charters at 5 per year. At the writing of this report, the state is approaching the cap. In addition to this arbitrary cap, Arkansas’ policies make it difficult for successful charter schools to expand. One example is that the law requires a separate board of directors for each charter campus.
- Arkansas earns 11 of 20 points for “operations.” Charter schools must negotiate for waivers with the government. Blanket waivers from the regulations that apply to district schools are preferable, as they guarantee charter school autonomy.
- Arkansas earns 5.5 of 15 points for “funding equity.” The law states but does not guarantee that charters are funded at parity with their district counterparts. For open-enrollment charters, funding is determined annually by the state board of education. Charter Schools in Arkansas do not receive per-pupil facilities funding.

## CASE STUDY:

# ONE SIZE DOES NOT FIT ALL IN ARKANSAS

*Adapted from Benjamin J. Lindquist, "The Achilles Heel of Charter Growth-Overregulation," published for the Thomas B. Fordham Institute, March 22, 2017.*

- Charters should operate under charter-specific reporting systems that support distinctive school options.
- Authorizers should provide a single point of contact for all schools to streamline monitoring and reporting processes.
- Authorizers should leverage technology to make information retrieval, analysis, and reporting less burdensome.

Thirteen different bodies across four state agencies monitor Arkansas charter schools. Each requires schools to report to a different person and comply with different requirements. In 2014–15, Arkansas charters were each expected to submit 374 separate reports as part of the standard compliance calendar. Even when a school had waivers, it was still required to complete all reports; never mind whether they apply to its activities.

As part of the reporting load, charters must navigate at least four and as many as six major reporting events every year, including but not limited to audits of finance and reporting, annual parent involvement plans, accreditation standards reviews, and school improvement plans. Each of these events requires 30 to 80 hours of labor from school administrators depending on the level of state scrutiny. The state also requires charter administrators to attend state trainings. In 2014-15, this meant that charter school leaders, spending 19 days off of school grounds. Burdensome? It gets worse.

Why does such a large reporting load matter? Authorizers have the power to impose reporting requirements that dictate every major aspect of what charter schools do. When their compliance mandates prevent adults from focusing on student learning and force conformity with regular district schools, they defeat the very purpose of chartering, which is to provide a variety of high-quality, distinctive options to learners and families with differing needs and preferences. One size does not fit all!

And this isn't only a problem in Arkansas. The scale and burden of overregulation in charters across the country are easily overlooked. They make day-to-day operations and charter expansion a problem. Overregulation may be the best way to stop charter schools from flourishing. It also prevents charters from cultivating best practices from which districts can learn. But, there are solutions.

Charter-specific authorizers can implement charter-specific oversight systems. They can create specialized teams and single points of contact for monitoring. They can also leverage technology to streamline necessary reporting processes. Even these small steps can make a world of difference for school performance.

California’s “B” grade reflects the autonomy its charter schools enjoy and the high degree of innovation coming out of California’s charters as a result of that autonomy. The Golden State has a large and robust charter sector. However, only districts can authorize charter schools, and denied applicants often have to appeal to the state board. Some districts also emphasize compliance over innovation. Furthermore, the state’s elected board is vulnerable to politics; pro- and anti-charter sentiment can shift from election to election. This was clear in the most recent election, where anti-charter forces struggled but failed to maintain a majority. This bodes well for the growth of the sector for the time being, but additional, independent authorizers would protect the sector from politics.

## FAST FACTS

- Law passed in 1992
- Number of charters: 1,275
- Estimated charter enrollment: 604,700 (increase of 4 percent from 2015-16)
- Online charters are permitted, but heavily regulated: They must spend at least 40 percent on teachers and 80 percent on instructional expenses (not facilities)
- Charter schools can contract with education service providers for management services
- California has a cap on the number of charter schools that can be authorized. However, this cap is raised by 100 schools every year and does not hinder the growth of charter schools
- A study by the University of Arkansas showed that charter schools in Oakland and Los Angeles had a 40 percent funding disparity with traditional public schools

- California receives a low score for “authorizing,” mainly because it limits authorizing to districts. Charters that want to operate in several places can apply to the state Board of Education.
- California earns high growth score with 13 of 15 points. California charters have seen steady growth of schools and enrollment.
- Law affords schools a blanket waiver from most regulations. However, since districts are the primary authorizers of charter schools, charters are too often subject to unnecessary regulations that hamper autonomy and innovation.
- California receives a low score for “funding equity,” Although the state provides charters access to public buildings (many states do not), there are limited funds (\$800 million) for charter school facilities development. This is not nearly enough considering the size of the state and the number of charter schools.

## ANALYSIS:

# STANDING UP TO REGULATORY BURDEN IN L.A.

- When authorizers inconsistently apply arbitrary rules, charters spend more time on paperwork and compliance and less time educating students.
- When authorizers require charters to use their services instead of those that are best for students, they prioritize adult interests and subvert charter autonomy.
- When inspection and renewal processes are too frequent or overly burdensome, especially for schools with strong performance records, time, resources, and human capital are diverted from learning.

California is home to some of the most innovative and high-performing charter networks in the country. But executing innovative ideas and programs isn't always easy, especially when district authorizers pile on rules and regulations that focus on compliance rather than outcomes.

In the fall of 2017, charter operators in the nation's second-largest school district, Los Angeles Unified School District (LAUSD), risked closure to take a stand against onerous regulations that they claim are bad for students. At issue were arbitrary rules that the district changes frequently and applies inconsistently, lack of a process for contesting district decisions regarding charter school operations, and the requirement that charters operate on annual instead of multi-year contracts. Some charter operators also questioned the broad authority of the district's inspector general to conduct lengthy and burdensome inspections of charter schools.

LAUSD was threatening to close several charter schools, despite strong academic performance, for failing to comply with district rules. Some of the schools facing closure refused to use the district to oversee services for disabled students. The ability to choose the best service provider for students, they argued, is an important autonomy for charter schools, guaranteed by California law. Other district processes and procedures, such as lengthy inspection processes and the awarding of annual as opposed to multi-year contracts, generated large amounts of paperwork for charter schools, taking time away from students and academic endeavors. Such regulatory burden was forcing charter operators to behave like traditional public schools, undermining the charter bargain of increased autonomy for increased accountability.

Had the state's most recent election favored anti-charter forces, several high-performing Los Angeles charter schools might have been closed for simple compliance issues. But on November 7th, the state board granted charters relief from several of the contested district rules (including the requirement that LAUSD oversee services for disabled students) and voted to keep the majority of the 16 schools slated for closure open. In another year or a different political climate, the outcome might not have been positive for charters or the thousands of Los Angeles families that seek charter school options.

Colorado rose in this year’s rankings to receive a “B.” Colorado has seen increased net growth in the charter sector and has allowed for more innovation in established schools. In addition to districts, a semi-independent institute authorizes Colorado’s charters. However, the law prevents the institute from authorizing schools in districts where the State Board of Education has granted exclusive chartering authority. This limits opportunities for operators to establish more diverse schools.

CER also ranks Colorado highly because it provides charter schools with significant operational autonomies and a comparatively strong funding base.

## FAST FACTS

- Law passed in 1993
- Number of charters: 250
- Estimated charter enrollment: 114,700 (up 5 percent from 2015-16)
- Colorado does not cap the number of students who are attending charter schools
- Colorado allows charter schools to contract with all education service providers and virtual charter schools are allowed
- Charters are entitled to 100 percent of the per-pupil operating funds their students would receive in district schools minus up to 5 percent in administrative fees
- A study by the University of Arkansas concluded that charter schools in Denver receive 21 percent less in per-pupil funding than traditional public schools

- Colorado receives only 9 of 15 possible points for “authorizing” because the Colorado Charter Schools Institute (CCSI) can only authorize in locales where the state has not granted districts exclusive operating authority. Because the CCSI cannot authorize schools in every part of Colorado, districts authorize most charters in the state. While districts like Denver have earned a reputation for strong authorizing practices, many districts still challenge or deny high quality charter applications. They may also provide inequitable funding for charters.
- Colorado receives a high “growth” score because the state does not cap the number of charter schools and there is steady expansion of charters.
- Charter schools receive automatic waivers from many laws and regulations that govern districts. This provides a reasonable amount of autonomy.
- Facilities funding for charter schools is extremely limited (\$98 per-pupil in 2017). The law provides for operations funding to be about 95 percent of that allotted to district schools, but there is little to no accountability for equitable funding, and equitable funding practices vary widely between authorizing districts.

## ANALYSIS:

# CHARTER SCHOOLS ARE NO MONOLITH

*by Michael Q. McShane, first published in U.S. News & World Report, July 28, 2015*

To date, much of the prominent research on charter schools has been devoted to trying to determine if charters outperform traditional public schools. Charter schools exist in a political context, so backers have had to prove that their schools can do as well or better than traditional public schools on the measures states use to hold schools accountable.

But academic superiority (measured by test scores) isn't the only goal of charter schools. Charter schools are also designed to give parents more options in the type of education that their child receives. They have the ability to specialize, and because students only attend charter schools by their free choice, schools have the opportunity to create unique learning communities organized around particular principles. Charters embrace a pluralistic ideal.

Unfortunately, the horserace narrative about charter schools totally obscures the diversity within the charter school sector. Even asking the question "do charter schools outperform public schools?" subtly implies that both charter schools and public schools are uniform institutions. They aren't. From international schools to schools oriented around public policy, charters across the country vary meaningfully across several different dimensions, including mission, curriculum, and pedagogical approach.

To achieve and sustain diversity in the charter sector, charters must have the opportunity to innovate. The opportunity to innovate is dependent on certain conditions, especially at the state level, including:

- Limiting regulations to those that ensure equity, fairness, and fiscal responsibility, doing away with those that focus on compliance;
- Creating policy environments that take a chance on untested models and focus on accountability for outcomes rather than inputs;
- Encouraging multiple and diverse authorizers;
- Allowing authorizers to operate in policy environments that favor autonomy and innovation over uniformity and regulation.

Where diversity exists, charter schools have had the opportunity to innovate. Diversity in the charter sector means that there are charters that were once innovative but have spawned successful replicas, charters that are currently innovating, and charters that might not be considered innovative at all. The point is that parents and students have real choice, when we give charters the autonomy to be different."

Connecticut earns a “D” in CER’s rankings. The state has only one authorizer, and it is an education bureaucracy: the Board of Education. The Board heavily regulates charter schools, which has hampered both autonomy and growth.

## FAST FACTS

- Law passed: 1996
- Number of charter schools: 31
- Estimated charter school enrollment: 9,700 (up 9 percent from 2015-16)
- Connecticut caps charters at 250 students or 25 percent of district enrollment
- Charters are permitted to contract with CMOs (but not EMOs) for management purposes

- Connecticut earns 3 of 15 points for “authorizing.” the state Board of Education is Connecticut’s sole authorizer, and decisions made by the Board are final and not subject to appeal. The state board is a better authorizing option than districts, but the charter movement would benefit more authorizers willing to foster greater diversity, innovation, and autonomy in chartering.
- Connecticut earns 5 out of 15 points for “growth.” The law caps charter school enrollment in each district at 250 students or 25 percent of district enrollment, whichever is higher. Additionally, the state has ceased authorizing until it charters two schools that focus primarily on English language learners. These arbitrary caps deny students opportunity.
- Connecticut earns 10 of 20 points for “operations.” Schools can apply to the state for waivers from state regulations, but in practice the state heavily regulates charters. Most of the state’s charters operate under the same constraints as their district counterparts.
- Connecticut earns 6.5 of 15 points for “funding equity.” The legislature sets an annual appropriation for the total amount of charter school funding, meaning that charters have no access to the local tax base. Currently, state charters receive around \$11,000 per pupil. Connecticut also provides a one-time grant of \$500,000 for facilities funding when charter schools start up but does not provide any additional per-pupil funding. Charter schools in Connecticut receive per-pupil Pre-k funding if they wish to run a such program.

Delaware earns a “D” grade in this year’s rankings. Delaware has a de-facto cap on charter schools because it allows district authorizers to refuse to accept charter applications. The state also erects roadblocks when successful charter schools seek to expand. However, we spare Delaware a failing grade because the state funds charters in a comparatively equitable way.

## FAST FACTS

- Law passed 1995
- Number of charter schools: 29
- Estimated charter school enrollment: 15,300 (up 6 percent from 2015-16)
- Virtual charter schools are banned
- Delaware has a legislative moratorium on chartering in Wilmington (where most charters are located)
- Charter schools are allowed to contract with EMOs and CMOs for management purposes

- Delaware earns 5 of 15 points for “authorizing.” Both the State Board of Education and districts can authorize charter schools. Neither authorizer provides charter with the autonomy to operate in a way that is substantively different from districts.
- Delaware earns 3 of 15 possible points for “growth.” The legislature has placed a moratorium on chartering in Wilmington (where most charter schools are located), until 2018. Delaware also limits the expansion of charters in other ways, such as requiring successful schools to submit new applications for extra campuses. These policies have led to little growth in the charter sector.
- Delaware earns 12 of 20 for “operations.” The law grants charters a blanket waiver from regulations that apply to districts, but the Delaware Department of Education is empowered to make new regulations that apply to charter schools. Additionally, the law requires charter school teachers to be traditionally certified. This limits the autonomy of charter operators to assemble the staff that they desire.
- Delaware earns 6 of 15 for “funding equity.” The law funds charters as it funds districts, with some exceptions. Per-pupil state funding amounts derive from a unit funding formula and local funding amount based on each previous year’s per-pupil expenditure in the charter students’ districts of residence. Districts do not always pass the full per-pupil tuition on to charters, which results in continued inequities in state and federal categorical funding.

Florida earns a “B” in CER’s rankings, putting it in eighth place among all states with charter laws. Florida has no cap on charter schools and charters have a great deal of autonomy. However, only school districts can act as authorizers, and while there is a strong appeals process guarding against arbitrary district decisions, the law would benefit from an expanded authorizing framework.

## FAST FACTS

- Law passed in 1996
- Number of charters: 654
- Estimated charter enrollment: 291,200 (up 3 percent from 2015-16)
- Florida does not cap the number of charter schools that can be authorized in the state
- Virtual charter schools are permitted and charter schools can contract with EMOs and CMOs, with some regulations
- Florida does not give charter schools per pupil funding for pre-k

- Florida earns 5 out of 15 points for “authorizing.” In Florida, the only entities that can authorize charter schools are traditional public school districts that make an appeal to the Board of Education. This practice limits the number, type, and quality of charters in Florida.
- Florida earns a 13 out of 15 for “growth.” While the state provides a fast track to growth for high-performing schools, the process for starting a new charter is onerous and highly regulated. The application process can discourage operators from opening new schools.
- Florida earns 16 out of 20 for “operations” because charter schools are exempt from most state statutes and regulations that apply to district schools. However, because charter schools are authorized by districts and rely on them for funding and charter renewal, charter autonomy is limited, in practice.
- Florida earns a 7.5 out of 15 for “funding equity” because funding for charter schools follows the same formula used for all other public schools minus administrative fees retained by school boards (five percent for all charters, or two percent for those considered “high-performing”). The law also entitles charters to categorical funds. In practice, however, these funds are not always distributed equitably. Finally, though the state has appropriated \$75 million for per-pupil charter school facilities funding, the funding is limited to charters that meet certain criteria, including: length of time the school has operated (three years), accreditation, and/or status an expansion or replication of an existing charter within the same district. This inequitable facilities funding scheme limits charter school growth.

Georgia earns a “C” in the CER’s rankings. Georgia has no charter cap and fairly substantive operational funding. However, the law does not provide charters a blanket waiver from regulations that hamper districts, and the sector is hindered by a lack of independent authorizers. Large funding disparities also adversely impact charter school quality and growth.

## FAST FACTS

- Law Passed: 1993
- Number of charters: 115
- Estimated Charter School Enrollment: 84,400 (2 percent increase from 2015-16)
- Georgia does not cap the number of charter schools
- Virtual Charter Schools are allowed
- Charter Schools can contract with EMOs and CMOs for management purposes
- A study by the University of Arkansas found that there was a 12 percent funding disparity between charter schools in Atlanta and traditional public schools, in part due to high special education enrollment in Atlanta’s charters.

- Georgia scores 6 out of 15 for “authorizing.” Local school boards, the State Board of Education, and the State Charter Schools Commission are all eligible authorizers. While its multiple authorizers boost Georgia’s score, the State Charter School Commission, which has a reputation for making politically motivated decisions rather than acting independently, puts Georgia’s charter sector at risk.
- Georgia earns 13 points for “growth.” Georgia’s law does not cap the number of charter schools that can be authorized in the state. However, there has been a significant drop of the number of charter schools in recent years, suggesting that the state is not motivated to expand the sector in response to demand.
- Georgia earns 11 out of 20 points for “operations” because the law grants blanket waivers from most state and local regulations that apply to district schools. While state sponsored charter schools are their own local education agencies and have a fair amount of autonomy, districts heavily regulate the schools that they sponsor. The law requires charter school teachers to receive traditional certification.
- Georgia earns 5 out of 15 points for “funding equity.” The law states that charter schools should be treated “no less favorably” than conventional district schools with regard to funding for instruction, administration, transportation and food services. However, school districts negotiate funding with locally approved charter schools, resulting in inequities. Further, state-chartered special schools receive only state and federal funds, and cannot draw from a local tax base. Authorizers may deduct up to three percent of charter funding for administrative fees. Charter schools do not receive any per-pupil facilities funding.

Hawaii earns a “D” in the national rankings for its weak charter school law. The State Public Charter School Commission, which heavily regulates charter schools, is the main authorizer, though public and private colleges and universities, county and state education agencies, and non-profits can apply to the state Board of Education to authorize schools. While Hawaii does not cap the number of charter schools, neither does it provide equitable funding.

### FAST FACTS

- Law passed: 1994
- Number of charters: 36
- Estimated charter school enrollment: 10,900
- Virtual charter schools permitted
- Hawaii does not cap the number of charter schools that can be authorized
- Charter schools are allowed to contract with CMOs and EMOs for management support

- Hawaii earns a 5 out of 15 points for “authorizing.” The Public Charter School Commission is the main authorizer, and it is monitored by the state Board of Education. Institutions of higher education, county and state education agencies, and non-profits are all eligible authorizers under Hawaii law, but as of these rankings only the Public Charter School Commission authorizes schools. Schools may appeal authorizer decisions, which allows for some recourse against arbitrary and/or political decision-making. But all authorizers must submit reports to the Board of Education, which gives it ample power.
- Hawaii earns 11 out of 15 points for “growth.” This is because Hawaii does not cap the number of charter schools that can exist. But the regulatory environment in the state has led to slow growth in the sector, which harms Hawaii’s overall score.
- Hawaii earns 9 of 20 points for “operations.” Charters receive a blanket waiver from most regulations that affect district schools. However, the Commission heavily regulates charters, especially charter finances, which greatly limits autonomy. Additionally, charter schools are subject to the master collective bargaining agreement that applies to all Hawaiian teachers, and all teachers must be traditionally certified. Collective bargaining limits teacher freedom and limits schools from hiring the right candidates and innovating in the areas of school structure and management.
- Hawaii earns 4 of 15 points for “funding equity.” Charter school funding is a line item in the state budget, making charters vulnerable to budget cuts and other funding inequities.

Idaho's grade drops from a "B" to a "C" this year. While Idaho law allows universities to authorize charter schools, in practice they do not. Meanwhile, state government and the quasi-independent Idaho Charter School Commission heavily regulate the charter sector. This has stalled the growth of Idaho's charter sector.

### FAST FACTS

- Law passed in 1998
- Number of charters: 52
- Estimated charter enrollment: 21,400 (up 1 percent from 2015-16)
- Virtual charter schools are allowed
- Idaho does not cap the number of charter schools that districts and school boards can authorize, but it does limit the number of university authorized charter schools to one, per district, per year
- Charter schools can contract with EMOs and CMOs for management purposes

- Idaho earns 9 of 15 points for "authorizing" because law allows multiple authorizers, including universities. In practice however, the Public Charter School Commission authorizes the vast majority of charter schools in the state: No university currently authorizes charter schools. This gap between policy and practice depresses Idaho's grade. Decisions made by the Idaho Charter School Board and local school boards are subject to appeal, which means that charter applicants have recourse from arbitrary or capricious treatment; this is a positive.
- Idaho earns 10 out of 15 for "growth" because the law limits the number of schools that universities can authorize (which may be one reason universities have not entered the sector). Charters school growth in Idaho has slowed due to the heavily regulated environment. This, too, harmed the state's score.
- Idaho earned 10 out of 20 points for "operations." In theory, charters in Idaho receive waivers from most regulations, except for teacher certification and school accreditation. Charters are also their own LEAs. In practice, however, the public charter school board heavily regulates schools, making waivers the law grants irrelevant.
- Idaho earns 6 out of 15 for "funding equity." Charter school funding comes from state sources and federal money that schools qualify to receive. Charters do not receive any local tax revenues or supplemental funds and are therefore inequitably funded, compared to districts. Charter schools do receive per-pupil facilities funding from the state, but that funding is less than that provided to district schools.

The land of Lincoln earned a “D” in CER’s rankings. However, the state made changes to the law in 2017, which increase the per-pupil funding allocation from 75% to 90%. This paves the way for more equitable charter school funding, which could positively impact future rankings. Nonetheless, a heavy regulatory environment still exists, making it difficult for operators to open new charter schools. Interest groups and legislators have submitted proposals for moratoriums on charter growth in Chicago, which only intensifies an already hostile environment.

### FAST FACTS

- Law passed: 1996
- Number of charter schools: 142
- Estimated charter enrollment: 65,500
- caps the number of charter schools that can be authorized at 120
- Virtual charter schools allowed: Illinois had a moratorium on virtual charter schools that the legislature recently lifted
- Charter schools can contract with EMOs and CMOs for management purposes

- Illinois earns 6 out of 15 points for “authorizing.” Public school districts and the Illinois State Charter Commission can authorize schools. However, as part of the new collective bargaining agreement in Chicago, the Chicago Public School District (the body that authorizes the majority of charter schools in Chicago), has placed a de-facto moratorium on new charters by forbidding access to old public school buildings that charters might use. Illinois would benefit from the addition of different, non-bureaucratic authorizers that would make charters less vulnerable to politics and regulation.
- Illinois earns 3 of 15 points for “growth.” There is a statewide cap of 120 charter schools (75 in Chicago and 45 outside of Chicago). Proposed moratoriums on new charter schools and virtual charter schools further limit growth. Additionally, it is difficult for successful charters to expand because the law requires new application processes each time an existing operator establishes an additional school.
- Illinois earns 10 of 20 points for “operations.” Charters receive blanket waivers from regulations affecting districts, but the law allows districts to impose their own regulations on the charters they authorize. Chicago Public Schools, in particular, heavily regulates the schools it authorizes.
- Illinois earns 5 of 15 points for “funding equity.” The law provides that charters receive no less than 75 percent and no more than 125 percent of the funding that districts receive. Charters may apply for state grants distributed to school districts. The state commission can charge up to 3 percent of a school’s revue for administrative fees. Districts can also receive “impact aid” to offset the alleged “funding drain” that charters pose, although this provision hasn’t been funded since FY2008. Charter Schools in Illinois do not receive per-pupil facilities funding.

## **GOLD STANDARD RESEARCH CAPTURES CHARTER SCHOOL IMPACTS**

*A 2005 randomized control trial (the gold standard of education research) found that charter middle schools in Chicago closed “just under half of the gap between the average disadvantaged, minority student in Chicago Public Schools and the average middle-income, non-minority student in a suburban district.”*

**— Caroline Hoxby & Jonah E. Rockoff, “Findings from the city of big shoulders,” Education Next, Fall 2005**

Indiana receives an “A” in the rankings. Indiana’s law receives high marks because it allows for multiple, strong authorizers and grants charter schools significant operational autonomies.

A variety of competent authorizers, such as Ball State University and the Indianapolis Charter School Board (mayor’s office), ensure that parents have access to diverse offerings. The state’s authorizers have also shown that they can properly balance oversight with the spirit of innovation, allowing schools the autonomies they require to serve students well.

The state’s funding formula is overly complicated, however; resulting in fewer per-pupil dollars allocated to charter school students. Charter school students may receive up to 40 percent less funding to support their education in comparison to district schools.

### FAST FACTS

- Law passed in 2001
- 83 charter schools
- Estimated charter school enrollment: 43,900
- Indiana’s Law does not cap the number of charter schools that can exist
- Charter schools are not supported for pre-k
- Virtual charter schools are allowed
- Charter schools are encouraged to partner with effective education service providers

- Indiana earns 14 of 15 possible points for “authorizing.” The law allows school boards, public four-year state universities, a state commission, and the Mayor of Indianapolis to authorize schools.
- Indiana earns a 13 out of 15 for “growth.” While Indiana does not cap the number of charter schools that can be authorized, the law does not allow for a charter holder to operate multiple campuses under the same charter, which means that every time a successful charter holder wants to expand or create a new school, they have to begin the charter application process from the beginning. This lengthy process not only discourages many proven providers from opening multiple schools, but also ensures that those who do want to open multiple schools must go through a lengthy process to do so.
- The state provides charters a blanket waiver from most rules and regulations that constrain district schools. This earns it a positive “operations” score. Recent events in the state suggest that charter school autonomy may need to be better protected from political interference.
- Indiana’s charter schools are not funded at parity with their district counterparts, lowering the state’s “funding equity” score.

## RESEARCH:

# AUTONOMY VERSUS TOP-DOWN CONTROL

*Adapted from the book “Charting a New Course: The Case for Freedom, Flexibility and Opportunity through Charter Schools”, published in 2017 by CER*

When conceived, charter schools were supposed to be the antithesis of their traditional public school (TPS) counterparts, unbound from the bureaucratic processes and controls that assure the kind of compliance valued in government schooling. In the 1990s scholars like Chubb & Moe described how TPS bureaucracies, with their focus on rules, regulations, and compliance, rob principals and teachers of “professional judgment” and “the flexibility they need to develop and operate as teams.” The key to effective education,” they wrote, “rests with unleashing the productive potential already present in the schools and their personnel...granting them the autonomy to do what they do best...”

This idea of institutional reform was at the heart of the charter concept: Charter schools were meant to replace the districts’ exclusive franchise over education with a new power structure.

The first charter law, adopted in Minnesota in 1991, put school selection in the hands of students and parents. It also diversified public schools by permitting the creation of new ones outside the district exclusivity model. Up until then, most states had attempted to make improvements by restructuring existing schools and districts; these approaches had failed.

New entities, called sponsors, would establish and hold accountable charter public schools. Eventually the states with the strongest charter laws would permit non-district entities, such as universities and cities, to sponsor charter schools. States with weak charter laws still allow district bureaucracies to establish and run charters.

In the 1990s, charter theory argued in favor of permitting contracting arrangements with other organizations, both non- and for-profit, that could execute on the vision of organizing bodies comprised of parents and teachers. These ideas were so powerful that 34 charter school laws including them were enacted between 1991 and 1998.

A small but influential set of state and national actors organically created the conditions for those charter school laws. With increasing national attention on charters and a new federal accountability framework pending (No Child Left Behind), pressures emerged for unified work. Although state laws required that all public schools, charter or not, should meet established academic standards, the charter sector was divided about the federal role.

How would the new accountability mandate treat charter schools, creatures of state laws whose autonomy and governance varied depending on unique state charter laws? Major school reform donors, most notably the Walton Family Foundation encouraged charter supporters to organize and coordinate one voice rather than offer competing perspectives on Capitol Hill. The seeds of isomorphism were planted.

Iowa earns the distinction of having the weakest charter school law in the country, according to CER's charter school law rankings. Iowa earns this title because of deeply inequitable funding practices, a heavy regulatory environment, and a charter sector that has failed to grow over the past eleven years.

### FAST FACTS

- Law passed in 1996
- Number of charter schools: 3
- Estimated charter school enrollment: 400 (up 33 percent from 2015-16)
- Virtual charter schools are allowed (but none exist)
- Iowa caps the number of charter schools at 20, with a total of one school per district
- Charters can contract with EMOs or CMOs for management purposes

- Iowa earns 2 of 15 points for “authorizing.” School districts are the only authorizers in Iowa, although charters can appeal to the state when districts make arbitrary or unfair authorizing decisions. There is perhaps no better proof that districts make poor authorizers than the Iowa charter school sector, which has barely grown since the inception of Iowa’s charter school law.
- Iowa earns 2 of 15 points for “growth.” Iowa caps the number of charter schools at a maximum of 20 statewide and a maximum of 1 charter school per district. Beyond the cap, the regulatory environment in Iowa has impeded most charter growth.
- Iowa earns 2 of 20 points for “operations.” The state regulates charters in the same manner that it regulates district schools. Charters are automatically subject to collective bargaining agreements. Though they may ask for exemptions from their district authorizers and appeal to the state for exemptions, this process makes it onerous for charter operators to establish and grow autonomous schools. The state requires charter school teachers to obtain a traditional teaching certification, which adversely impacts that ability of charter school operators to assemble the staffs of their choice.
- Iowa earns 0 of 15 points for “funding equity.” The law makes no statement about charter school funding, leaving funding decisions entirely in the hands of districts. This ensures funding inequities.

## CASE STUDY:

# MEASURING THE BURDEN OF CHARTER SCHOOL APPLICATIONS

*Adapted from the work of the same title by Michael Q. McShane, Jen Hatfield, and Elizabeth English, American Enterprise Institute*

- Charter school authorizers should act as guardians of autonomy.
- States should undertake a review of regulations that impact charter schools.
- Charter school application processes should be efficient and emphasize quality.

In 2015, Michael Q. McShane, Jenn Hatfield, and Elizabeth English set out to understand one aspect of the charter authorization process in different U.S. states: charter school applications. They found that too many charter school application processes are burdensome, unwieldy, and prevent authorizer success.

The literature is clear. Strong charter school authorizers: 1. Establish clear performance benchmarks and hold schools accountable for meeting them; 2. Review applicants' governance, organizational, financial, and academic proposals to judge whether they are capable of meeting the agreed-upon goals; 3. Ensure that schools comply with all applicable laws and conform to norms of financial management; 4. Strive to be parsimonious in their applications by only asking for necessary information.

McShane et al. collected applications from over 40 different authorizers and analyzed the extent to which the applications reflected a sound approach to charter school authorizing. A plurality (43 percent) of the application requirements were clearly appropriate for authorizers to include, the majority of requirements were either unnecessary (34 percent) or clearly inappropriate (23 percent). Authorizers could shorten the average application by at least one-third without sacrificing their ability to ensure quality—a change that could save applicants more than 700 hours of work. These findings matter, especially if acting upon them encourages more high-quality operators to enter the charter school sector.

The authors suggest four lessons to help authorizers improve charter application processes: 1. **Authorizers can streamline applications without losing quality control.** They should focus on core aspects of the operator's proposed plan and excise "busywork" from applications. 2. **Authorizers shouldn't mistake length for rigor.** Lengthy applications create unnecessary hurdles for applicants trying to serve students and communities. They may also prevent good schools from opening. 3. **Authorizers should have a clear and principled vision of their role, and they should stick to it.** Authorizers should not try to do the work of charter operators. 4. **Authorizers must prize innovation.** Too many authorizers say that they value innovation but then explicitly privilege some school models (often "proven" by test scores) over others.

Kansas earns an “F” grade. Kansas does not cap the number of charters that can exist, but charters in Kansas are dependent upon school districts for authorizing and exemptions from regulations that give charter schools autonomy. In practice, the few charter schools that exist in Kansas have difficulty differentiating themselves from their district counterparts because districts regulate them heavily.

## FAST FACTS

- Law passed: 1994
- Number of charter schools: 10
- Estimated charter school enrollment: 2,800 (0 percent change from 2015-16)
- Virtual charter schools permitted (with district consent)
- Kansas does not cap the number of charter schools that can enroll students
- Charter schools can contract with EMOs and CMOs for management purposes (with district consent)

- Kansas earns 0 points for “authorizing.” In Kansas, school districts are the sole authorizers. Although district authorizing decisions are subject to approval by the State Board of Education, the Board does not have an appeals process in place when districts make unfair or arbitrary authorizing decisions.
- Kansas earns 10 of 15 points for “growth.” Kansas does not cap the number of charter schools. However, there has been no growth in the state’s charter sector in recent years. The heavy regulatory environment in which charters operate is hampering the growth of the sector.
- Kansas earns 2 of 20 points for “operations.” In Kansas, charter schools receive no blanket exemptions from regulations that affect district schools. Instead, they must request exemptions from specific regulations, including collective bargaining agreements, in their charter applications. This arrangement guarantees no autonomy to charter schools and hampers the ability of the charter sector to innovate and grow. Finally, the state requires charter school teachers in Kansas be traditionally certified, this hinders the ability of charter operators to assemble the staffs they desire.
- Kansas earns 0 of 15 points for “funding equity.” The state’s charter law does not address charter school funding at all. This leaves funding decisions entirely to district authorizers. The evidence shows that districts in Kansas do not fund charter schools equitably.

Kentucky’s law is new but weak. District authorizers, heavy regulation, and inequitable funding earn the state a “D” grade in CER’s rankings. To promote an innovative and robust charter sector, Kentucky’s legislators will have to consider dramatic changes to the law.

Kentucky’s law permits only districts to authorize charter schools, except in the big cities of Louisville and Lexington where the mayors may become authorizers. Despite their authorizing authority, Kentucky’s charter school regulations will hamper the ability of mayors in both cities to grow high quality charter sectors.

When charters open in Kentucky, they will be vulnerable to politics, as they must rely on a separate appropriation for funding. This tenuous funding arrangement is could prove disastrous for charter success and growth.

## FAST FACTS

- Law passed: 2017
- Number of schools: 0
- Charter school enrollment: 0
- Kentucky doesn’t cap the number of charter schools
- Virtual charter schools are not permitted
- Charter schools may contract with education service providers but only with permission from state regulators

- Kentucky scores 6 out of 15 for “authorizing” because its law allows only for expanded authorizing (authorizers other than districts) in two large cities, Louisville and Lexington. Outside of these cities, only districts can authorize, which limits charter diversity and innovation.
- Because its law is new, the actual growth of Kentucky’s sector cannot be assessed. However, the law is unlikely to foster a flourishing charter sector, given the regulations to which it subjects charters, through district authorizers, and provisions that may deter prospective operators from establishing charters. CER awards Kentucky 10 out of 15 points for the potential it sector has to grow.
- Kentucky scores 8 out of 20 points for operations. The law provides blanket waivers from most regulations that affect districts. However, because districts will authorize most charters, charters will likely be vulnerable to regulations.
- Kentucky receives 3 of 15 points for “funding equity.” Charter school funding will be appropriated by the legislature each year, making charters vulnerable to politics and budget cuts.

Louisiana earns a “C” in CER’s 2017 charter school law rankings. Although charter schools have thrived in areas such as New Orleans, charters statewide are overregulated and underfunded. Moreover, state interference has prevented effective operators from opening schools.

Another factor in Louisiana’s score is the status of the once-independent recovery school district. The school board that the independent district replaced after Katrina has been reinstated and the independent district abolished. Even though charters retain their status as local education agencies (LEAs), this reconnection to the local district may eventually limit charter school growth and innovation.

### FAST FACTS

- Law passed in 1995
- Number of charters: 145
- Estimated charter school enrollment: 84,400 (Up 5 percent from 2015-16)
- Louisiana does not cap the number of charter schools.
- Virtual charter schools are permitted
- Charter schools can Contract with either EMOs or CMOs for management purposes

- Louisiana earns 7 of 15 for “authorizing” because all charter schools in Louisiana are authorized by either their local school board or the Board of Elementary and Secondary Education. While Louisiana does have multiple authorizers, these authorizers have grown increasingly regulatory, making it very difficult for new and innovative charter schools to thrive. There is no appeals process for charter schools authorized by the State Board, which limits the recourse of charter providers to question adverse decisions.
- Louisiana earns 13 out of 15 for “growth.” The strength of this score derives from the lack of a cap. However, while the law allows certain schools to expand with limited regulation (type A and B schools), most must apply for expansion as if they were opening for the first time.
- Louisiana earns 10 of 20 points for “operations” because charter school autonomy varies according to the authorizer. Schools authorized by school districts are less autonomous than those authorized by the state. Despite this, charter schools have a blanket exemption from all state board rules and regulations applicable to public schools with certain exceptions, most notably accountability regulations.
- Louisiana earns 5 of 15 for “funding equity.” All authorizers in the state can charge schools a two percent administrative fee. Additionally, while all charter schools are able to access start up loans for facilities funding, the state of Louisiana does not provide any per-pupil facilities funding.

Maine earns a “D” this year. While the law provides Maine charter schools a great deal of autonomy, Maine’s authorizers (a state commission and school districts) do not honor the tenets of the law, in practice. Maine’s charter sector remains small and hasn’t grown much in recent years.

## FAST FACTS

- Law passed: 2011
- Number of charter schools: 9
- Estimated charter school enrollment: 2000 (up 33 percent from 2015-16)
- There are state and district (enrollment) caps on charter schools
- Virtual charter schools are permitted
- Charter schools can contract with EMOs and CMOs for management purposes

- Maine earns 5 out of 15 points for “authorizing.” Two bodies can authorize charter schools: public school districts and the Maine Charter School Commission. School districts have not been active in authorizing charter schools. Further, the state Board of Education heavily regulates the Maine Charter School Commission, effectively making it a weak authorizer that passes unnecessary regulations on to the schools it oversees. Also, problematic: decisions made by either type of authorizer are not subject to appeal, removing the ability for charter applicants to fight back against arbitrary or capricious application decisions.
- Maine earns 2 of 15 points for “growth.” This very low score derives mainly from a cap on the number of charters (no more than 10) that the state Commission can authorize through 2022. Additionally, no more than 5-10 percent (depending on district size) of a district’s assigned students may be enroll in a charter school in the charter’s first three years. These arbitrary caps deny opportunities to students who need them.
- Maine earns 12 of 20 points for “operations.” Maine law exempts charter schools from most regulations that apply to districts. In practice, few districts authorize and regulate charter schools. This lack of regulation is positive. However, the state regulates charter applicants heavily, which adversely affects the ability of successful charter schools to expand. Additionally, the law requires charter school teachers to be certified. This requirement prevents individuals who have not gone through the bureaucratic measures of teacher certification from working with students and limits the ability of charter operators to assemble the staff that they choose.
- Maine earns 7 of 15 points for “funding equity.” Maine’s law states that per-pupil operating funding (minus administrative fees) should flow to charter schools, but the law is not specific enough to ensure equity. The law entitles authorizers to a 3 percent authorizing fee. Sending districts may also retain a 1 percent fee. Schools in Maine do not receive per-pupil facilities funding, but schools that wish to run Pre-k programs receive per pupil Pre-k funding.

Maryland earns an “F” in CER’s recent charter school law rankings. Districts are the sole authorizers in Maryland and the law provides districts with regulatory power. This approach has ensured that Maryland has a heavily regulated, comparatively small charter sector. Baltimore has a more robust charter sector than other locales, primarily because charter advocates were aggressive in opening new schools when the state’s law was passed and the district was more open to charters than most. Existing charters have expanded, but few new schools have opened in Maryland.

## FAST FACTS

- Law passed: 2003
- Number of charter schools: 50
- Estimated charter school enrollment: 23,500 (up 24 percent from 2015-16)
- No caps on charter schools
- Virtual charter schools prohibited
- Charter schools are allowed to contract with EMOs and CMOs for management purposes

- Maryland earns 1 of 15 points for “authorizing.” The only entities that can authorize charter schools in Maryland are local school districts. The law does not exempt charter schools from regulations that traditionally apply to district schools and district authorizers rarely exempt charter schools from rules and regulations that apply to traditional schools. Maryland charter schools can apply to the state Board of Education to be exempt from district regulations but, in practice, charters in Maryland generally do not have autonomy they need to thrive.
- Maryland earns 1 of 15 points for “growth.” The state places no formal cap on the number of schools that can be authorized. However, because school districts are vested with authorizing and regulatory authority, there is an informal cap on charter school growth—districts are hesitant to authorize schools that will act as their competitors.
- Maryland earns 3 of 20 points for “operations.” Charters in Maryland are subject to all of the same regulations that apply to all public schools, including collective bargaining agreements, though they can apply to the state Board of Education for exemptions. Charter school teachers in Maryland are required to have traditional teaching certifications. These and the requirements above drastically limit charter school autonomy, innovation, and success.
- Maryland earns 4 out 15 points for “funding.” A 2007 Maryland Court of Appeals ruling reaffirmed the State Board of Education’s decision that the law requires charter students be funded in a “commensurate” manner and at the same level as traditional public schools. However, school districts set charter school funding first, and appealing inequities in funding to the Board can be an onerous process. Funding inequities persist.

## CASE STUDY:

# THE NATIONWIDE CHARTER SCHOOL FACILITIES BURDEN

- Per-pupil facilities allowances and access to local property tax bases put charters on equal footing with district schools.
- Grant programs help charter start up; most charters don't have access to community buildings or local tax bases to build or lease school space.
- Charters should have the same access to state facilities as their district counterparts.

In Baltimore, a charter school moves locations halfway through the year because its authorizer, a local university, can no longer afford to pay for utilities. An expanding charter school in Rochester, N.Y. seeks facilities in a neighboring town because the few buildings in Rochester big enough for the student populations were too expensive. Across the country, charters that provide high caliber educational opportunities are unable to provide hot lunches for students because they can't afford buildings with kitchens equipped to cook food.

In many states, charter schools receive only a portion of the per-pupil funding their district counterparts receive. Most charters don't have access to local tax revenues in the communities they serve, and in too many places charter funding is a line item in state budgets, always vulnerable to cuts. If these funding inequities weren't enough, in the vast majority of states charters face an additional financial burden: they have to raise funds to establish and maintain facilities.

Some states offset the charter facilities burden by providing a portion of the facilities funding that districts receive. Other states help charters co-locate with district schools. Still others allow charter schools the right of first refusal to rent vacant district buildings. But in practice these initiatives do little to help charter schools cover the expenses of establishing and safely maintaining schools.

Even when charter schools can access federal and state loan programs and government and non-profit start-up grants, many face ongoing facilities challenges. From covering heating and cooling bills, to paying for broadband access, to finding new facilities to accommodate growing schools from year to year, charters operators are constantly seeking inventive ways to house students and provide the basics that any American school needs.

The facilities burden shrinks charter budgets, forcing operators to allocate money that could be spent on teaching and learning to facilities. Yet charter schools across the nation manage to outperform their district peers time and again. When charters have the autonomy to behave in innovative ways and deliver educational programs as they see fit, they flourish. Imagine what these schools could do if they could spend all of the money they receive for students on student learning.

Massachusetts moves up in the national ranking this year, making a substantial jump from 27th to 10th place. It earns a “B.” A renewed focus on rewarding the independence and autonomy that are provided to charters in practice facilitated the Bay State’s rise in the rankings.

Despite onerous caps on the number of charter schools that can be established in the Commonwealth, Massachusetts ensures that its charters operate with significant autonomy. Furthermore, the state supports innovative schools, despite regulations that it could interpret differently.

The Commonwealth’s sole authorizer, the Massachusetts Board of Elementary and Secondary Education allows charter schools all of autonomies they are promised by law. This has enabled Massachusetts’ charters to produce some of the best results in the country for students.

## FAST FACTS

- Law passed in 1993
- Number of charters: 82
- Estimated charter enrollment: 44,200 (up 10 percent from 2015-16)
- Virtual charter schools are banned
- Charter schools offering pre-k programs in districts where pre-k is funded receive per-pupil funding for pre-k
- Massachusetts has a cap of 72 charter schools statewide as well as caps restricting the amount of tuition that districts can send to charter schools when students enroll; Tuition caps, in particular, have significantly hindered the growth of charters in MA
- A study by the university of Arkansas showed that charters in Boston had a 17 percent disparity in funding compared to traditional public schools.

- Massachusetts earns a 9 of 15 points for “authorizing” because the law allows for only one authorizer, the Board of Elementary and Secondary Education.
- Massachusetts earns a 6 out of 15 for “growth” due to its two different kinds of charter school caps. The first is a statewide cap on the number of schools that can exist. The second is a tuition cap, which limits how much per-pupil funding districts can send to charter schools (effectively limiting the number of charter school seats in each district).
- Massachusetts earns 15 of 20 points for “operations” because charter schools operate free from most regulations that apply to districts. Additionally, the state allows charters significant operational autonomy in practice.
- Massachusetts earns an 11 out of 15 for “funding equity.” The state mandates that districts send the same per-pupil amount they would spend on each student to the charter school of his or her choice. The law provides some (but not enough) facilities funding (roughly \$893 per pupil in 2017).

## CASE STUDY:

# HOW CHARTER SCHOOL CAPS LIMIT OPPORTUNITY IN MASSACHUSETTS

- Where charter school caps exist, waitlists for charter schools are lengthy.
- Caps inhibit innovation: Authorizers are more likely to approve known providers than take a chance on something new, no matter how promising.
- Charter caps are often imposed arbitrarily; they protect the status quo and limit meaningful reform.

Boston’s charter schools are the highest performing in the country. Multiple gold standard studies have found that they spur dramatic growth in student achievement and promote college attendance. Studies also find that Boston charters achieve these results without “creaming” students. They serve more poor and minority students than the Boston public school district as well as an increasingly large number of English language learners and students with special educational needs.

Despite the sector’s track record and the accolades it has received from the academic community, there has been almost no growth in the number of charter school seats available to Boston’s families since 2011. In 2018, there are 10,000 students on waitlists for Boston’s charter schools. More than 30,000 students are on waitlists statewide. Students and families cannot access the schools they want because of an arbitrary cap on charter schools.

Massachusetts has two charter school caps: one that limits the number of charter schools that can exist statewide and another that limits the amount of “tuition” that districts can send to charter schools to 9 percent of net school spending in most districts and 18 percent of net school spending in the lowest performing districts in the state. State law requires that state and local per-pupil funding follow students from district to charter schools. The state then reimburses district schools for lost per-pupil funds for a period of six years.

Proponents of the charter school cap claim that it encourages the state to authorize only the most effective schools. But the commonwealth has been authorizing charter schools for more than 20 years. It has a proven track record of choosing high quality charter authorizers, providing them with the autonomy they need to succeed, and closing schools when they don’t perform. The cap might have once influenced the commonwealth’s approach to authorizing, but today *it only prevents students from accessing the charter school education they desire.*

In November of 2016, a proposal to raise the district cap on charter schools was handily defeated at the ballot box. The highest voter turnout was in suburban communities with excellent district schools and few, if any, charters. With the arbitrary charter caps that the legislature imposed when creating the commonwealth’s charter law, the fate of Boston’s mostly poor and minority students has, essentially, been placed in the hands of wealthy suburban voters who have few complaints about their public schools and the financial wherewithal to “vote with their feet” when if schools fail to perform.

## INNOVATION INTERRUPTED

*The consequences of Massachusetts’s 2010 charter legislation are clear: in a state where the charter movement should be flourishing, it is at a standstill. Despite 10,000 unique students on waiting lists in the city of Boston alone, the Department of Elementary and Secondary Education (DESE) authorized only three new charter schools in 2017, none of them in Boston or in other communities with substantial waiting lists. Furthermore, DESE has a history of denying strong applications from “unconventional” providers. A sector that was built on the promise of providing innovative new school options for families has been prohibited from offering up innovative ideas.*

*This lack of opportunity to innovate has led would-be charter operators to leave the state for other places where they have the opportunity to establish schools and to try out new ideas. Current Secretary of Education James Peyser warned of the potential for this kind of brain drain even prior to 2010. He saw the cap on charter schools as the main culprit. At the time, he might not have predicted that the legislature would further halt the charter movement by designing a “proven provider” clause.*

**— Cara Stillings Candal, Pioneer Institute, Boston**

## RESEARCH:

# FAMILIES DEMAND MORE THAN THE STATUS QUO

*by Cara Stillings Candal*

In November of 2016 charter school advocates in Massachusetts suffered a resounding defeat at the ballot box. Convinced by state and national teachers' unions (despite overwhelming evidence to the contrary) that charters are selective and that they drain funding from district schools, the public voted overwhelmingly to keep a stringent cap on the number of charter schools that can exist in the state at a given time.

Across the country, charter advocates wondered about this negative sentiment toward Massachusetts's schools. Gold-standard research finds time and again that the Commonwealth's charters, especially those in Boston, help students realize incredible academic gains.<sup>1</sup> And these schools have flourished within a system that is also very generous to district schools—sometimes at the expense of charters. While state law ensures that charters and districts receive the same operational funding per-pupil, it provides little funding for charters beyond that (charter schools have to raise money for facilities), and districts are very generously reimbursed for a period of six years after students leave them for charter schools.

But what reformers failed to realize is that charters in the Commonwealth have come to have a very distinct reputation—one that elicits negative sentiment even among some of the most common consumers of charters: low-income parents living in Boston and the state's few other urban centers. The reputation that Boston's charters have is one of sameness: a “no excuses” approach to education that seems increasingly inflexible and even out-of-touch with the needs of today's students.

Of course, not every successful charter is of the “no excuses” ilk, but many of the most successful have at one time or another adopted this moniker. At the start of the state's charter movement in the 1990s, these schools were a welcome innovation. They provided rigor, structure, and high expectations where district schools did not (and they still do).

They also extended the school day and year, cultivated their own faculty, in particular pedagogical approaches, and committed to things like personalized tutoring for every student, when district schools could not. These schools continue to provide a very high quality of education to families, and most maintain long waiting lists that speak to their popularity. But to some parents it seems that they are the only type of charter school option around, and not every parent desires the same kind of education for their child, no matter their background.

Although Michigan’s grade dropped this year from an “A” to a “B,” the state remains high on CER’s list at number four. The extent to which Michigan regulates charter schools and a lack of facilities funding negatively impact its score. Nevertheless, the law allows for multiple, strong authorizers, which secures Michigan a place in the top five.

The strength of Michigan’s charter school law stems from the strength of its university authorizers. Early pioneers in the charter movement, Michigan universities have built their own chartering processes, some of which allow authorizers to track progress in real time. Michigan’s charter sector has received negative (often unwarranted) attention in the past year, resulting in limited growth in the charter sector.

## FAST FACTS

- Law passed in 1993
- Number of charters: 300
- Estimated charter enrollment: 146,100 (down 2 percent from 2015-16)
- Michigan has no caps on the number of brick and mortar charter schools but does cap the number of Virtual Charter Schools
- Charter schools do not receive facilities funding
- Michigan allows contracts with a variety of education service providers
- Michigan has one of the highest charter school closure rates in the country (22 percent), demonstrating that multiple authorizers take the performance of charter schools seriously and that charter schools can and are held to a high standard of accountability

- Michigan scores a perfect 15 of 15 for “authorizing.” Its authorizers operate free from the laws and regulations of the state education department. This independence allows authorizers (mostly universities) to use the logistical capacity and experience they already have in administering programs and being publicly accountable to constituents, students and staff.
- Despite slowed growth in some places, the capacity for growth and expansion in Michigan’s law earns the state a relatively high score on this measure. However, there is a state cap on all but reservation- and district-based authorizers. Lifting the state cap would spur new and necessary growth.
- Operationally, Michigan’s schools are not exempt from most state regulations. Instead, schools have to request a waiver of specific regulations from the state. Although the state has a history of approving most waiver requests, a blanket waiver, allowed by law, would be a boon to the charter sector.
- Charter schools in Michigan receive the foundation allowance that any traditional public school in the state would receive (around \$8,000 per pupil). However, charter schools do not receive any per-pupil facilities funding from the state, nor do they receive any additional state aid for facilities (localities support facilities with local tax dollars). This lack of facilities funding results in great inequities for charter school students.

## ANALYSIS:

# DON'T SACRIFICE INNOVATION FOR REGULATION: RETHINK ACCOUNTABILITY

*By Michael Horn, Co-Founder & Distinguished Fellow, Clayton Christensen Institute*

- Overregulation encourages sameness and inhibits innovative thinking.
- Accountability mechanisms can consider cognitive and non-cognitive outcomes.
- School evaluations can be holistic and include student and parent input.

Accountability and regulation are not the same thing. Over time, school policy-makers have layered on mechanisms for accountability with compliance- and input-based regulations. The result is that there now exists very little freedom for novel thinking around what schools should look like.

As a result of layering on compliance- and input-based regulations, metrics like seat time, student-teacher ratios, and teacher credentialing have all become regulated. Some people say that the business model has wielded too much influence over education reform. But few businesses hold managers accountable for products and services without giving them the autonomy to hire the right people and allocate budgets. Yet, this is what happens to teachers and principals consistently, particularly in the district environment, but to an increasing degree in the charter sector as well.

School accountability mechanisms should focus on outcomes, not inputs. A critical outcome for schools to consider is individual growth (as opposed to proficiency). There are challenges associated with assessing growth (for example, it can take a few years for new schools or different schools to demonstrate proficiency). But when school operators and authorizers consider where students start in a curriculum and whether and in what period of time they move to mastery, they obtain meaningful information about what a school has or has not helped a student to learn and be able to do. Another benefit: Emphasizing the importance of growth as a measure of achievement instills a growth mindset in students and educators alike.

So how do we hold schools accountable and emphasize the importance of growth without overregulating? One interesting approach is an auditing model, where schools report on the outcomes that they claim students will achieve. Those can be cognitive (achievement) and non-cognitive outcomes, such as character formation or growth. In an auditing model, students should also provide evidence of the outcomes a school has enabled them to achieve. And an audit could include some form of a reliable, valid, assessment—carried out by a third-party—as one measure of outcomes.

In such a policy environment, students could start to make better decisions based on the goals that they have set for themselves. There would also be much more opportunity for true choice and transparency of choice, as consumers will be able to make informed decisions based on the type of outcomes each school produces for different students in each local context.

Minnesota has been a leader in charter school authorizing since it established the first charter law in 1992. The state has a wide variety of authorizers. They authorize a diverse array of schools that have significant autonomy.

The state has recently forced authorizers to regulate schools in a detrimental, top-down fashion under the pretense of improving accountability. Unfortunately, the state's actions have served to suppress innovation without improving accountability. Despite this, other components of Minnesota's charter law, including equitable operational funding, secures Minnesota's place in the top five of CER's ranking.

## FAST FACTS

- Law passed in 1991 (the first in the country)
- Number of charters: 180
- Estimated charter enrollment: 53,400 (up 11 percent from 2015-16)
- Virtual charter schools allowed
- Minnesota does not cap the number of students who attend charter schools
- Minnesota does not automatically fund pre-k in charter schools, but a school can apply to deliver pre-k and, if approved, must submit to additional regulations

- Minnesota wins high marks for “authorizing” because a variety of entities may authorize schools, including local school boards, intermediate school boards, educational district cooperatives, nonprofit organizations (including those formed solely to authorize charter schools), public postsecondary institutions, and private colleges. However, in order to authorize schools, these organizations need to receive approval from the state commissioner of education. This requirement presents an unnecessary hurdle and often ensures that strings are attached to charter approvals.
- Minnesota earns 13 of 15 points for “growth” because there is no cap on charter schools and growth has been steady in the last decade.
- Charter schools are exempt from most regulations that affect districts schools. They are not exempt from state teachers’ licensure requirements, which can prevent charter operators from assembling the staff of their choice.
- Minnesota receives a 10 out of 15 for “funding equity.” Minnesota law prohibits charters from using state funds to buy land or buildings, but it does allow charters to lease space (though not directly from authorizers). Beginning in FY 2017, charter schools received long-term facilities maintenance revenue, like their district counterparts. The statute allows charters to use this funding as they see fit.

Mississippi earns a “D” on CER’s charter school law rankings. Since Mississippi’s charter law passed in 2010 there has been little to no growth in the charter school sector. This slow expansion is attributable to a heavy regulatory environment and inequitable funding for charter schools.

## FAST FACTS

- Law passed: 2010
- Number of charter schools: 3
- Estimated charter school enrollment: 400 (up 100 percent from 2015-16)
- Mississippi caps the number of charter schools
- Virtual charter schools are not permitted
- Charters can contract with CMOs but not EMOs for management purposes

- Mississippi scores 5 out of 15 for “authorizing.” Mississippi has one authorizer, the Mississippi Charter Board, which oversees charter applications throughout the state. While the Mississippi Charter Board is preferable to district authorizers, multiple authorizers would lead to a healthier charter school sector—one that is more robust and less likely to rely on heavy regulation.
- Mississippi earns 3 out of 15 for “growth.” Mississippi caps the number of charter schools that can be authorized at 15 new charters per year, and operators can only establish charters in communities where the district schools are low performing. These rules, combined with heavy regulation from the state’s only authorizer, has led to negligible growth in the charter sector.
- Mississippi earns 9 of 20 points for “operations.” Charter schools in Mississippi are exempt from some but not all laws and regulations that apply to traditional schools. They are also their own local education authorities. However, schools are required to follow several regulations on issues such as discipline and curriculum, which limits their autonomy to use innovative models. Additionally, three years after a school is approved, the law requires that 100 percent of its teachers be traditionally certified. This prevents operators from assembling the staffs they desire.
- Mississippi earns 4 of 15 points for “funding equity.” In Mississippi, local funding for charter schools is equal to the ad valorem tax receipts and in-lieu payments received for the support of the school district in which the student resides. The state directs each school’s proportionate share of funds from federal and state categorical funds to eligible charter schools. The state authorizer receives a three percent administrative fee from a school’s annual per-pupil allocations. Charter schools receive no per-pupil facilities funding.

Missouri earns a “C” in the Center for Education Reform’s most recent charter school law rankings.

Missouri’s charter sector is strong, with multiple authorizers and reasonable autonomy. But, geographic limitations on where operators can establish schools have placed artificial limits on growth and harmed the sector. The law only allows charters to operate in St. Louis and Kansas City and, despite continued push from parents, educators and policymakers, a change to the law is not likely. The good news is that, despite obstacles, the charters in both urban centers provide excellent options for many students.

## FAST FACTS

- Law passed in 1998
- Number of charters: 71
- Estimated charter enrollment: 23,000 (up 11 percent from 2015-16)
- Charters are limited to Kansas City and St. Louis
- Charters can contract with EMOs and CMOs for management purposes

- Missouri scores 9 out of 15 for “authorizing.” A variety of entities can authorize schools, including several universities. However, Missouri’s charter school law only permits charter schools in St. Louis and Kansas City, which drastically limits the number of children who have access to a quality charter school education.
- Missouri scores 8 out of 15 for “growth” because charter schools are limited to St Louis and Kansas City). This geographic requirement amounts to an arbitrary cap on charter schools and prevents the charter sector from meeting demand.
- Missouri earns 13 out of 20 for “operations” Charter schools are exempt from most state and district regulations (unless a district is the authorizer). However, the state heavily regulates schools via Annual Performance Reports. While reporting requirements may seem innocuous, they are often unnecessary, compliance-based, and take charter operators away from the work of teaching and learning.
- Missouri earns 7 out of 15 points for “funding equity.” Missouri’s law states that school districts are required to pay charter schools per-pupil funding in accordance with the state funding formula. The law also requires districts to send applicable federal and state aid to charters. Charter schools that are their own local education agencies receive all funding streams and categories. The State Department of Education retains one and five-tenths percent of a charter’s state and local funding for administrative fees, which it passes on to authorizers. The law does not provide per-pupil facilities funding.

## THE FREEDOM TO FAIL FOSTERS SUCCESS

*We believe that parents (who see their child come home from school every day) are better able than bureaucrats (who see mostly standardized tests scores) to judge the quality of the school they've chosen. We believe that if offered more freedom, educational entrepreneurs will embrace a variety of different approaches and offer parents a diverse range of options. We accept that more freedom might mean that more schools fail than would in a more regulated environment, but we believe that failure is necessary for success. We are certain that, over time, the net result of giving educators autonomy and empowering parents to judge schools will drive the creation of a higher quality sector.*

**— Jeanne Allen & Max Eden in “Charting a New Course: The Case for Freedom, Flexibility, and Opportunity through Charter Schools”**

Nevada earns a “C” in the annual ranking. Regulations in Nevada stifle the growth of a promising charter sector. The Law allows multiple entities—even universities—to authorize charter schools, but the Nevada Public Charter School Authority authorizes most. The Public Charter School Authority heavily regulates its schools. While charter growth in Nevada has been substantial in recent years, it is primarily the result of school expansions rather than the establishment of new charters.

### FAST FACTS

- Law passed in 1997
- Number of charters: 43
- Estimated charter enrollment: 39,900 (up 17 percent from 2015-16)
- Nevada does not have a cap on the number of charter schools allowed
- Virtual charter Schools are permitted
- Schools can contract with EMOs and CMOs with some restrictions (such as no more than 30percent of staff can be employed by the EMO)

- Nevada earns 7 of 15 points for “authorizing” because the law allows for multiple entities to authorize charter schools: school districts, the state public charter school authority, and universities. However, in practice, universities in Nevada do not act as authorizers, perhaps because the state heavily regulates authorizing activities.
- Nevada earns 12 of 15 points for “growth.” The state doesn’t cap charter schools, but there has been extremely limited growth in the charter sector for two years. This is despite the state’s inability to meet current demand for charters.
- Nevada earns 9 out of 20 points for “operations.” Charter schools do not have a blanket waiver from regulations that apply to district schools; they must seek permission from the local school board to extend the school year, for example. Charters must also clear many operational decisions with authorizers and the law requires that they hire certified teachers, which limits autonomy.
- Nevada earns 6.5 of 15 points for “funding equity.” Charter students are included in district calculations for funding purposes. A charter school is entitled to receive a proportionate share of money available to districts from federal, state, or local sources. Authorizers may deduct up to 2 percent for administrative fees, but charters meeting certain requirements can request to lower it to 1 percent. Authorizers can also request reimbursements from charters for administrative costs. Nevada’s law does provide for per-pupil facilities funding. The law provides for funding from a legislative appropriation, but this has yet to occur since the legislature adopted the state’s charter school law.

## CASE STUDY:

# SERVING ALL STUDENTS IN NEVADA

*Based on the work of Max Eden, Manhattan Institute and Danielle DyTang, CER Intern, 2017*

- Closing schools on the basis of test scores alone puts vulnerable students at risk.
- Charter schools require innovative, personalized approaches to accountability.
- States should evaluate laws that inadvertently close successful schools.

In 2016, Rainshadow Charter High School in Reno, Nevada, was on its last leg. Its test scores and graduation rates were low, and the local school board had given the school one year to turnaround before closing it forever. In 2014, American YouthWorks Academy in Austin, Texas was closed. The Texas Education Agency cited lagging student performance as measured by state test scores. More recently, the state of South Carolina has denied two charter school applications on the theory that the schools would not be able to produce acceptable academic results.

These closures, potential closures, and charter school application denials all seem reasonable until one considers the students these schools serve or were seeking to serve: students who have previously dropped out of high school or who exhibit one or more risk factors for dropout, such as substance abuse, experience with the juvenile justice system, or teenage parenthood. Students who fall into these categories also tend to have special educational needs at rates disproportionate to the general population.

Accountability for outcomes is an essential part of the charter school bargain, but too many charter school advocates take a narrow view of accountability. They tout test scores as the only way to understand whether a school is successful. Schools like Rainshadow and American YouthWorks dedicated themselves to serving the most vulnerable students. By definition, these students have persistently difficult relationships with schools and with tests.

Blanket laws and regulations that declare test scores the only measure (or even the main measure) of accountability preclude a more holistic approach to understanding how some schools can help vulnerable students to grow—even flourish—academically. In some cases, it takes time. In others, schools can help students go on to a successful post-secondary experience, even if they never excel on a standardized test.

Officials in Nevada recognize that a different way of thinking about outcomes is in order: The state is currently developing an alternative accountability framework that could allow Rainshadow and schools like it to demonstrate growth in other areas unique to their schools' cultures. States across the country would do well to look to Nevada and consider rigorous alternatives to strict test-based accountability. Such alternatives could help policymakers understand how all public schools, charter and district alike, can better serve special populations of students.

New Hampshire earns a “D” on CER’s rankings. Local school boards (districts) are the main authorizers in New Hampshire. This has a large, negative impact on the state’s grade. New Hampshire has also seen very little growth in its charter sector in recent years.

## FAST FACTS

- Law passed: 1996
- Number of schools: 25
- Estimated charter school enrollment: 3,300 (up 3 percent from 2015-16)
- There is a cap on district-sponsored charter schools
- Virtual charter schools are allowed
- Charter schools can contract with EMOs and CMOs

- New Hampshire earns 3 of 15 points for “authorizing.” School boards in New Hampshire are the primary charter school authorizers; however, once a school board approves them, charter schools need a second approval from the state. Charter applicants can bypass school boards and apply directly to the state as an authorizer, but the state heavily regulates charters, much like school boards. The lack of innovation in the New Hampshire charter sector is evidence that district authorizers don’t let charters behave in a way that it substantively different from district schools.
- New Hampshire earns 6 of 15 points for “growth.” The state caps the number of schools that school boards can approve, though there is no cap on the number of schools that the state can authorize directly. Additionally, no more than 10 percent of students in a school district can attend a charter school without district approval. New Hampshire law further limits charter school growth by requiring successful schools to submit a new application every time they would like to expand or establish a new campus.
- New Hampshire earns 12 of 20 points for “operations.” The law exempts charter schools from state laws and regulations that apply to public schools, but because districts authorize charters schools in New Hampshire, charters are often subject to district regulation. This limits autonomy and innovation. Additionally, the law requires charter school teachers to be traditionally certified, which makes it difficult to school operators to assemble the staffs that they desire.
- New Hampshire earns 2.5 of 15 points for “funding equity.” New Hampshire law guarantees that charters receive at least 80 percent of the per-pupil funding that districts receive, but this doesn’t always happen in practice. Many charters receive significantly less funding than their district counterparts. The disparity is a result of unclear guidance on how federal categorical funds should be distributed. Too often, charters do not receive the federal funds to which their students are entitled. Moreover, New Hampshire provides no per-pupil facilities funding to charters. One of the results of these deep funding inequities has been school closures.

In this edition of CER’s rankings, New Jersey once again receives a low “C.” Although the state does not cap charter school growth, New Jersey’s law is weak, mainly because it limits the autonomy of charter operators. The commissioner of education (state education department) is New Jersey’s sole charter authorizer. The state supports the replication of existing, successful charters but it not committed to authorizing new, innovative, charter school as well.

## FAST FACTS

- Law passed: 1996
- Number of charters: 89
- Estimated charter enrollment: 48,900 (up 10 percent from 2015-16)
- New Jersey does not cap the growth of charter schools
- Virtual charter schools permitted
- Charter schools can contract with EMOs and CMOs for management services
- A study by the University of Arkansas concluded that charter schools in Camden received 45 percent less in per pupil funding than traditional public schools

- New Jersey earns 3 of 15 possible points for “authorizing.” The commissioner of education (who represents the state department of education) is the sole authorizer. The state’s decisions are not subject to appeal, so applicants have no recourse for unfavorable decisions. New Jersey would benefit from multiple, independent authorizers.
- New Jersey earns 12 out of 15 points for “growth.” While New Jersey does not cap the number of charter schools in the state, the charter sector has stagnated and not grown much in recent years, not adding many charter school seats.
- New Jersey earns 9 out of 20 points for “operations.” Instead of granting charters blanket waivers from regulations, charter school operators must request freedom from specific regulations in their charter applications. Without blanket waivers, charters are vulnerable to state politics, unaware of what waivers might be granted and/or tentative to request autonomies that might result in the denial of a charter application. Moreover, teacher certifications cannot be waived in New Jersey.
- New Jersey earns 6 of 15 for “funding equity.” New Jersey law requires districts to send per-pupil tuition to charters for students residing in the catchment area that choose charters. The law requires districts to pay for either 90 percent of the per-pupil program budget or 90 percent of the “thorough and efficient funding” amount, which is defined by state law. The money that charter schools receive is often much less than districts because they do not receive “adjustment aid” from the state. Also, districts can charge charters up to ten percent of per-pupil funding to cover administrative fees. New Jersey’s law does not provide any facilities funding.

New Mexico earns a “C” in this year’s rankings. There are large gaps between stated policy and practice, specifically in the area of funding, which lowers the state’s ranking. Moreover, New Mexico’s Public Education Department heavily regulates charters, which hampers growth and innovation.

### FAST FACTS

- Law passed: 1993
- Number of charters: 100
- Estimated charter enrollment: 25,400 (down 1 percent from 2015-16)
- Growth is capped at no more than 15 schools authorized per year with unused slots being rolled over.
- Virtual charter schools are allowed as long as they have a physical location in the state
- Charter schools must contract with EMOs and CMOs for management purposes

- New Mexico earns 8 of 15 points for “authorizing.” By law, both local school districts and the State Public Education Commission can authorize charter schools. The Public Education Commission currently authorizes the majority. Unfortunately, the commission regulates schools heavily. Decisions made by local school districts and the PEC are subject to appeal to the state Secretary of Education. This boosts the state’s score because charter applicants have recourse against decisions that they believe to be arbitrary or capricious.
- New Mexico scores 7 of 15 for “growth,” largely due to arbitrary charter caps. In New Mexico, there is a cap of no more than 15 schools per year, unused slots do not roll over from year to year. Furthermore, the law prohibits the establishment of more than 75 charters in a five-year period. Charters in sparsely-populated districts may not enroll more than 10 percent of students in the sending district. These arbitrary restrictions limit opportunities for students and contribute to slow growth in the charter sector.
- New Mexico earns 10 out of 20 possible points for “operations.” The law provides limited exemptions for charters and schools must negotiate extra exemptions with authorizers on a case by case basis. Additionally, the Public Education Commission heavily regulates charter schools, with a strong focus on compliance. Charter school teachers must be certified.
- New Mexico earns 9 of 15 points for “funding equity.” By law, charters are entitled to 98 percent of per-pupil costs, with 2 percent deducted for administrative fees by all authorizers. School boards that authorize charters must provide the portion of state and federal per-pupil funds attached to each student. In practice, this does not always happen. Charter schools do receive some per pupil facilities funding, but that amount pales in comparison to the support districts receive.

## CASE STUDY:

# A FOCUS ON COMPLIANCE PUTS NEW MEXICO'S CHARTERS AT RISK

- Renewal processes should focus on understanding outcomes.
- Authorizers must commit to unbiased reviews of their schools.
- Lengthy, biased renewals waste money and time on learning.

In November 2017, the New Mexico Public Education Commission (PEC) voted to allow New Mexico's first charter school replication. Mission Achievement and Success (MAS) Charter School will open its second campus in September of 2018. The school is one of the highest performing in New Mexico; the state has awarded it an "A" grade three years in a row. But in 2016, MAS was defending its charter against an unfavorable preliminary charter renewal report. The report drew several erroneous conclusions about the school's performance.

First, the state's Charter School Division (CSD) cited MAS for a failure to meet academic goals. The school wrote its charter in 2012, when New Mexico was administering its Standards Based Assessment (SBA). But in 2014, the state transitioned all schools to the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment. *Despite the state's own evidence* that MAS's students outperformed not only their demographic peers but also the state average on PARCC, CSD concluded that the school was not meeting academic goals because it had no data for the defunct SBA.

CSD also unfairly cited MAS for being out of compliance with teacher licensure requirements and for failing to serve English language learners (ELLs). CSD drew the first conclusion because it chose to rely upon an unverified report about teachers' certification status instead of accepting the school's own verified evidence that all MAS teachers were properly certified (or in the process of becoming certified), according to state law.

CSD's finding about MAS's ELL students was even more egregious. Ignoring test data showing that MAS's ELL students outperform almost all of their peers statewide, the renewal team concluded that MAS wasn't serving ELLs well because it did not find ELL proficiency data in the cumulative student files it reviewed. When the school presented documentation of the tests, which it kept in separate binders, the renewal team refused to accept them as evidence, citing a requirement about how documents should be housed.

CSD's erroneous findings put MAS's charter and the students that MAS serves at risk. Because of CSD's report, MAS's leadership wasted time and resources to engage in a lengthy response process that would correct CSD's report and secure its charter renewal. MAS's experience begs the question: How can a school go from accolades, to almost losing its charter, to expansion within the span of year? The answer: When authorizers focus on compliance rather than outcomes.

New York ranks in the top ten, with a “B” grade. The state has varied, independent authorizers that have helped to grow and protect a strong charter sector. The SUNY Charter Schools Institute, for example, provides charters with a great deal of autonomy and protects them from burdensome regulations. In some places, however, politics threaten the stability of the sector. In New York City, where district leadership is sympathetic to the teachers’ union’s agendas, charters face ongoing hostilities.

New York City, which is home to the majority of the state’s charters, also faces an uphill battle when it comes to establishing innovative schools. New York law restricts the type of charters that operators can establish. For example, there is no provision for online or blended schools and charters may not have relationships with for-profit education service providers.

### FAST FACTS

- Law passed in 1998
- Number of charters: 349
- Estimated charter enrollment: 132,100 (up 5 percent from 2015-16)
- A new innovation adopted in 2017 by SUNY allows charter schools to certify their own teachers
- Charter schools do not receive per pupil Pre-k funds
- A study by the University of Arkansas concluded that charter schools in New York City receive 19 percent less in per pupil funding than traditional public schools

- New York receives 11 of 15 possible points for “authorizing” because its law allows both school districts and the SUNY Charter Schools Institute to authorize schools.
- New York earns a 10 out of 15 for “growth” due to its charter school caps. However, policies exist that allow successful charter schools to replicate (such as allowing single boards to hold multiple charters).
- New York earns 14 out of 20 points for “operations,” mainly due to the autonomy authorizers provide. However, the law requires charter teachers to be certified (with few exceptions) and participate in collective bargaining processes. This limits the ability of school leaders to hire the candidates they choose.
- New York earns 6.5 out of 15 points for “funding equity.” New York charters are not guaranteed a consistent per-pupil amount of funding if they draw from several different districts. Moreover, the legislature has frozen base funding for charters in recent years, making only temporary exceptions for some schools. The state does not provide per-pupil facilities funding for charter schools.

North Carolina earns a “C” grade in CER’s rankings. Positive aspects of the law include no cap on the number of schools that can exist, robust protections for teachers, and the recent authorization of more innovative charters. However, a lack of equitable funding provisions and multiple, independent authorizers hurts the state’s grade.

## FAST FACTS

- Law passed: 1996
- Number of charters: 173
- Estimated charter enrollment: 91,800 (up 12 percent from 2015-16)
- North Carolina does not cap the number of Charter schools that can be authorized
- Virtual charter schools are allowed for students in grades 6-12
- Charter schools can contract with EMOs and CMOs for management purposes

- North Carolina earns 7 out of 15 points for “authorizing” because the state has only one semi-independent authorizer, the North Carolina Charter Schools Advisory Board. The Board reviews all applications for charter schools and then recommends them to the State Board of Education, which makes the final decision. This approach prevents diversity in the charter sector. Additionally, operators may not appeal authorizing decisions, which means that there is little to no recourse for a charter applicant who feels that the state board of education made an incorrect or politically motivated decision.
- North Carolina earns 14 out of 15 points for “growth” because the state does not cap the number of charter schools that can be authorized. The state has also implemented policies that make it easy for schools to expand without going through an onerous “re-application” process. The state loses a point, however, because the availability of charters has not kept pace with demand.
- North Carolina earns 13 of 20 points for “operations.” The state provides charters a blanket waiver from most state rules and regulations, but localities impose requirements on charter school boards that hinder autonomy.
- North Carolina earns 5 of 15 points for “funding equity.” Although the law provides that charters should receive per-pupil funds equal to the district allocation where the charter is located, those funds are often withheld in practice. Furthermore, application fees for charter applications and renewals unfairly disadvantage charters. Charters do not receive per pupil facilities funding or funding for pre-k programs.

Ohio earns a low “C” this year, a result of numerous factors partially documented on the case study which follows this page. Some charter advocates have criticized Ohio for allowing too many low-quality charter authorizers. Critiques trace back to legislation passed between 2001 and 2003, which limited the authority of the State Board of Education to issue final approvals and recommendations for charter schools and allowed non-profit entities to become charter school authorizers. The latter change led to a dramatic increase in the number of organizations seeking to authorize charter schools and an increase in the number of schools. Not all performed well, and critics blamed a lack of authorizer accountability.

In 2015, the legislature passed House Bill 2, which placed stringent requirements on authorizers. The state education department has increased oversight authority and can close authorizers if schools do not perform to standard. This, in turn, has encouraged authorizers to heavily regulate their schools, constraining growth in the charter sector.

### FAST FACTS

- Law passed: 1997
- Number of charters: 339
- Estimated charter enrollment: 121,000 (Down 8 percent from 2015-16)
- New brick and mortar charters are limited to the 8 major urban areas
- Virtual charter schools are allowed
- Charter schools can contract with EMOs and CMOs for management services.

- Ohio scores 6 out of 15 points for “authorizing.” Multiple organizations may become authorizers (including local boards of education, mayors, any of the 13 state universities, and non-profit organizations). But, the state acts as an “über authorizer; it heavily regulates authorizer decisions about schools.
- Ohio earns 7 of 15 points for “growth.” Charters may operate only in the eight largest cities, and each authorizer can authorize up to 100 schools. Virtual charter schools are capped at up to five new schools per year. These arbitrary restrictions have led to a decrease in the size of the charter sector.
- Ohio earns 12 of 20 possible points for “operations.” Charters receive a blanket waiver from state and local laws, but government heavily regulates authorizers and they heavily regulate schools. This regulation creates an environment where schools have far less autonomy than the law prescribes.
- Ohio earns 7 of 15 possible points for “funding equity.” Some equity exists in the law, but is rarely implemented in practice. For example, authorizers do not always provide transportation, although the law provides it. Charter schools are also entitled to per-pupil facilities funding. While the amount of funding has increased in recent years (especially for high performing schools) it is still inequitable when compared to what traditional public schools receive for facilities.

## CASE STUDY:

### HOW OHIO'S HOUSE BILL 2 CREATED AUTHORIZER CHAOS

- Arbitrary ratings systems, whether for authorizers or schools, can close the wrong schools and prevent the right schools from opening.
- Authorizers should be held to account for providing charters with the autonomy to flourish, closing them when they don't work, and protecting them from needless regulations.
- To ensure high-quality charter sectors, state law should provide for multiple, independent authorizers and hold them accountable for strong authorizing practices focused on serving students.

In 2015, concerned both by (real) cases of corruption and the (false) perception of low academic quality, the Ohio legislature adopted H.B. 2, launching a detailed evaluation system for charter school authorizers. The theory was, if Ohio held charter authorizers “accountable” it would see better management and better results. “Poor” authorizers would be shutdown, “ineffective” authorizers would be given two years to improve before being shut down, and only “effective” authorizers would be permitted to sponsor new schools.

There was just one problem: the charter authorizer ratings had essentially nothing to do with charter school quality. The sponsors rated “effective” by the state had an academic “D” average for the schools under their charge, and the sponsors rated “ineffective” had a “C” average. When the state looked at the value that each Ohio charter school was adding to student learning, as measured by test score growth, it revealed no correlation between school quality and authorizer ratings. In 2016, only 19 out of the 48 charter schools Ohio had awarded an “A”, for high “value-add” scores, were overseen by “effective” authorizers who were permitted to open new schools.

How did this happen? The legislature called for authorizers to be evaluated in equal parts by compliance with laws and regulations, adherence to quality practices, and academic performance. No doubt that sounded fair and straightforward to legislators. But in practice the Ohio Department of Education graded charters on whether they could jump through hundreds of arbitrary paperwork hoops—like confirming that the school’s flag is more than 5 feet long—and penalized charters that didn’t adhere to “best practices” (which don’t have any solid empirical evidence behind them in the first place). As a result of H.B. 2, bureaucratic bean counting and box checking counted for literally twice as much as academic quality.

This may all sound like abstract accounting, but it had significant real-world consequences. Because only “effective” authorizers were permitted to sponsor new schools, Ohio felt compelled to return \$22 million out of a \$71 million federal charter school grant. In effect, thousands upon thousands of students who are stuck in low-performing traditional schools won’t have the chance to attend a new high-performing charter. The Ohio legislature may or may not manage to fix this obviously broken system, but profound damage has already been done.

Oklahoma earns a “C” in this round of rankings. Provisions for multiple authorizers, including universities, school districts, the state Board of Education, and some Native American tribes, as well as strong teacher protections earn the state points. However, the statute severely limits where authorizers can operate and does not provide equitable facilities funding.

### FAST FACTS

- Law passed: 1999
- Number of charters: 37
- Estimated charter enrollment: 22,300 (up 11.5 percent from 2015-16)
- There is a cap of five new charter schools per year in each county and no more than one per school district outside of large urban areas
- Online charter schools are allowed
- Charters can contract with EMOs and CMOs for management purposes
- Oklahoma has one of the strongest charter school pre-k programs in the country
- A study by the university of Arkansas concluded that there was a 31 percent funding disparity between charter and districts schools in Tulsa

- Oklahoma scores 8 out of 15 points for “authorizing” because the law allows for multiple entities to authorize charter schools including universities, school districts, the state Board of Education and various Native American tribes. However, universities can only authorize schools in cities with populations of more than 500,000. The law also limits non-district authorizing in communities with populations less than 500,000 (only up to five per year and no more than one per district per year). These limitations affect the quality of authorizing especially in small communities, because it limits authorizing to school districts. Additionally, the first time a charter application is denied by an authorizer, prospective operators have no recourse (arbitration is permitted after a second denial).
- Oklahoma scores an 8 out of 15 for “growth” because the law places artificial limits on growth in less populated communities. These limits are evident in the relatively rapid growth in the number of charter school seats available but slow growth in the number of charters that are opening to meet demand.
- Oklahoma earns 15 of 20 points for “operations.” The law provides charters a blanket waiver from many state regulations that affect district schools, but charter schools are heavily dependent on school districts for funding and support.
- Oklahoma earns 7 out of 15 for “funding equity.” Charters receive funds from the same state aid funding formula that provides for district schools. However, the law does not require local funding for charters, so large inequities exist between charters and districts. Authorizers may deduct up to five percent administrative fees from each charter school’s state aid allocation, which negatively impacts schools. Oklahoma charters do not receive per-pupil facilities funding.

Oregon dropped in the rankings from a “C” to a “D.” Although a high charter cap scores some points for Oregon, this state’s charter law allows only district authorizers and establishes a very inequitable funding mechanism for charter schools.

## FAST FACTS

- Law passed in 1999
- Number of charter schools: 126
- Estimated charter school enrollment: 32,900 (increased 4 percent from 2015-16)
- Oregon does not cap the number charter schools
- Virtual charter schools are allowed
- Charter schools can contract with EMOs with significant regulations.

- Oregon scores 3 out of 15 points for “authorizing.” Oregon’s law allows only local school boards to authorize charter schools, which typically limits diversity an innovation. If a school board denies an application, a charter can appeal to the state board or a university, which can authorize the school if it accepts the application.
- Oregon scores 9 points for “growth.” Although the state does not cap the amount of brick and mortar charter schools that can operate, virtual charter schools may not enroll over 3 percent of the students in a district. Additionally, Oregon has many policies that make it difficult for successful charter schools to expand. Those policies include requirements for new applications when a successful school wants to expand and the requirement that schools with multiple campuses have multiple boards of directors.
- Oregon scores 12 out of 20 for “operations.” Oregon’s charter schools receive a blanket waiver from most regulations that apply to district schools. However, since school districts are the main authorizers in Oregon, charter schools are rarely permitted operational autonomy in practice.
- Oregon earns 4 of 15 points for “funding equity.” The law provides a per-pupil funding amount for charters that is 80 percent of the weighted average daily maintenance formula for students in grades K-8 and 95 percent of the formula for students in grades 9-12. This formula assumes that charters and district schools serve the same student populations. Because charters often serve more low-income students than their district counterparts, funding inequities result. Furthermore, authorizers can retain up to 20 percent of charter school funding for “administrative” fees. These fees deepen the funding disparities between charter and district schools. ‘Charter schools receive no per-pupil facilities funding.

Pennsylvania earns a “C” for its average charter school law. There is no authorizer diversity in Pennsylvania: only public school districts can authorize charters. The state appeals board can approve schools on appeal, but this doesn’t happen often, especially when anti-charter officials sit on the board. District oversight limits charter autonomy and growth, despite great demand (over 40,000 students are on charter school waiting lists).

In Philadelphia, the situation is particularly dire. The governor-appointed School Reform Commission is returning power to the local school district, which has traditionally been hostile to charter schools. The potential for charter schools to serve more Philadelphia students may decline if the law does not enable additional authorizers.

## FAST FACTS

- Law passed in 1997
- Number of charters: 180
- Estimated charter enrollment: 138,400 (down 2 percent from 2015-16)
- There is no cap on the number of charter schools
- Virtual charter schools are permitted
- EMOs and CMOs can operate with some regulations

- Pennsylvania earns 3 out of 15 for “authorizing.” Only districts can authorize brick and mortar charters. The State Board of Education authorizes virtual charter schools. Although limited authorizing options contribute to Pennsylvania’s low score, charter operators can appeal to the State Board of Education if they feel that districts are making adverse or unfair decisions. This is one positive aspect of the law.
- Pennsylvania earns 10 of 15 points for “growth.” While there is no legal cap on the number of charter schools that can exist, many districts throughout the state have imposed informal caps on the number of charter schools by choosing not to approve them. These limitations have hurt the growth of the state’s charter sector.
- Pennsylvania earns 13 of 20 points for “operations.” Charter schools in Pennsylvania have a blanket waiver from most state and district requirements. However, many districts strictly regulate charter schools and their activities. This regulation limits innovation and charter school autonomy.
- Pennsylvania earns 6 out of 15 points for “funding equity.” Charter school operational funding is inequitable because it is based on expenditure calculations made by the individual districts. The state can intervene if districts are not making scheduled payments to charter schools; however, charters are not entitled to the same federal funding as their district counterparts. Charter schools receive some per-pupil funding for facilities, but the amount does not come close to parity with districts.

Rhode Island earns a “D” rating this year. Rhode Island provides equitable operating funds for charters (especially compared to other states that score a “D”), but a hard charter school cap of 35 schools and no recourse for charter schools to appeal arbitrary or unfair decisions make Rhode Island’s policies inhospitable to charters.

## FAST FACTS

- Law passed: 1995
- Number of charter schools: 31
- Estimated charter school enrollment: 8,000 (up 11 percent from 2015-16)
- Rhode Island has a cap of 35 charter schools
- Virtual charter schools are permitted but they must provide some face to face contact
- Charters can contract with EMOs and CMOs for management services

- Rhode Island earns 3 out of 15 for “authorizing.” Rhode Island only allows one entity, the State Board of Education, to authorize charter schools (without appeal for unfavorable application or closure decisions). While the State Board is a preferable authorizer to local school districts, Rhode Island could greatly benefit from multiple authorizers, which allow for more innovation and policy environments that offer less regulation.
- Rhode Island scores 2 of 15 for “growth.” Rhode Island has a restrictive cap of 35 charter schools statewide, which limits opportunity. However, the state does provide efficient routes for successful schools to expand.
- Rhode Island earns 8 of 20 points for “operations.” The commissioner of education is empowered to create rules and regulations for charter schools, and charter schools can apply for waivers if they would like to be exempted from certain regulations. Providing charters with blanket waivers would be far preferable to this process, which is time consuming, burdensome, and prevents some charters for requesting exemptions. The law also requires charter school teachers to be traditionally certified, which prevents operators from assembling the staff that they desire.
- Rhode Island earns 7 of 15 points for “funding equity.” The weighted student formula that the state recently adopted is supposed to apply to district and charter schools in the same way. At the end of a 7-year “rollout,” charters and district schools are supposed to be funded at the same rate, with local funding directed from districts to charters (in essence, following the students). Schools may apply to the state for reimbursement of up to 30 percent of facilities costs.

# NATIONAL CHARTER SCHOOL LAW RANKINGS & SCORECARD—2018



Grade		A				B						C											D										F																
State		DC	AZ	IN	MN	MI	CO	CA	FL	NY	MA	SC	TX	NC	UT	OK	MO	WI	LA	TN	GA	ID	NV	NM	OH	PA	NJ	HI	KY	OR	AR	DE	ME	CT	IL	NH	AL	WY	MS	RI	WA	AK	VA	KS	MD	IA			
Year Law Passed		96	94	01	93	91	93	92	96	98	93	95	95	96	98	99	98	93	95	02	93	98	97	93	97	97	96	94	17	99	95	95	11	96	96	96	15	95	10	95	12	95	98	94	03	96			
<b>CHARTER AUTHORIZERS</b>	Possible Points																																																
Multiple Authorizers	8	6	7	8	7	8	4	4	1	5	4	5	3	4	4	5	6	3	4	3	4	5	5	4	5	1	2	3	2	1	2	2	4	2	4	1	1	1	2	2	3	1	0	0	1	1			
Authorizer Independence of Local/State Authority	7	5	6	6	3	7	5	3	4	6	5	4	3	3	5	3	3	4	3	3	2	4	2	4	1	2	1	2	4	2	2	3	1	1	2	2	2	2	3	1	1	1	1	0	0	0	1		
Authorizers Subtotal	15	11	13	14	10	15	9	7	5	11	9	9	6	7	9	8	9	7	7	6	6	9	7	8	6	3	3	5	6	3	4	5	5	3	6	3	3	3	5	3	4	2	0	0	1	2			
<b>GROWTH</b>																																																	
No Charter Caps	10	9	10	10	10	9	10	9	10	6	3	10	6	10	7	5	6	8	10	10	10	7	10	5	6	9	10	10	10	8	3	2	1	3	2	5	3	8	3	1	3	10	10	10	0	1			
Scaling Up	5	5	3	3	3	4	3	4	3	4	3	2	4	4	2	3	2	2	3	3	3	2	2	1	1	2	1	0	1	3	1	1	2	1	1	0	0	0	1	0	1	1	0	1	1				
Growth Subtotal	15	14	13	13	13	13	13	13	10	6	12	10	14	9	8	8	10	13	13	13	10	12	7	7	10	12	11	10	9	6	3	2	5	3	6	3	8	3	2	3	11	11	10	1	2				
<b>OPERATIONS</b>																																																	
School Autonomy	8	6	6	7	6	4	5	6	6	7	5	4	5	5	4	5	5	6	4	2	4	4	2	4	4	5	3	5	3	5	4	5	6	4	4	4	4	5	2	4	3	5	2	1	0	1	1		
Allows Freedom to Innovate	7	6	7	6	5	6	5	5	5	4	5	5	4	4	5	5	5	5	3	2	4	3	4	3	5	5	3	4	3	4	4	4	3	3	2	4	2	3	2	3	3	2	2	2	2	1			
Teacher Freedom	5	5	5	4	3	3	4	4	5	3	5	4	5	4	3	5	3	3	3	3	3	3	3	3	3	3	0	4	3	3	3	3	3	4	4	5	3	3	2	3	0	0	0	0	0				
Operations Subtotal	20	17	18	17	14	13	14	15	16	14	15	13	14	13	12	15	13	14	10	7	11	10	9	10	12	13	9	9	10	12	11	12	12	10	10	12	12	8	9	8	11	4	3	2	3	2			
<b>EQUITY</b>																																																	
Operating Funds	10	8	5	7	8	8	7	7	6	6	8	6	7	5	8	5	7	5	5	6	5	5	6	8	6	6	6	4	3	4	5	6	5	4	5	2.5	5	2	4	7	2	1	0	0	4	0			
Pre-K Funds	2	2	0	0	0	0	0	0	0	0	2	0	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	0	0	0	0	0	0	0	0	0	0	0	0			
Facility Funds/Financing	5	4	2	0	2	0	0.5	1	1.5	0.5	1	0	0	0	0.5	0	0	0	0	3	0	1	0.5	1	1	0	0	0	0	0.5	0	0	0.5	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Equity Subtotal	15	14	7	7	10	6	7.5	8	7.5	6.5	11	6	9	5	8.5	7	7	5	5	9	5	6	6.5	9	7	6	6	4	3	4	5.5	6	7	6.5	5	2.5	5	2	4	7	2	1	0	0	4	0			
<b>TOTAL SCORE</b>	<b>65</b>	<b>56</b>	<b>51</b>	<b>51</b>	<b>47</b>	<b>47</b>	<b>44</b>	<b>43</b>	<b>42</b>	<b>42</b>	<b>41</b>	<b>40</b>	<b>39</b>	<b>39</b>	<b>39</b>	<b>38</b>	<b>37</b>	<b>36</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>34</b>	<b>32</b>	<b>32</b>	<b>30</b>	<b>29</b>	<b>29</b>	<b>28</b>	<b>27</b>	<b>26</b>	<b>26</b>	<b>25</b>	<b>24</b>	<b>24</b>	<b>23</b>	<b>21</b>	<b>21</b>	<b>20</b>	<b>20</b>	<b>18</b>	<b>14</b>	<b>12</b>	<b>9</b>	<b>6</b>				
2015 Rank		1	5	3	2	4	9	11	7	6	27	9	25	23	10	23	12	15	15	20	17	13	24	19	14	18	29	30	N/A	26	34	21	31	39	32	35	N/A	38	36	33	28	37	42	43	41	40			
2018 Rank		1	2	3	5	4	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45			
Total Charter Schools as of FEB. '18		120	556	83	180	300	250	1275	654	349	82	72	762	173	129	37	71	234	145	111	115	52	43	100	339	180	89	36	N/A	126	58	29	9	31	142	25	1	4	3	31	8	29	8	10	50	3			

South Carolina ranks 11 and receives a low “B” grade. It moves up in this year’s rankings as a result of recent changes to the law, including a change that allows universities to authorize charter schools. South Carolina now permits three types of authorizers: universities, local school districts, and the South Carolina Public Charter School District (PCSD).

In late 2017, PCSD began to challenge the authority of universities to approve schools that it had not. Charter operators also allege that PCSD has become increasingly bureaucratic and focused on process and narrow measures of success. Many operators are seeking new authorizers as a result. Should these trends continue, South Carolina is likely to drop, once again, in future CER rankings.

## FAST FACTS

- Law passed in 1996
- Number of charters: 72
- Estimated charter school enrollment 31,700 (up 1 percent from 2015-16)
- South Carolina does not cap the number of charter schools
- Virtual charter schools are allowed, provided that 25 percent of instruction involves a “real time” teacher
- There is wide flexibility for charters wishing to contract with EMOs/CMOs for management services

- South Carolina scores 9 out of 15 for “authorizing” because the law allows universities, school districts, and the South Carolina Public Charter School District to authorize charter schools. Currently no universities are authorizing schools. The South Carolina Charter School District is a government entity, which means it is vulnerable to politics.
- South Carolina earns a 12 out of 15 for “growth.” While the law does not cap the number of charter schools available, it requires operators to apply for a new charter each time they would like to expand. This makes it difficult for the charter sector to grow. Long and burdensome application and reapplication processes do not entice operators to replicate.
- South Carolina receive 13 of 20 points for “operations.” The law provides charter schools a blanket waiver from most state and local regulations. However, charter school funding flows from the authorizer, instead of the state. This makes schools vulnerable to the whims of authorizers (many of which are local school districts, who sometimes see charters as competitors).
- South Carolina scores 6 out 15 for “funding equity.” Charter schools authorized by the Public Charter School District cannot draw funding from a local tax base (as district schools do), but they do receive state funding in addition to the pre-determined per-pupil amount students would otherwise receive. State funding is helpful, but it is also subject to budget cuts. Charter Schools in South Carolina do not have access to any per-pupil facilities funding.

## CASE STUDY:

# HOW HOSTILE AUTHORIZERS HINDER SOUTH CAROLINA'S CHARTERS

- School districts make ineffective charter school authorizers.
- Charters with district authorizers tend to be underfunded and less autonomous.
- Strong authorizers focus on accountability for outcomes, not compliance.

Legacy Early College Charter Schools operates three schools on two campuses in Greenville, South Carolina, serving students in kindergarten through grade 12. Almost all of Legacy's students live below the poverty line. In a community where comparatively few high school graduates go on to college, Legacy boasts high college acceptance rates and impressive student growth scores on standardized examinations.

Legacy depends upon federal Title I funding for much of its budget; the federal government provides Title I funds as a budgetary supplement for districts and schools with high concentrations of poverty. The Greenville County School District (GCSD), which is the district that Legacy's students would otherwise attend, also relies heavily on Title I funds.

In 2014, GCSD denied Legacy its Title I funds, citing smaller than expected growth in the organization's student enrollment (an argument that contradicts federal guidelines on Title I fund distribution issued under the Obama administration). The district again withheld Title I funds in 2015. When Legacy appealed to the state, the department of education supported the district's decision. Legacy ultimately appealed to the U.S. Department of Education (USDOE), which administers the Title I program. USDOE ordered the state and district to pay Legacy the \$172,000 its students were owed. In its decision, USDOE also compelled GCSD to ensure Legacy "access to other products and services purchased with Title I set-aside funding."

Legacy's leadership decided to sever its relationship with the GCSD in 2016. The South Carolina Public Charter School District (SCPCSD) agreed to authorize Legacy.

Like most Title I schools, Legacy has equipment (computers, smart boards) that it purchased with Title I funds. When Legacy contracted with its new authorizer, GCSD agreed that Legacy's Title I equipment would stay with its students. But there was a catch: the district claimed the value of the equipment in Legacy's schools was comparable to the \$172,000 in back Title I funding it owed the charter school.

Now Legacy has a choice: forfeit money that belongs to students (and that the USDOE has ordered the district to provide to Legacy) or engage in a time consuming and potentially costly battle with its former authorizer—a battle that will divert the attention of school leadership from the immediate needs of students. Either way, students lose.

Tennessee earns a “C” in this round of rankings. Tennessee’s charter school sector is improving, as the achievement school district has increased the reach of charters beyond Memphis. Recent changes to Tennessee’s charter school law have drastically increased the number of charter schools that exist outside of Memphis, and charters have quickly taken hold in Nashville and the rest of the state. Factors that negatively impact Tennessee’s score include a reliance upon school districts for authorizing, a highly regulatory environment, and, as a consequence, slower than desirable growth of the sector.

## FAST FACTS

- Law passed in 2002
- Number of charters: 111
- Estimated charter enrollment: 30,000 (down 10 percent from 2015-16)
- Tennessee does not cap the number of charter schools
- Virtual charter schools allowed
- Statute prohibits charter schools from contracting with EMOs
- A study by the University of Arkansas concluded that charter schools in Shelby County (Memphis) receive 9 percent more in per pupil funding than their traditional public school peers.

- Tennessee earns a 6 out of 15 for “authorizing.” In Tennessee, only two entities are able to authorize charter schools, local school districts and the Recovery School District (RSD). The RSD may only authorize in low performing school districts. In most of Tennessee, districts are the sole authorizers.
- Tennessee earns 13 out of 15 points for “growth.” This higher score is due to the absence of a cap on charter schools. However, there are provisions in Tennessee law that make it difficult for successful charter schools to expand; one example is a requirement that successful charters that wish to expand begin the application process anew each time.
- Tennessee receives 7 out of 20 points for “operations” because the state does not give charters blanket waivers from state rules and regulations that apply to traditional public schools. Instead, charter schools need to apply to the state for waivers from specific regulations. Additionally, the law mandates that charter school teachers be certified in the same manner as teachers in district schools. This limits hiring autonomy.
- Tennessee earns 9 out of 15 points for “funding equity.” Operational funding allocated to district charter schools is equal to the per-pupil state and local funds that districts receive. Funding is the same for RSD charters, but the local education agency (LEA), or district, pays the state 100 percent of the per-pupil share it would have received for a charter student, and that money is redirected to the charter. LEAs can charge charter school applicants up to \$500 per application. The state provides a small amount of money (around \$300 per student) for charter school facilities funding.

Texas’ charter school sector scores above average in the rankings. At number 12, Texas receives a high “C”. Texas law allows for school districts and the State Commissioner of Education to authorize charter schools. Originally, Texas only authorized charters that proposed to attract at-risk or economically disadvantaged students. Recently, though, the state has approved charter schools with a more diverse range of missions. This has helped operators to serve more students and to establish more schools throughout the state.

Texas law provides comparatively strong operational funding and autonomy for charters, but it does not provide for multiple, independent authorizers. It vests most control with the Texas Education Agency, which has impeded the development of more high-quality schools.

## FAST FACTS

- Law passed in 1995
- Number of charters: 762
- Estimated charter enrollment: 315,200 (up 10 percent from 2015)
- Texas places a cap of 15 on the number of schools that the commissioner can authorize each year
- Virtual charter schools allowed
- Charter schools are allowed to contract with EMOs and CMOs for management purposes
- A study by the University of Arkansas concluded that there was a 2 percent funding disparity in Houston and a 20 percent funding disparity in San Antonio between charter schools and traditional public schools

- Texas earns a 6 out of 15 for “authorizing” because only public school districts and the State Commissioner of Education can authorize charters. Additionally, government heavily regulates charter schools and authorizers; authorizers, for example, have little autonomy to make decisions and schools have little recourse to appeal authorizer decisions.
- Texas earns 10 out of 15 points for “growth.” Although the law caps Commissioner schools at 15 per year, the regulatory environment in the state is also flexible enough that the sector actually grows under the cap.
- Texas earns a 14 of 20 points for “operations.” Charters in Texas are exempt from many rules and regulations that apply to traditional public schools, but they do not receive a blanket waiver from all state rules and regulations. Additionally, charters face special requirements for automatic closure, which risks closing schools that might be serving students well.
- Texas earns a 9 out 15 for “funding equity.” The law provides a funding formula for open enrollment charters but no formula for district-authorized charters. The state does not provide per pupil facilities funding for charter schools, though it does provide per-pupil funding for charter schools operating pre-k programs.

Utah earns a “C” in the annual rankings. Although the state provides equitable funding for charter schools, caps place limits on charter school growth, and authorizing policies limit the autonomy of teachers and charter operators. These factors lower Utah’s score.

### FAST FACTS

- Law passed in 1998
- Number of charters: 129
- Estimated charter enrollment: 71,500 (up 10 percent from 2015-16)
- Online charter schools are permitted
- Charters can contract with EMOs and CMOs for management purposes
- Utah does not have a cap on the number of charter schools, but the state annually updates an enrollment cap, which has not been a substantial obstacle to enrollment growth

- Utah scores 9 out of 15 points for “authorizing.” The law allows both districts and the Utah State Charter School Board to authorize charter schools. Universities may sponsor schools, but the law requires local universities to receive final authorization from the state board. Utah’s university sponsors are not independent authorizers, and this lowers the state’s score. However, the Utah Charter School Board operates autonomously from the State Board of Education, which means it is not as vulnerable to political pressure. This raises Utah’s score.
- Utah receives 9 out of 15 points for “growth.” The state does not cap the number of students who can be enrolled in a particular school, but it does cap the number of students enrolled in charter schools. The current number of students allowed to attend charter schools is 71,500. Any arbitrary limitation on the number of students who can attend charter schools denies families opportunities.
- Utah earns 12 out of 20 points for “operations.” Schools must request a waiver from state government to operate freely of most regulations, which means that any schools are highly regulated. Additionally, charter school teachers are subject to the same certification requirements as their district counterparts. This prevents charter operators from assembling the staffs they desire.
- Utah earns 8.5 out of 15 for “funding equity.” The state provides operating funds for charters, but those funds are subject to budget fluctuations. This means that charters normally operate with less funding than district schools. Charter schools receive additional per-pupil funding as part of a local revenue replacement program. The program requires that at least 10 percent of funding must be spent on facilities.

Virginia earns an “F” in the most recent charter school law rankings. Charter schools in Virginia are dependent on local school boards for everything from authorization to granting exemptions from the regulations that generally apply to district schools. As a result of their dependence on districts, few school boards in Virginia will approve or support charters once they get off the ground.

## FAST FACTS

- Law passed: 1998
- Number of charter schools: 8
- Estimated charter school enrollment: 1500 (25 percent increase from 2015-16)
- Virginia does not cap the number of charter schools that can be authorized
- Virtual schools are permitted (with district approval)
- Charter Schools can contract with EMOs and CMOs for management support (with district approval)

- Virginia earns 0 of 15 points for “authorizing.” In Virginia, school districts have total control over all authorizing decisions for charter schools. While there is no formal appeals process involving an independent body, a charter can petition its authorizing district to reconsider unfavorable renewal decisions. Unfair regulations and processes such as these have resulted in limited autonomy for charters and negligible growth in the state’s charter sector.
- Virginia earns 11 of 15 points for “growth.” Virginia does not cap the number of charter schools that can be authorized, which earns it comparatively high points in this category. However, the very slow growth of the state’s charter sector is evidence that the heavy regulatory charter environment in the state provides little incentives for operators to establish schools.
- Virginia earns 3 of 20 points for “operations.” Charter schools in Virginia rely upon districts to exempt them from rules and regulations that typically apply to schools. This includes collective bargaining agreements and traditional teacher certification requirements. This is a charter law in name only. Charters require autonomy to be innovative, successful, and different from their district counterparts.
- Virginia earns 0 of 15 points for “funding equity.” District authorizers decide upon funding levels and then pass funding on to charter schools. With such discretion over funding, districts directly control charter school budgets and operations. Virginia provides no per-pupil facilities funding to charters.

Washington earns a “D” in the rankings. The state’s law fails to provide for authorizer independence nor does it provide equitable funding for charters. Additionally, a second lawsuit challenging the constitutionality of charters has greatly hampered the growth of the charter school sector in this state.

## FAST FACTS

- Law passed in 2012
- Number of charter schools: 8
- Estimated charter school enrollment: 1,300
- Charter growth is capped at up to eight schools per year with a maximum of forty schools per year
- Online charter schools are not permitted

- Washington earns 4 of 15 points for “authorizing.” Washington’s law permits two entities to authorize charter schools: the Washington Charter School Commission and public school districts (which must first receive state approval to authorize schools). Washington’s law does not provide a route for charter schools to appeal arbitrary or unfair decisions made by either the Commission or local districts.
- Washington earns 3 of 15 points for “growth”. The law caps charter schools at 40, and states that no more than 8 charters can be authorized each year for the first 5 years of the statute. There has been little growth in the charter sector due to a lawsuit questioning the constitutionality of charters.
- Washington earns 11 of 20 points for “operations.” Charter schools in Washington are exempt from most rules that apply to traditional schools. However, authorizers have the ability to write rules and regulations into charters, which ultimately limits autonomy. State law requires charter school teachers to be traditionally certified. This can hamper an operator’s autonomy to assemble the best staff.
- Washington earns 2 of 15 for “funding equity.” Washington’s law states the state superintendent should allocate funding to charter schools and that the amount of funding should be determined by calculating a statewide average of a variety of funding categories (special education, general funding, categorical). Authorizers can retain a maximum four percent authorizer oversight fee. Charter schools do not receive per-pupil facilities funding.

*The broadly accepted authorizing frameworks we know have given us some tremendous things. Most notably, they've created networks of schools that are particularly good at closing achievement gaps for low-income and minority kids. Those schools have become safe havens of order and creativity because of their strong emphasis on structure, great teaching, and high expectations—what folks commonly, if inelegantly, refer to as the “no excuses” model. They've changed and saved lives. This is laudable, and I support all of it. But what haven't those same authorizing frameworks given us? In their emphasis on bringing “quality schools”—or, rather, what “we” thought were quality schools—into existence, we may have perverted the pluralism inherent in the chartering power and instead substituted control.*

**— Derrell Bradford, from Keynote Address, Yale School of Management, Education Leadership Conference, 2017**

DC has the strongest charter sector in the country and earns an “A” grade. The DC Public Charter School Board (DCPCSB) authorizes charter schools. The congressional act authorizing the Board also granted it independence from all city and “state” activities. The Board’s autonomy is currently threatened; The City Council has attempted to interfere with charter schools (the schools are fighting back with a lawsuit) and some Board personnel have negotiated with the relatively new State Education Agency, which did not exist when Congress authorized the Board.

Despite these threats, DC’s law is stronger than all others for two reasons: The District provides the strongest funding base in the country for charters (though funding is still not equal to district schools) and the Board maintains a great deal of independence.

## FAST FACTS

- Law passed in 1996
- 120 charter schools
- Estimated charter enrollment: 43,429
- Virtual charter schools are allowed (although limited in practice)
- Charter schools can contract with for all forms of education service providers
- DC charter schools are permitted to offer pre-K

- DC receives a high score for “authorizing” because the law enables DCPCSB to authorize schools without the constraints and limitations that traditional school districts tend to put in place. DCPCSB is not accountable to the Board of Education.
- The law caps charter growth at 10 schools per year, but it also allows the cap to carry over from one year to the next, which means that charter growth has never been limited. In recent years the growth of the sector has slowed because of challenges with DCPCSB board members, but overall growth in the sector remains strong.
- The District receives a high “innovation” score because it permits a wide variety of charter schools, including schools with diverse instructional approaches, to operate with great autonomy. This includes schools that blend traditional instruction with virtual learning, and a single-sex school for girls.
- DC’s charters enjoy more equitable charter school funding than most states. DC also has the most robust per-pupil facilities funding program in the country. This is reflected in the District’s strong “funding equity” score.

## CASE STUDY:

# WHY WASHINGTON, DC'S CHARTER LAW WORKS

- Independent authorizers are less vulnerable to politics and more likely to grant real autonomy to charter operators.
- Strong authorizers hold charters accountable for outcomes but do not confuse accountability with regulation.
- Sound policy provides all schools with equitable funding for students and facilities.

Charter schools in Washington, DC work. Students who attend charters score better on standardized tests, graduate high school at higher rates, and are more likely to be accepted to college than their counterparts in the district's traditional public schools. This comparison is especially important given the extent to which DC's district schools have improved in recent years.

DC is a compelling case study for several reasons. First, the charter sector is large, about the same size as the district (DCPS). Second, the demographics of the District and the charter system are similar: whereas charters serve slightly more poor students, DCPS serves slightly larger numbers of "students in crisis." Finally, DC funds charters comparatively well; charters receive equitable per-pupil and facilities funding.

So why do DC charters have an edge over their counterparts? According to David Osborne: it's the governance model. DCPS "uses the 'unified' governance model that emerged more than a century ago, in which the district operates all but one of its 113 schools and employs all the staff, with central control and most policies applied equally to most schools." The traditional model remains despite some of the most aggressive school district reforms in the U.S. in the last 15 years.

Charter governance in DC is fundamentally different. The district's independent Public Charter School Board (PCSB) "does not own or operate schools. Instead, it contracts with 62 independent organizations—all of them nonprofits—to operate 115 schools. It negotiates performance contracts (charters) with operators, lets parents choose their schools, shuts down schools that fail to perform, and replicates those that succeed."

With few exceptions, the PCSB manages to check the impulse to overregulate charter schools. But a word of caution: PCSB should carefully guard against the desire of local agencies to micromanage charters and impose regulations. As the sector continues to grow, the risk of unwarranted regulation increases. Allowing additional authorizers to enter the space could be helpful, and a renewed vigilance on the part of the nation's most independent charter authorizer will serve DC's charters well.

Wisconsin earns a “C” in the national rankings. The law provides charters needed autonomy, which should result in a diverse and innovative charter sector. However, restrictions on who can authorize schools ultimately limit diversity and innovation; districts authorize 90 percent of charters in the state. Limits on charter school expansion also contribute to Wisconsin’s middling grade.

## FAST FACTS

- Law passed: 1993
- Number of charters: 234
- Estimated charter enrollment: 44,900 (no increase from 2015-16)
- Virtual charter schools are permitted, but only if authorized by local districts
- Wisconsin has no caps for the majority of authorizers but some exist for universities. Milwaukee Public Schools has a self-imposed cap
- Charters can contract with EMOs and CMOs for management purposes

- Wisconsin earns 7 out of 15 points for “authorizing” because multiple entities can authorize charter schools. School boards, some universities, and the Milwaukee City Council can act as authorizers (with geographic restrictions). In practice, however, school districts authorize 90 percent of charter schools in Wisconsin.
- Wisconsin earns 10 out of 15 points for “growth” because of the moderate caps that exist for some university authorizers (such as Menominee and LaCourte Universities). Milwaukee Public Schools also instituted a cap. Additionally, charter schools in Wisconsin have shown poor growth recently, which suggests a regulatory environment adverse to charter school growth.
- Wisconsin earns 14 out of 20 points for “operations” because charter schools have a blanket waiver from most state laws and regulations that apply to traditional public schools. However, due to the large number of schools that are authorized by traditional school districts, charter schools in Wisconsin are always at risk of being overregulated, which undermines autonomy. Furthermore, the law requires charter school teachers to be certified. This may prevent charter schools from hiring the best-qualified candidates.
- Wisconsin earns 5 out of 15 points for “funding equity” because the law does not specify how district-authorized charters should be funded. Charter schools funded by all other authorizers receive per-pupil funding equal to the payment amount of the prior year, plus any revenue increase adjustments in the current school year. Wisconsin’s law does not provide any per-pupil facilities funding.

Wyoming’s weak charter school law earns the state a “D” in the national rankings. Districts are the only authorizers in Wyoming and the very low number of charter schools available to families is proof that districts are not strong advocates for charter schools. Furthermore, Wyoming law does not equitably fund charter schools.

## FAST FACTS

- Law passed: 1995
- Number of charter schools: 4
- Estimated charter enrollment: 500 (0 percent change from 2015-16)
- There is no cap on the number of charter schools that can be authorized
- Virtual charter schools are permitted in Wyoming (though none exist)
- Schools are allowed to contract with CMOs and EMOs for management purposes

- Wyoming earns 3 of 15 points for “authorizing.” Only school districts can authorize charter schools in Wyoming, though appeals to the state Board of Education are available if and when districts make arbitrary or unfair decisions. The approach to authorizing limits autonomy and innovation in the charter sector.
- Wyoming earns 8 of 15 points for “growth.” Wyoming does not cap the number of charter schools, but its charter sector has seen no growth in recent years. A heavy regulatory environment prevents operators from establishing and expanding schools.
- Wyoming earns 8 out of 20 points for “operations.” Charters do not receive blanket waivers from regulations and are dependent on district authorizers and/or the state Board of Education to exempt them. It is therefore difficult for charters to behave differently than their district counterparts. Additionally, Charter school teachers must be certified in the same manner as traditional public school teachers, making it difficult for charter operators to assemble the staffs they desire.
- Wyoming earns 2 out of 15 points for “funding equity.” Wyoming law states that charter schools are entitled to 100 percent of the foundation program funding amount computed under state law, based on “average daily membership,” and 100 percent of the charter’s proportion of major maintenance payments. However, there is no way to hold districts accountable to this statute. The state has no legal authority over local school boards and the manner in which they distribute funds to charter schools.

# CONCLUSION & CALL-TO-ACTION



# RECOMMENDATIONS FOR STATE POLICYMAKERS

State policymakers must understand that the charter school conversation has moved beyond a simple “for” or “against.” To be sure, there is still no shortage of charter opponents. But it’s incumbent on state policymakers to do more than simply support charter schools. They have to know why it’s important to support charter schools and propose policies to advance their particular vision.

We encourage policy makers to consider: do we want charter schools that are “better” than public schools, or that are different than public schools?

For many in the charter sector, the answer is clearly “better.” But we put that word in scare quotes for a reason: in practice, “better” is almost always defined in terms of reading and math standardized test scores. Charter schools, by and large, successfully outperform their neighboring public schools on these tests, giving policymakers and the public a clear case that charters are “working.” If policymakers want to double-down on this vision, the agenda is not terribly complicated. You simply orient the regulatory infrastructure around producing a sector of schools with higher standardized test scores. You put up significant barriers to entry to attempt to only allow schools to open that you think are likely to produce standardized test score gains. You get every charter authorizer on the same page that the prime factor in charter school renewal is whether they meet their intended test-score targets. You automatically weed out schools that post low-test scores. Over time, the system is likely to achieve its intended effect.

But this places a whole lot of faith in standardized test scores as the ultimate arbiter of educational quality, certainly more faith than parents place in them, and for good reason; parents know that the intangibles of a school – its culture, the commitment of its teachers, its particular pedagogical vision – can matter a whole lot more to their child’s development than whether they place five percentiles above or below what the state would predict on standardized math tests. But by designing a system based exclusively on standardized tests, policymakers risk designing a standardized system that has little room for mission-driven innovation.

Policymakers who value pedagogical pluralism and innovation must chart a more complicated policy course to enable a diverse and robust charter sector. To achieve this more open, parent-driven kind of system, the prescription isn’t quite as simple as centralizing policy around the single end of raising test scores. Rather, policymakers must inject a certain openness and liberty into how their state opens, monitors, and closes charter schools.

## OPENING NEW CHARTER SCHOOLS

System-centered charter advocates say that authorizers must set “high standards” for opening a new charter school. Parent-centered advocates can’t flippantly counter that they are for “low standards”—rather, they must make a more nuanced case for a host of targeted reforms.”

## **1. ENCOURAGE INDEPENDENT, MULTIPLE & DIVERSE CHARTER AUTHORIZERS**

Most charter advocates, whether system- or parent-centered, agree that it's best to have multiple authorizers. But the multiplicity matters the most if each authorizer has the liberty to operate in a distinctly different way. Oftentimes, when a state has multiple authorizers on paper it actually only has a series of authorizers with local monopolies. And many of those authorizers are either school districts or operate contingent on school district approval. This means that, in practice, rather than encouraging competition and innovation there are simply a chain of different fiefdoms. What's more, even in states that have multiple authorizers, there is a growing pressure to make these authorizers adopt standard "best practices." In practice, this can counteract the autonomy and judgment of charter authorizers and encourage authorizer homogenization.

State policymakers should aim for a law that allows at least one non-district, nongovernmental authorizer who is capable of starting a charter school in any part of the state, without geographic restrictions that produce another monopoly over a particular region or city and permitting all communities to be home to charter schools, versus selecting certain districts and city-sizes, as is the case in Kentucky, the latest law to be adopted. When it's done so by law, as law in Ohio, Oklahoma, Missouri and Tennessee, it constrains charters into specific areas, limiting their popular appeal and pedagogical potential. When it's done in practice, as in Massachusetts and New Jersey, efforts for further expansion tend to be resisted by constituencies that have never benefited from charter schools. Such bargains are made allegedly to gain political support but result in increased protectionism, not expansive attitudes toward reform. It further changes the nature of what chartering is and can be in those areas for its residents and builds the philosophy, amongst suburbanites, that charters are a course of last resort for other people's kids. Geographic and socioeconomic constraints on where charters are allowed to open and local authorizing monopolies should be counter acted.

Policymakers should also enable a range of different kinds of organizations that are allowed to authorize charter schools. School districts should have the option, as should the state education agencies, local governments, universities, and nonprofit organizations. While we believe allowing for the same creativity that fostered the first charter school laws is in order to find the next best entity to authorize, we nevertheless point to the data on states with universities as authorizers as evidence of why this should be the preferred model for lawmakers today.

These different types of authorizers should be encouraged to either remain mission agnostic or should be encouraged to specialize as part of a diverse state-wide range of authorizing bodies. It would be interesting to see authorizers spring up with particular missions; for example, classical education, Montessori education, or digital education, and focus on bringing those particular approaches to any location statewide. No matter the approach, mission-standardization across multiple authorizers should be discouraged.

## **2. CREATE A MECHANISM FOR "SMALL-SCHOOLS" TO START UP**

There is a very compelling reason why authorizers might be hesitant to take a chance on a new charter school: opening a new charter school is a massive endeavor, and if a large school sets up shop overnight and fails quickly it could harm hundreds upon hundreds of students in the process.

As Matt Candler of 4.0 Schools in New Orleans has said, the typical charter school launch goes as follows: cross your fingers that a 200-400-page application based on a school you've never tested gets approved and then go from zero to running a \$1-4 million operation serving 80-200 kids overnight. Realizing that this isn't the most efficient or promising way to start a new school, Candler's 4.0 Schools acts as an incubator for "Tiny Schools" where a handful of teachers can test out new pedagogical approaches for a classroom or two of children and can work towards scaling up their concept if it proves fruitful.

More organizations like 4.0 Schools should exist, and they should have a mandate to authorize start-up charter schools, at least on a limited basis. Ideally, you could imagine a dual-track system for charter approval. One system would be the normal process by which educational entrepreneurs write a massive application and try to launch a big new school from whole cloth. And the other would be a sort of "start-up" track, authorizing 1-4 classroom mini schools for 1-2 years of a pilot launch to try to prove their concept and competence.

For policymakers, an approach to help achieve this practice is to limit requiring "proven" school models and discouraging authorizers from using prior experience running a school with traditional measures of success to be a proxy for approval. The founders of KIPP were once two scrappy, young teachers who had no prior experience. Yet their creativity, aspiration and dedication drove them to start what is considered among the best charter management organizations. Had they been required to demonstrate prior success, thousands would have never completed their education.

## MONITORING CHARTER SCHOOLS

### 1. LEGISLATIVELY COMMISSION A REGULATORY AUDIT

As you learned from Benjamin Lindquist's chapter, charter schools are often hampered to such a significant degree by state regulations that it makes a mockery of the promise of charter autonomy. For the most part, state legislatures entrust oversight of the charter sector to state education agencies, which are often the ones promulgating an intensive, compliance-based system. State legislators should maintain oversight over state education agencies, local education agencies, and charter authorizers to monitor and mitigate the everyday regulatory burden imposed on charter schools. Legislative committees should commission periodic third-party regulatory reviews, with an eye toward issuing legislative recommendations that can fight back against bureaucratic-regulatory creep.

Similarly, the federal Department of Education must review its role in having fostered a climate of compliance driven, punitive state oversight of authorizers and charter schools. The Public Charter School Start up grant program has developed from a thin, state block grant program into a complex web of federal demands on states; increased funds for schools has also increased funds to support that bureaucracy.

We encourage Education Secretary Betsy DeVos to provide incentives for states to conduct a forensic audit on the regulatory demands and non-regulatory compliance which have played a significant role in the regulatory reload of charters addressed in many of this publication's papers.

## **2. ENCOURAGE ALL SCHOOLS, CHARTER & PUBLIC, TO CONDUCT & REPORT SCHOOL CLIMATE SURVEYS**

The promise of charter schooling goes well beyond test scores – but quite often that’s all that the public (and policymakers) are able to judge. One solution to this information problem is to encourage all schools—charter and public—to conduct and publish consistent school climate surveys. It could well be that a charter school is performing just as poorly on standardized tests as its neighbors, but according to students they feel much safer there than at their former school. It could also be the case that students at one charter school perform higher on tests but feel less respected and nurtured than at another charter school that doesn’t perform quite as high. All of this is information that parents care about, deserve to know, and could help encourage schools to compete not just on standardized tests, but on offering a whole-child education.

## **3. DEFEND CHARTER SCHOOL AUTONOMY ON TEACHER QUALITY**

When No Child Left Behind’s call for highly qualified teachers reached the states, the default requirement became standard certification of teachers, even for charter schools which had prior to its adoption been permitted in most states to allow alternative paths to teaching. While many states permit some flexibility—mostly temporary—from such provisions, most have not resulted in the kind of expansive environment for attracting non-traditional teacher candidates to the classroom.

At a time when there is a shortage of qualified people to teach, the growing push to maintain and expand teacher licensure requirements to all charter schools must be counteracted and reversed. Under the Every Student Succeeds Act, states are allowed to use federal funds to establish specialized teacher preparation academies. State legislators should push to allow charters to set up their own academies, essentially giving them freedom to recruit and train their own teachers.

Separate from charter school laws, all schools would benefit from legislation that permits wide latitude in hiring and subject matter expertise to substitute for certification. The National Council on Teacher Quality has more to say about this subject.

## **CLOSING CHARTER SCHOOLS**

Many system-centered reformers will be quick to straw-man arguments for a more free and open charter sector by saying that parent-centered reformers don’t want to allow bad schools to be shut down. On the contrary, part of the charter bargain is that charter schools must be accountable to a state entity with the power to close them. The question is how.

In a parent-centered eco-system, authorizers should retain the ability to close a school – but that decision should always be a human one. Rather than simply close a school based on a formula for standardized test score performance, test scores should open a serious conversation rather than close one.

When a charter school is identified as being low-performing, a charter authorizer ought to conduct a thorough review, consulting students, teachers, and parents to judge whether the school truly deserves closure or whether it might have other virtues that make it worth keeping open. Perhaps parents and students feel that they are safer in a charter school than they were at their last school. Perhaps teachers feel as though they’re making tremendous progress of the

sort that doesn't shine through on test results. Or, perhaps teachers feel as though the culture at their charter school is toxic and parents feel like they are being stonewalled. Either way, this is all information that a charter authorizer should have a duty to collect and take into account before making a decision.

This is a subject we do not take lightly. Tomes have been written on it, and hundreds of meetings, hearings and debates held to discuss when and how—indeed if—to close charter schools.

The current approach advised by the national charter-only organizations is failing to deliver on the promise that students have access to schools that best meet their needs. It also fails to deliver on the promise that educators have the opportunity to create those schools with leeway to devise and develop new and innovative approaches. Parents need and deserve opportunities to choose from a wide and increasing plethora of diverse educational approaches. By leading a national conversation on closing charter schools and demanding laws that develop complex systems to put authorizers, not parents, exclusively in control of enforcement, the authorizing and association organizations have given a blank check to opponents and policymakers to over-regulate and thus reduce the footprint possible for chartering. As we point out, the downward spiral growth curve of the charter sector is not an accident.

# THE NEXT GENERATION CHARTER SCHOOLS ACT

*Based on the work of the American Legislative Exchange Council*

Section 1. {Title.} The Next Generation Charter Schools Act

Section 2. {Declaration of Purpose.}

(A) The General Assembly hereby finds and declares that

(1) The Charter School Act of [year] as approved by this body has provided students in our state with high-quality public school choices while advancing overall academic excellence [1] and helping to close the achievement gap; and

(2) Will provide parents flexibility to choose among diverse educational opportunities within the state's public school system

(3) The demand for quality public school choices in [state] consistently outstrips the supply; and

(4) National research and accumulated experience have documented that quality public charter schools best fulfill their potential when they have the resources, autonomy and accountability they need to succeed.

(B) The General Assembly further finds and declares that the provisions established in this article update and improve [state's] Charter School Act to meet [state's] 21st century educational needs.

Section 3. {Definitions.}

(A) "Charter authorizer" as used in this article means an entity or body established in Section 4 to approve charter schools. An "authorizer" means an entity authorized under this Act to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew, not renew, or revoke charter contracts.

(B) "Charter Board or Commission" means the independent, state-level entity created pursuant to Section 4 as a charter authorizer.

(C) "Charter applicant" means an eligible person(s), organization, or entity as defined by the Charter School Law that seeks approval from a charter authorizer to found a charter school.

(D) An "application" means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status.

(E) A "charter contract" means a fixed-term, renewable contract between a public charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(F) A "conversion public charter school" means a charter school that existed as a non-charter public school before becoming a public charter school.

(G) An "education service provider" means a for-profit education management organization, non-profit charter management organization, school design provider, or any other partner entity with

which a public charter school intends to contract for educational design, implementation, or comprehensive management.

(H) A “governing Board or Commission” means the independent Board of a public charter school that is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school’s application.

(I) A “local school Board” means a school board exercising management and control of a local school district pursuant to the state constitution and state statutes.

(J) A “non-charter public school” means a public school that is under the direct management, governance, and control of a local school board or the state.

(K) A “parent” means a parent, guardian, or other person or entity having legal custody of a child.

(L) A “public charter school” means a public school that:

(1) Has autonomy over decisions including, but not limited to, matters concerning finance, personnel, scheduling, curriculum, and instruction;

(2) Is governed by an independent governing Board or Commission;

(3) Is established and operating under the terms of a charter contract between the school’s board and its authorizer;

(4) Is a school to which parents choose to send their children;

(5) Is a school that admits students on the basis of a lottery if more students apply for admission to any specific grade or program than can be accommodated;

(6) Provides a program of education that includes one or more of the following: pre-school, pre-kindergarten, any grade or grades from kindergarten through 12th grade, and adult community, continuing, and vocational education programs;

(7) Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and

(8) Operates under the oversight of its authorizer in accordance with its charter contract and application.

(M) A “start-up public charter school” means a public charter school that did not exist as a non-charter public school prior to becoming a public charter school.

(N) A “student” means any child who is eligible for attendance in public schools in the state.

(O) A “virtual public charter school” means a public charter school that offers educational services predominantly through an on-line program.

(P) “School district” means each school district now or hereafter legally organized as a body corporate pursuant to [insert state statute];

(Q) “State Board or Commission” means the state Board or Commission of education appointed pursuant to [insert state statute].

Section 4.[2] {Charter Authorizers.}[3]

(A) Upon the effective date of this article and thereafter, a charter applicant seeking to establish a public charter school may submit the charter petition to one of several charter authorizers:

- (1) The elected governing authority of a county or municipality [define limitations, if any];
- (2) The mayor of a city [define limitations, if any];
- (3) Any school district located in the state;
- (4) The state Board or Commission of education;
- (5) The board of trustees of a two- or four-year institution of higher learning as defined by [insert state statute], as described in Subsection 4(B);
- (6) The Public Charter School Board or Commission established in Subsection 4(C).

(B) Establishment – University Authorizer

- (1) In general, there is established within the state public university authorizers.
- (2) The ultimate responsibility for choosing to sponsor a charter school and responsibilities for maintaining sponsorship shall rest with the university’s board of trustees.
- (3) Notwithstanding Subsection (2), the university’s board of trustees may vote to assign sponsorship authority and sponsorship responsibilities to another person or entity that functions under the direction of the university’s board.
- (4) Before a university may sponsor a charter school, the university must conduct a public meeting with public notice in the county where the charter school will be located.

(C) Establishment – Public Charter School Board or Commission.

b

- (1) There is established within the state a Public Charter School Board or Commission (in this section referred to as the “Board or Commission”).
  - (i) The mission of the Board or Commission shall be to authorize high-quality public charter schools throughout the state consistent with the intent of this Act.
- (3) The Board or Commission shall consist of nine members, no more than five of whom shall be members of the same political party. Three members shall be appointed by the Governor; two members shall be appointed by the President of the Senate and one member by the Senate Minority Leader; two members shall be appointed by the Speaker of the House of Representatives and one by the Minority Leader of the House of Representatives. In making the appointments, the appointees shall ensure statewide geographic diversity among Board or Commission members.
- (4) Members appointed to the Board or Commission shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, public school leadership, assessment, curriculum and instruction, and public education law. All members of the Board or Commission shall have demonstrated understanding of and commitment to charter schooling as a strategy for strengthening public education by providing additional high-quality

choices.

(5) To establish staggered terms of office, the first appointment of the Governor, the first appointment of the President of the Senate and the first appointment of the Speaker of the House shall serve an initial term of four years; the second appointment by the Governor and the first appointment of the Senate Minority Leader and the Minority Leader of the House shall serve an initial term of three years; all remaining appointments shall serve an initial term of two years. The initial appointments shall be made no later than 30 days after the effective date of this Act. Members may be reappointed; however, no member shall be appointed to a new term after the member has served seven consecutive years.

(6) A member of the Board or Commission may be removed for any cause that renders the member incapable or unfit to discharge the duties of the office. Whenever a vacancy on the Board or Commission exists, the original appointing authority shall appoint a member for the remaining portion of the term.

(J) Operations of the Board or Commission. –

(a) Chair. – The members of the Board or Commission shall elect from among their membership 1 individual to serve as Chair. Such election shall be held each year after members of the Board or Commission have been appointed to fill any vacancies caused by the regular expiration of previous members' terms, or when requested by a majority vote of the members of the Board or Commission.

(b) Quorum. – A majority of the members of the Board or Commission, not including any positions that may be vacant, shall constitute a quorum sufficient for conducting the business of the Board or Commission.

(c) Meetings. – The Board or Commission shall meet at the call of the Chair, subject to the hearing requirements of [cite statute here].

(K) No compensation for service. – Members of the Board or Commission shall serve without pay but may receive reimbursement for any reasonable and necessary expenses incurred by reason of service on the Board or Commission.

(L) Personnel and resources. –

(a) In general. – Subject to such rules as may be made by the Board or Commission, the Chair shall have the power to appoint, terminate, and fix the pay of an Executive Director and such other personnel of the Board or Commission as the Chair considers necessary.

(b) Special rule. – The Board or Commission is authorized to use the services, personnel, and facilities of the state of [insert state].

(M) Expenses of Board or Commission. – Any start-up expenses of the Board or Commission shall be paid from such funds as may be available to the State Department of Education; provided, that within 45 days of [implementation date], the State Department of Education shall make available not less than \$130,000 to the Board or Commission.

(N) Audit. – The Board or Commission shall provide for an audit of the financial statements of the Board or Commission by an independent certified public accountant in accordance with Government auditing standards for financial audits issued by the Comptroller General of the United States.

(O) Authorization of appropriations. – For the purpose of carrying out the provisions of this section and conducting the Board or Commission’s functions required by this Subchapter, there are authorized to be appropriated to the Board or Commission \$300,000 for fiscal year [date] and such sums as may be necessary for each of the 3 succeeding fiscal years.

(P) Authorizer Funding

(1) To cover authorizer costs for overseeing public charter schools in accordance with this Act, the state shall remit to each authorizer an oversight fee for each public charter school it authorizes. The oversight fee shall be drawn from and calculated as a uniform percentage of the per-student operational funding allocated to each public charter school, not to exceed three percent of each public charter school’s per-student funding in a single school year. The state shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state legislature may establish a sliding scale for authorizer funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of years of authorizing or after a certain number of schools has been authorized.

(2) An authorizer’s oversight fee shall not include any costs incurred in delivering services that a public charter school may purchase at its discretion from the authorizer. The authorizer shall use its funding provided under this section exclusively for the purpose of fulfilling authorizing obligations in accordance with this Act.

(Q) The Board or Commission shall operate with dedicated resources and staff qualified to execute the day-to-day responsibilities of public charter school authorizing in accordance with this Act.

(R) The Board or Commission shall annually submit to the Legislature a report summarizing:

(1) The academic and financial performance of all operating public charter schools overseen by the Board or Commission, according to the performance expectations for public charter schools set forth in this Act;

(2) The status of the Board or Commission’s public charter school portfolio, identifying all public charter schools in each of the following categories: approved (but not yet open), operating, renewed, transferred, revoked, not renewed, voluntarily closed, or never opened; and,

(3) The authorizing functions provided by the Board or Commission to the public charter schools under its purview, including its operating costs and expenses detailed in annual audited financial statements that conform with Generally Accepted Accounting Principles.

A charter authorizer shall:

(1) Receive applications, evaluate applications to ensure they meet the minimal requirements set forth by statute, and make approval and denial decisions;

(2) Execute contracts, incorporating and consistent with approved applications, between the authorizer and public charter schools detailing the rights and responsibilities of the authorizer and the charter school and setting forth the academic and operational performance expectations and measures by which the charter school will be judged. The authorizer may choose to make the approved application the charter contract;

(3) Monitor on a regular basis the performance of the charter schools it oversees;

(4) Establish, through formal rulemaking, renewal and revocation criteria and processes for the charter schools it oversees.

#### Section 5. {Application Process.}

(1) In reviewing and evaluating charter applications, authorizers shall employ procedures, practices, and criteria consistent with the purposes of this Act. The application review process shall include thorough evaluation of each written charter application, an in-person interview with the applicant group, and an opportunity in a public forum for local residents to learn about and provide input on each application. The authority shall provide each applicant with its detailed analysis of the application and grant the applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies.

(2) In deciding whether to approve charter applications, authorizers shall:

(a) Grant charters only to applicants that have demonstrated competence in each element of the authorizer's published approval criteria and are likely to open and operate a successful public charter school;

(b) Base decisions on documented evidence collected through the application review process;

(c) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest or any appearance thereof.

(3) No later than [INSERT NUMBER OF DAYS] after the filing of a charter application, the authorizer shall decide to approve or deny the charter application. The authorizer shall adopt by resolution all charter approval or denial decisions in an open meeting of the authorizer's governing board.

(4) An approval decision may include, if appropriate, reasonable conditions that the charter applicant must meet before a charter contract may be executed pursuant to Section 3, (E) of this Act. However, such conditions may not include enrollment caps or operational requirements that in any manner contradict this Act.

(5) For any charter denial, the authorizer shall clearly state, for public record, its reasons for denial. A denied applicant may subsequently re-apply to that authorizer or apply to any other authorizer in the state.

(6) Within [INSERT NUMBER OF DAYS] of taking action to approve or deny a charter application, the authorizer shall report to the state department of education the action it has taken. The authorizer shall provide a copy of the report to the charter applicant at the same time that the report is submitted to the state department of education. The report shall include a copy of the authorizer governing board's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the procedural requirements and application elements set forth in Section 3 of this Act.

#### (C) Renewals, Revocations, and Non-renewals

(1) A charter may be renewed for successive five-year terms of duration, although the authorizer may vary the term based on the performance, demonstrated capacities, and particular circumstances of each public charter school. An authorizer may grant renewal with specific conditions for necessary improvements to a public charter school but may not impose conditions inconsistent with this Act.

(2) No later than [INSERT DATE], the authorizer shall issue a public charter school performance report and charter renewal application guidance to any public charter school whose charter will expire the following year. The performance report shall summarize the public charter school's performance record to date, based on the data required by this Act and the charter contract, and shall provide notice of any weaknesses or concerns related to the public charter school that may jeopardize its position in seeking renewal if not timely rectified. The public charter school shall have [INSERT NUMBER OF DAYS] to respond to the performance report and submit any corrections or clarifications for the report.

(3) The renewal application guidance shall, at a minimum, provide an opportunity for the public charter school to:

(a) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(b) Describe improvements undertaken or planned for the school; and

(c) Detail the school's plans for the next charter term.

(4) The renewal application guidance shall include or refer explicitly to the criteria that will guide the authorizer's renewal decisions, which shall be based on the performance framework set forth in the charter contract and consistent with this Act.

(5) No later than [INSERT DATE], the governing board of a public charter school seeking renewal shall submit a renewal application to the charter authorizer pursuant to the renewal application guidance issued by the authorizer. The authorizer shall rule by resolution on the renewal application no later than [INSERT NUMBER OF DAYS] after the filing of the renewal application.

(6) In making charter renewal decisions, every authorizer shall:

(a) Ground its decisions in evidence of the school's performance over the term of the charter contract in accordance with the performance framework set forth in the charter contract;

(b) Ensure that data used in making renewal decisions are available to the school and the public; and

(c) Provide a public report summarizing the evidence basis for each decision.

(7) A charter contract may be revoked at any time or not renewed if the authorizer determines that the public charter school did any of the following or otherwise failed to comply with the provisions of this Act:

(a) Commits a material and substantial violation of any of the terms, conditions, standards, or procedures required under this Act or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(b) Fails to meet or make progress toward the performance expectations set forth in the charter contract;

(c) Fails to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(d) Substantially violates any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(e) In the case of a violation that threatens the health and safety of the students of any public charter school or if members of the public charter school committed a material violation of the law, the authorizer may take immediate action.

(8) An authorizer must develop revocation and non-renewal processes that:

(a) Provide the charter holders with a timely notification of the prospect of revocation or non-renewal and of the reasons for such possible closure;

(b) Allow the charter holders a reasonable amount of time in which to prepare a response;

(c) Provide the charter holders with an opportunity to submit documents and give testimony challenging the rationale for closure and in support of the continuation of the school at an orderly proceeding held for that purpose;

(d) Allow the charter holders access to representation by counsel and to call witnesses on their behalf;

(e) Permit the recording of such proceedings; and

(f) After a reasonable period for deliberation, require a final determination be made and conveyed in writing to the charter holders.

(9) If an authorizer revokes or does not renew a charter, the authorizer shall clearly state, in a resolution of its governing board, the reasons for the revocation or nonrenewal.

(10) Within [INSERT NUMBER OF DAYS] of taking action to renew, not renew, or revoke a charter, the authorizer shall report to the state department of education the action taken, and shall provide a copy of the report to the public charter school at the same time that the report is submitted to the state department of education.

The report shall include a copy of the authorizer governing board's resolution setting forth the action taken and reasons for the decision and assurances as to compliance with all of the requirements set forth in this Act.

#### (D) School Closure and Dissolution

(1) Prior to any public charter school closure decision, an authorizer shall have developed a public charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, and proper disposition of school funds, property, and assets in accordance with the requirements of this Act. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the school and the authorizer. In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol.

(2) In the event of a public charter school closure for any reason, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school, and then to the state treasury to the credit of the general revenue fund. If

the assets of the school are insufficient to pay all parties to whom the school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

## Section 6. {Operations and Autonomy.}

(A) A charter school is a public school and is part of the state's system of public education. Except as provided in [add relevant citation in state code], a charter school is exempt from all statutes and rules applicable to a school, a Board or Commission, or a district, although it may elect to comply with one or more provisions of statutes or rules.

### (B) Open Enrollment and Requirements

(1) A public charter school shall be open to any student who is eligible for attendance in public schools in the state.

(2) A school district shall not require any student enrolled in the school district to attend a public charter school.

(3) A public charter school shall not limit admission based on ethnicity, national origin, religion, gender, income level, disabling condition, proficiency in the English language, or academic or athletic ability.

(4) A public charter school may limit admission to students within a given age group or grade level and may be organized around a special emphasis, theme, or concept as stated in the school's application.

(5) A public charter school shall enroll all students who wish to attend the school, unless the number of students exceeds the capacity of a program, class, grade level, or building.

(6) If capacity is insufficient to enroll all students who wish to attend any specific grade level or program at the school, the public charter school shall select students through a lottery.

### (C) Enrollment Preferences

(1) Any non-charter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

(2) A public charter school shall give enrollment preference to students enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. An enrollment preference for returning students excludes those students from entering into a lottery.

(3) A public charter school may give enrollment preference to children of a public charter school's founders, governing Board or Commission members, and full-time employees, so long as they constitute no more than 10 percent of the school's total student population.

(4) This section does not preclude the formation of a public charter school whose mission is focused on serving students with disabilities, students of the same gender, students who pose such severe disciplinary problems that they warrant a specific educational program, or students who are at risk of academic failure. If capacity is insufficient to enroll all students who wish to attend such school, the public charter school shall select students through a lottery.

#### (D) Credit Transferability

(1) If a student who was previously enrolled in a public charter school enrolls in another public school in this state, the student's new school shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other public schools.

#### (D) Information to Parents and the General Public

(1) A school district shall provide or publicize to parents and the general public information about public charter schools authorized by the district as an enrollment option within the district to the same extent and through the same means that the district provides and publicizes information about non-charter public schools in the district.

#### (E) Determination of Student Capacity of Public Charter Schools

(1) An authorizer may not restrict the number of students a public charter school may enroll. The capacity of the public charter school shall be determined annually by the governing Board or Commission of [Board or Commission's contract with] the public charter school and in consideration of the public charter school's ability to facilitate the academic success of its students, to achieve the other objectives specified in the charter contract, and to ensure that its student enrollment does not exceed the capacity of its facility or site. [An authorizer is required to hear amendments concerning enrollment annually.]

#### (F) Legal Status of Public Charter School

(1) Notwithstanding any provision of law to the contrary, to the extent that any provision of this Act is inconsistent with any other state or local law, rule, or regulation, the provisions of this Act shall govern and be controlling.

(2) A public charter school shall be a non-profit education organization.

#### Moved to Section 3 definitions

(3) A public charter school shall be subject to all federal laws and authorities enumerated herein [by state law] or arranged by charter contract with the school's authorizer, where such contracting is consistent with applicable laws, rules, and regulations. [Nothing in the charter contract should contradict state or federal law.]

(4) Except as provided in this Act, a public charter school shall not be subject to the state's education statutes or any state or local rule, regulation, policy, or procedure relating to non-charter public schools within an applicable local school district regardless of whether such rule, regulation, policy, or procedure is established by the local school Board or Commission, the state Board or Commission of education, or the state department of education.

(5) A charter contract may consist of one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract shall be separate and distinct from any others. (6) A single governing Board or Commission may hold one or more charter contracts. Each public charter school that is part of a charter contract shall be separate and distinct from any others.

(G) Local Educational Agency Status [The 44 jurisdictions with public charter school laws vary greatly in how they address the local educational agency (LEA) status of public charter schools. In

this model legislation, we provide two options for handling this issue in state law. Option one is the preferred method, but option two is available if necessary for state consideration.]

#### OPTION 1: A PUBLIC CHARTER SCHOOL IS A LOCAL EDUCATIONAL AGENCY

(1) A public charter school shall function as a Local Educational Agency (“LEA”). A public charter school shall be responsible for meeting the requirements of LEAs under applicable federal, state, and local laws, including those relating to special education. LEA status shall not preclude a public charter school from developing partnerships with districts for services, resources, and programs by mutual agreement or formal contract.

(2) A public charter school shall have primary responsibility for special education at the school, including identification and service provision. It shall be responsible for meeting the needs of enrolled students with disabilities. In instances where a student’s individualized education program team determines that a student’s needs are so profound that they cannot be met in the public charter school and that the public charter school cannot provide a free, appropriate public education to that student, the student’s district of residence shall place the student in a more appropriate setting.

#### OPTION 2: A PUBLIC CHARTER SCHOOL IS NOT A LOCAL EDUCATIONAL AGENCY

(1) The [INSERT NAME OF ENTITY] of a public charter school is the public charter school’s Local Educational Agency (“LEA”). A public charter school is a school with that LEA.

(2) The [INSERT NAME OF ENTITY] retains responsibility for special education and shall serve students in public charter schools in a manner consistent with LEA obligations under applicable federal, state, and local law.

#### (H) Powers of Public Charter School

(1) A public charter school shall have all the powers necessary for carrying out the terms of its charter contract including the following powers:

- (a) To receive and disburse funds for school purposes;
- (b) To secure appropriate insurance and to enter into contracts and leases, free from prevailing wage laws;
- (c) To contract with an education service provider for the management and operation of the public charter school, so long as the school’s governing Board or Commission retains oversight authority over the school, as specified in this Act;
- (d) To incur debt in reasonable anticipation of the receipt of public or private funds;
- (e) To pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;
- (f) To solicit and accept any gifts or grants for school purposes subject to applicable laws and the terms of its charter contract;
- (g) To acquire real property for use as its facility or facilities, from public or private sources; and,
- (h) To sue and be sued in its own name.

(i) To employ or contract with other entities for the provision of teaching, professional, and support staff as needed.

(I) General Requirements

(1) A public charter school shall not discriminate against any person on the basis of race, creed, color, sex, disability, or national origin or any other category that would be unlawful if done by a non-charter public school.

(2) No public charter school may engage in any sectarian practices in its educational program, admissions or employment policies, or operations.

(3) A public charter school shall not discriminate against any student on the basis of national-origin minority status or limited proficiency in English. Consistent with federal civil rights laws, public charter schools shall provide limited English proficient students with appropriate services designed to teach them English and the general curriculum.

(4) A public charter school shall not charge tuition and may only charge such fees as may be imposed on other public schools in the state.

(5) The powers, obligations, and responsibilities set forth in the charter contract cannot be delegated or assigned by either party.

(J) Applicability of Other Laws, Rules, and Regulations

(1) Public charter schools shall be subject to the same civil rights, health, and safety requirements applicable to other public schools in the state, except as otherwise specifically provided in this Act.

(2) Public charter schools shall be subject to the student assessment and accountability requirements applicable to other public schools in the state, but nothing herein shall preclude a public charter school from establishing additional student assessment measures that go beyond state requirements if the school's authorizer approves such measures.

(3) Public charter school governing Board or Commissions shall be subject to and comply with state open meetings and freedom of information laws.

(K) Public Charter School Employees

(1) If a public charter school governing board chooses to employ staff, the public charter school shall comply with applicable federal laws, rules, and regulations regarding the qualification of teachers and other instructional staff. In accordance with Section 2, (G), (4), teachers in public charter schools shall be exempt from state teacher certification requirements.

(2) Employees of a public charter schools to the extent the school employs staff, shall have the same rights and privileges as other public school employees except as otherwise stated herein.

(3) Employees of a public charter schools, to the extent the school employs staff, are eligible for participation in retirement and other benefits programs of the state, if the public charter school chooses to participate.

(4) Teachers and other school personnel, no matter what entity employs them, as well as

governing board of trustees, shall be subject to criminal history record checks and fingerprinting requirements applicable to other public schools.

(5) Public charter school employees cannot be required to be members of any existing collective bargaining agreement between a school district and its employees. A public charter school may not interfere, however, with laws and other applicable rules protecting the rights of employees to organize and be free from discrimination.

(L) Access to Extra-Curricular and Interscholastic Activities

(1) A public charter school shall be eligible for state-sponsored or district-sponsored interscholastic leagues, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as non-charter public schools.

(2) A public charter school student is eligible to participate in extracurricular activities not offered by the student's school at:

(a) The school within whose attendance boundaries the student's custodial parent or legal guardian resides; or

(b) The non-charter public school from which the student withdrew for the purpose of attending a public charter school.

(3) A public charter school student is eligible for extracurricular activities at a non-charter public school consistent with eligibility standards as applied to full-time students of the non-charter public school. (4) A school district or non-charter public school may not impose additional requirements on a public charter school student to participate in extracurricular activities that are not imposed on full-time students of the non-charter public school.

(5) When selection to participate in an extracurricular activity at a non-charter public school is made on a competitive basis, a public charter school student is eligible to try out for and participate in the activity as provided in this section.

(6) The state Board or Commission of education shall make rules establishing fees for public charter school students' participation in extracurricular activities at non-charter public schools. The rules shall provide that:

(a) Public charter school students pay the same fees as other students to participate in extracurricular activities;

(b) Public charter school students are eligible for fee waivers similar to other students;

(c) For each public charter school student who participates in an extracurricular activity

at a non-charter public school, the public charter school shall pay a share of the non-charter public school's costs for the extracurricular activity; and

(d) A public charter school's share of the costs of having one or more students participate in an extracurricular activity at non-charter public schools shall reflect state and local tax revenues expended, except capital facilities expenditures, for such extracurricular activities in a non-charter public school divided by total student enrollment of the non-charter public school.

(7) In determining a public charter school's share of the costs of an extracurricular activity under Subsections (6)(c) and (d), the state Board or Commission of education may establish uniform fees statewide based on average costs statewide or average costs within a sample of school districts.

## Section 7. {Equitable Funding.}

(A) A charter school is a public school and is part of the state's system of public education. A charter school shall receive funding for each of its pupils from federal, state and local sources that is equal to the amount that a traditional public school would receive for that same pupil.

[The 44 jurisdictions with public charter school laws vary greatly in how they fund public charter schools. In this model legislation, we provide three options for handling this issue in state law. In the first option, funding flows from the state to school districts to public charter schools. In the second option, funding flows from the state directly to public charter schools. In the third option, funding flows from the state to authorizers to public charter schools. It is preferred that all federal, state, and local dollars follow a student to a public charter school.]

### OPTION 1: FUNDING FLOWS FROM THE STATE TO SCHOOL DISTRICTS TO PUBLIC CHARTER SCHOOLS

#### (B) Enrollment

(1) The enrollment of students attending public charter schools shall be included in the enrollment, attendance, and, if applicable, count of students with disabilities of the school district in which the student resides. The public charter school shall report all such data to the school districts of residence in a timely manner. Each school district shall report such enrollment, attendance, and count of students with disabilities to the state department of education.

#### (C) Operational Funding

(1) The school district of residence shall pay directly to the public charter school for each student enrolled in the public charter school who resides in the school district an amount of state and local dollars for that student equal to one hundred percent of the amount calculated pursuant to the state's funding formula for school districts, notwithstanding any oversight fee reductions pursuant to this Act.

#### (D) Payment Schedule

(1) Payments made pursuant to this section shall be made by school districts in twelve substantially equal installments each year beginning on the first business day of July and every month thereafter. Amounts payable under this section shall be determined by the state department of education. Amounts payable to a public charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter contract. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.

#### (E) Sanctions for Failure to Make Payments

(1) In the event of the failure of a school district to make payments required by this section, the state treasurer shall deduct from any state funds which become due to such school district an amount equal to the unpaid obligation. The treasurer shall pay over such sum to the public

charter school upon certification of the state department of education. The state department of education shall promulgate regulations to implement the provisions of this section.

(F) Categorical Funding

(1) A school district shall direct the proportionate share of moneys generated under federal and state categorical aid programs to public charter schools serving students eligible for such aid. A school district shall ensure that public charter schools with rapidly expanding enrollments are treated equitably in the calculation and disbursement of all federal and state categorical aid program dollars. Each public charter school that serves students who may be eligible to receive services provided through such programs shall comply with all reporting requirements to receive the aid.

(G) Special Education Funding

FOR PUBLIC CHARTER SCHOOLS THAT ARE THEIR OWN LEAS FOR SPECIAL EDUCATION PURPOSES:

(1) A school district shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.

(2) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services.

FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF NON-DISTRICT AUTHORIZER LEAS FOR SPECIAL EDUCATION PURPOSES:

(1) A school district shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.

(2) A public charter school shall pay to its authorizer any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student that the authorizer provides directly or indirectly.

(3) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services, including, but not necessarily limited to, a reasonable reserve not to exceed five percent of the authorizer's total budget for providing special education services. The reserve shall only be used by the authorizer to offset excess costs of providing services to students with disabilities enrolled in one of its public charter schools.

FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF SCHOOL DISTRICT LEAS FOR SPECIAL EDUCATION PURPOSES:

(1) The school district shall provide special education services to students enrolled in public charter schools on the same basis as such services are provided to students enrolled in other public schools of the school district.

(2) The school district shall retain any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student with a disability that the school district provides directly or indirectly.

(3) At either party's request, however, the public charter school and the school district may negotiate and include in a contract alternate arrangements for the provision of and payment for special education services. If the public charter school and the school district have negotiated to allow the public charter school to provide special education services, the proportionate share of state and federal resources generated by such students shall be directed by the school district to the public charter school enrolling such students.

(H) Generally Accepted Accounting Principles – Independent Audit

(1) A public charter school shall adhere to Generally Accepted Accounting Principles.

(2) A public charter school shall annually engage an external auditor to do an independent audit of the school's finances. A public charter school shall file a copy of each audit report and accompanying management letter to its authorizer by [INSERT DATE].

(I) Transportation Funding

(1) The state department of education shall disburse state transportation funding to a school district for each of the public charter school students residing in the school district on the same basis and in the same manner as it is paid to school districts. A school district shall disburse state transportation funding to a public charter school in proportion to the amount generated by the school's students who reside in the school district.

(2) A public charter school may enter into a contract with a school district or private provider to provide transportation to the school's students.

(J) Budget Reserves

(1) Any monies received by a public charter school from any source and remaining in the public charter school's accounts at the end of any budget year shall remain in the public charter school's accounts for use by the public charter school during subsequent budget years.

(K) Ability to Accept Gifts, Donations, and Grants

(1) Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a public charter school. The governing board of a public charter school is authorized to accept gifts, donations, and grants of any kind made to the public charter school and to expend or use such gifts, donations, and grants in accordance with the conditions prescribed by the donor; provided, however, that no gift, donation, or grant may be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

OPTION 2: FUNDING FLOWS FROM THE STATE DIRECTLY TO PUBLIC CHARTER SCHOOLS

(A) Enrollment

(1) Each public charter school shall certify to the state department of education its student enrollment in the same manner as school districts.

(B) Operational Funding

(1) For a public charter school authorized by a school district, the state shall pay directly to the public charter school for each student enrolled in the public charter school an amount of

state and local dollars for that student equal to one hundred percent of the amount calculated pursuant to the state's funding formula for the student's resident school district, notwithstanding any oversight fee reductions pursuant to this Act.

(2) For a public charter school authorized by an entity other than a school district, the state department of education shall withhold from the state equalization payments for each school district with students residing in the school district and attending the public charter school an amount equal to one hundred percent of the amount calculated pursuant to the state's funding formula for each student in the resident school district multiplied by the number of students enrolled in the public charter school from the resident school district. The state department of education shall send the sum of these withholdings to the public charter school, notwithstanding any oversight fee reductions pursuant this Act.

#### (C) Payment Schedule

(1) Payments made pursuant to this section shall be made by the state in twelve substantially equal installments each year beginning on the first business day of July and every month thereafter. Amounts payable under this section shall be determined by the state department of education. Amounts payable to a public charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter contract. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.

#### (D) Categorical Funding

(1) The state shall direct the proportionate share of moneys generated under federal and state categorical aid programs to public charter schools serving students eligible for such aid. The state shall ensure that public charter schools with rapidly expanding enrollments are treated equitably in the calculation and disbursement of all federal and state categorical aid program dollars. Each public charter school that serves students who may be eligible to receive services provided through such programs shall comply with all reporting requirements to receive the aid.

#### (E) Special Education Funding

##### FOR PUBLIC CHARTER SCHOOLS THAT ARE THEIR OWN LEAS FOR SPECIAL EDUCATION PURPOSES:

(1) The state shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.

(2) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services.

##### FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF NON-DISTRICT AUTHORIZER LEAS FOR SPECIAL EDUCATION PURPOSES:

(1) The state shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.

(2) A public charter school shall pay to its authorizer any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for

such student that the authorizer provides directly or indirectly.

(3) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services, including, but not necessarily limited to, a reasonable reserve not to exceed five percent of the authorizer's total budget for providing special education services. The reserve shall only be used by the authorizer to offset excess costs of providing services to students with disabilities enrolled in one of its public charter schools.

#### FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF SCHOOL DISTRICT LEAS FOR SPECIAL EDUCATION PURPOSES:

(1) The school district shall provide special education services to students enrolled in public charter schools on the same basis as such services are provided to students enrolled in other public schools of the school district.

(2) The school district shall retain any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student with a disability that the school district provides directly or indirectly.

(3) At either party's request, however, the public charter school and the school district may negotiate and include in a contract alternate arrangements for the provision of and payment for special education services. If the public charter school and the school district have negotiated to allow the public charter school to provide special education services, the proportionate share of state and federal resources generated by such students shall be directed by the school district to the public charter school enrolling such students.

#### (F) Generally Accepted Accounting Principles – Independent Audit

(1) A public charter school shall adhere to Generally Accepted Accounting Principles.

(2) A public charter school shall annually engage an external auditor to do an independent audit of the school's finances. A public charter school shall file a copy of each audit report and accompanying management letter to its authorizer by [INSERT DATE].

#### (G) Transportation Funding

(1) The state department of education shall disburse state transportation funding to a public charter school on the same basis and in the same manner as it is paid to school districts.

(2) A public charter school may enter into a contract with a school district or private provider to provide transportation to the school's students.

#### (H) Budget Reserves

(1) Any monies received by a public charter school from any source and remaining in the public charter school's accounts at the end of any budget year shall remain in the public charter school's accounts for use by the public charter school during subsequent budget years.

#### (I) Ability to Accept Gifts, Donations, and Grants

(1) Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a public charter school. The

governing Board of a public charter school is authorized to accept gifts, donations, and grants of any kind made to the public charter school and to expend or use such gifts, donations, and grants in accordance with the conditions prescribed by the donor; provided, however, that no gift, donation, or grant may be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

### OPTION 3: FUNDING FLOWS FROM THE STATE TO AUTHORIZERS TO PUBLIC CHARTER SCHOOLS (A) Enrollment

(1) Each authorizer shall certify to the state department of education the student enrollment for that year for each of its public charter schools in the same manner as school districts.

#### (B) Operational Funding

(1) For a public charter school authorized by a school district, the school district shall pay directly to the public charter school for each student enrolled in the school an amount of state and local dollars for that student equal to one hundred percent of the amount calculated pursuant to the state's funding formula for the student's resident school district, notwithstanding any oversight fee reductions pursuant to this Act.

(2) For a public charter school authorized by an entity other than a school district, the state department of education shall withhold from the state equalization payments for each school district with students residing in the school district and attending the public charter school an amount equal to one hundred percent of the amount calculated pursuant to the state's funding formula for each student in the resident school district multiplied by the number of students enrolled in the public charter school from the resident school district. The state department of education shall send the sum of these withholdings to the authorizer. The authorizer shall forward the sum of these withholdings to each public charter school, notwithstanding any oversight fee reductions pursuant to this Act.

#### (C) Payment Schedule

(1) Payments made pursuant to this section shall be made by an authorizer in twelve substantially equal installments each year beginning on the first business day of July and every month thereafter. Amounts payable under this section shall be determined by the state department of education. Amounts payable to a public charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter contract. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation.

#### (D) Sanctions for Failure to Make Payments

(1) In the event of the failure of an authorizer to make payments required by this section, the state treasurer shall deduct from any state funds which become due to such an authorizer an amount equal to the unpaid obligation. The treasurer shall pay over such sum to the public charter school upon certification of the state department of education. The state department of education shall promulgate regulations to implement the provisions of this section.

#### (E) Categorical Funding

(1) An authorizer shall direct the proportionate share of moneys generated under federal and state categorical aid programs to public charter schools serving students eligible for such aid. The state

shall ensure that public charter schools with rapidly expanding enrollment are treated equitably in the calculation and disbursement of all federal and state categorical aid program dollars. Each public charter school that receives such aid shall comply with all reporting requirements to receive the aid.

(F) Special Education Funding

FOR PUBLIC CHARTER SCHOOLS THAT ARE THEIR OWN LEAS FOR SPECIAL EDUCATION PURPOSES:

- (1) An authorizer shall pay directly to the public charter school any federal or state aid attributable to a student with a disability attending the school.
- (2) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services.

FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF NON-DISTRICT AUTHORIZER LEAS FOR SPECIAL EDUCATION PURPOSES:

- (1) The authorizer shall pay directly to a public charter school any federal or state aid attributable to a student with a disability attending the school.
- (2) A public charter school shall pay to its authorizer any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student that the authorizer provides directly or indirectly.
- (3) At either party's request, a public charter school and its authorizer may negotiate and include in the charter contract alternate arrangements for the provision of and payment for special education services, including, but not necessarily limited to, a reasonable reserve not to exceed five percent of the authorizer's total budget for providing special education services. The reserve shall only be used by the authorizer to offset excess costs of providing services to students with disabilities enrolled in one of its public charter schools.

FOR PUBLIC CHARTER SCHOOLS THAT ARE PART OF SCHOOL DISTRICT LEAS FOR SPECIAL EDUCATION PURPOSES:

- (1) The school district shall provide special education services to students enrolled in public charter schools on the same basis as such services are provided to students enrolled in other public schools of the school district.
- (2) The state shall disburse to a school district any federal or state aid attributable to a student with a disability attending a public charter school in proportion to the level of services for such student with a disability that the school district provides directly or indirectly.
- (3) At either party's request, however, the public charter school and the school district may negotiate and include in a contract alternate arrangements for the provision of and payment for special education services. If the public charter school and the school district have negotiated to allow the public charter school to provide special education services, the proportionate share of state and federal resources generated by such students shall be directed by the school district to the public charter school enrolling such students.

(G) Generally Accepted Accounting Principles – Independent Audit

(1) A public charter school shall adhere to Generally Accepted Accounting Principles.

(2) A public charter school shall annually engage an external auditor to do an independent audit of the school's finances. A public charter school shall file a copy of each audit report and accompanying management letter to its authorizer by [INSERT DATE].

#### (H) Transportation Funding

(1) The state department of education shall disburse state transportation funding to an authorizer for each of its public charter school students on the same basis and in the same manner as it is paid to school districts. An authorizer shall disburse state transportation funding to a public charter school in proportion to the amount generated by the school's students.

(2) A public charter school may enter into a contract with a school district or private provider to provide transportation to the school's students.

#### (I) Budget Reserves

(1) Any monies received by a public charter school from any source and remaining in the public charter school's accounts at the end of any budget year shall remain in the public charter school's accounts for use by the public charter school during subsequent budget years.

#### (J) Ability to Accept Gifts, Donations, and Grants

(1) Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment or operation of a public charter school. The governing board of a public charter school is authorized to accept gifts, donations, and grants of any kind made to the public charter school and to expend or use such gifts, donations, and grants in accordance with the conditions prescribed by the donor; provided, however, that no gift, donation, or grant may be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

### Section 7. {Facilities Funding.}

[In this model law, we provide a menu of approaches for handling this issue in state law, most of which should be included in a given state's law.]

#### (A) Per-Student Facility Allowance

(1) The per-student facility allowance for public charter schools shall be determined as follows: the total capital costs for public schools in the state over the past five years shall be divided by the total student count in the state over the past five years.

(2) The actual facility allowance payments to be received by each public charter school shall be determined as follows: the per-student facility allowance shall be multiplied by the number of students estimated to be attending each public charter school.

#### (B) Public Charter School Facility Grant Program

(1) The state board of education shall establish, within available bond authorizations, a grant program to assist public charter schools in financing school building projects, general improvements to school buildings, and repayment of debt for school building projects. Public

charter schools may apply for such grants to the state board of education at such time and in such manner as the state board of education prescribes. The state board of education shall give preference to applications that provide for matching funds from non-state sources.

(2) For the purposes described in subsection (3) of this section, the [INSERT NAME OF APPROPRIATE STATE BONDING AUTHORITY] shall have the power, from time to time, to authorize the issuance of bonds of the state in one or more series and in principal amounts not exceeding in the aggregate [INSERT DOLLAR AMOUNT] provided [INSERT DOLLAR AMOUNT] of said authorization shall be effective [INSERT DATE].

(3) The proceeds of the sale of said bonds, to the extent of the amount stated in subsection (2) of this section, shall be used by the state Board or Commission of education for the purpose of grants pursuant to subsection (1).

(4) Bonds issued pursuant to this section shall be general obligations of the state and the full faith and credit of the state are pledged for the payment of the principal of and interest on said bonds as the same become due, and accordingly and as part of the contract of the state with the holders of said bonds, appropriation of all amounts necessary for punctual payment of such principal and interest is hereby made, and the state treasurer shall pay such principal and interest as the same become due.

#### (C) Public Charter School Facility Revolving Loan Program

(1) The public charter school facility revolving loan program is hereby created in the state treasury. The public charter school facility revolving loan program shall be comprised of federal funds obtained by the state for public charter schools and any other funds appropriated or transferred to the fund by the state. Funds appropriated to the public charter school facility revolving loan program shall remain available for the purposes of the program until re-appropriated or reverted by the general assembly.

(2) Loans may be made from moneys in the public charter school facility revolving loan program to a public charter school, upon application by a public charter school and approval by the state Board or Commission of education or its designee. Money loaned to a public charter school pursuant to this section shall be for construction, purchase, renovation, and maintenance of public charter school facilities. No loan to a public charter school shall exceed [INSERT DOLLAR AMOUNT] over [INSERT NUMBER OF YEARS]. A public charter school may receive multiple loans from the public charter school facility revolving loan program, as long as the total amount received from the program over [INSERT NUMBER OF YEARS] does not exceed [INSERT DOLLAR AMOUNT].

(3) The state Board or Commission of education or its designee may consider all of the following when making a determination as to the approval of a public charter school's loan application:

(a) Soundness of the financial business plans of the applicant public charter school.

(b) Availability to the public charter school of other sources of funding.

(c) Geographic distribution of loans made from the public charter school facility revolving loan program.

(d) The impact that loans received pursuant to this section will have on the public charter school's receipt of other private and public financing.

(e) Plans for innovatively enhancing or leveraging funds received pursuant to this section, such as loan guarantees or other types of credit enhancements.

(f) The financial needs of the public charter school.

(4) Commencing with the first fiscal year following the fiscal year the public charter school receives the loan, the [INSERT NAME OF APPROPRIATE STATE AGENCY] shall deduct from apportionments made to the public charter school, as appropriate, an amount equal to the annual repayment of the amount loaned to the public charter school under this section and pay the same amount into the public charter school facility revolving loan program in the state treasury. Repayment of the full amount loaned to the public charter school shall be deducted by the [INSERT NAME OF APPROPRIATE STATE AGENCY] in equal annual amounts over a number of years agreed upon between the public charter school and the state Board or Commission of education or its designee, not to exceed [INSERT NUMBER OF YEARS] for any loan.

(5) Notwithstanding other provisions of law, a loan may be made to a public charter school pursuant to this section only in the case of a public charter school that is incorporated.

(6) Notwithstanding other provisions of law, in the case of default of a loan made directly to a public charter school pursuant to this section, the public charter school shall be solely liable for repayment of the loan.

#### (D) Bonding Authority

[Public charter schools should either have equal access to all of the relevant bonding authorities in a state or have their own bonding authority. For the first option, a state must amend the appropriate section of the law (e.g., state health and educational facility authority section) to clarify that public charter schools are eligible to obtain tax-exempt financing from the relevant authority. For the second option, see language below.]

(1) As used in this section:

Soundness of the financial business plans of the applicant public charter school. Availability to the public charter school of other sources of funding.

Geographic distribution of loans made from the public charter school facility revolving loan

(a) “Authority” means the state public charter school finance authority created by this section.

(b) “Obligations” mean any notes, debentures, revenue bonds, or other evidences of financial indebtedness, except general obligation bonds.

(c) “Project” means:

(i) Any building, structure, or property owned, or to be acquired, by a public charter school for any of its educational purposes and the related appurtenances, easements, rights-of-way, improvements, paving, utilities, landscaping, parking facilities, and lands; or

(ii) Any capital equipment owned, or to be acquired, by a public charter school for any of its educational purposes, interests in land, and grounds, together with the personal property necessary, convenient, or appurtenant to them.

(2) There is created a body politic and corporate known as the state public charter school finance

authority. The authority is created to provide an efficient and cost-effective method of financing public charter school facilities.

(3) The governing Board or Commission of the authority shall be composed of:

(a) The governor or the governor's designee;

(b) The state treasurer; and

(c) The state superintendent of public instruction or the state superintendent's designee.

(4) Upon request, the state Board or Commission of education shall provide staff support to the authority.

(5) The authority shall have perpetual succession as a body politic and corporate.

(6) The authority may:

(a) Sue and be sued in its own name;

(b) Have, and alter at will, an official seal;

(c) Receive and accept aid or contributions from any source, including the United States or this state, in the form of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this part, subject to the conditions upon which the aid and contributions are made, for any purpose consistent with this part;

(d) Exercise the power to borrow money and issue obligations, except the authority may only exercise powers to finance a project as defined in state law;

(e) Employ advisers, consultants, and agents, including financial experts, independent legal counsel, and any advisers, consultants, and agents as may be necessary in its judgment and fix their compensation;

(f) Make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions; and

(g) Have and exercise any other powers or duties that are necessary or appropriate to carry out and effectuate the purposes of this chapter.

(7) If the authority is dissolved at any time, for any reason, all funds, property, rights, and interests of the authority, following the satisfaction of the authority's obligations, shall immediately vest in and become the property of the state, which shall succeed to all rights of the authority subject to any encumbrances which may then exist on any particular properties.

(8) None of the net earnings of the authority shall inure to the benefit of any private person. (E) Moral Obligation of the State

(1) The general assembly hereby finds and declares that its intent in enacting this section is to support public charter schools and public charter school capital construction by helping qualified public charter schools that choose to have the [INSERT NAME OF BONDING AUTHORITY] issue bonds on their behalf obtain more favorable financing terms for the bonds.

(2) If the [INSERT NAME OF BONDING AUTHORITY] has issued bonds on behalf of a public charter school that defaults on its debt service payment obligations, the Board of directors of the authority shall submit to the governor a certificate certifying any amount of moneys required to fulfill the school's debt service payment obligations. The governor shall submit a request for appropriations in an amount sufficient to fulfill the school's debt service payment obligations and the general assembly may, but shall not be required to, appropriate moneys for said purpose. If, in its sole discretion, the general assembly appropriates any moneys for said purpose, the aggregate outstanding principal amount of bonds for which moneys may be appropriated for said purpose shall not exceed [INSERT DOLLAR AMOUNT].

#### (F) Access to State Facilities Programs for Non-Charter Public Schools

[Public charter schools should have equal access to all of the existing state facilities programs for traditional public schools in a state. To implement this item, a state must amend the relevant section of the law (e.g., public school capital construction assistance fund section) to clarify that public charter schools are eligible to obtain funding from the relevant program.]

#### (G) Credit Enhancement Fund

(1) [INSERT DOLLAR AMOUNT] shall be set aside for a credit enhancement fund for public charter schools to be administered by the state Board or Commission of education.

(2) Using the amounts described in paragraph (1), the state Board or Commission of education shall make and disburse grants to eligible nonprofit corporations to carry out the purposes described in paragraph (3).

(3) The recipient of a grant under this fund shall use the monies provided under the grant to carry out activities to assist public charter schools in:

(a) Obtaining financing to acquire interests in real property (including by purchase, lease, or donation), including financing to cover planning, development, and other incidental costs;

(b) Obtaining financing for construction of facilities or the renovation, repair, or alteration of existing property or facilities (including the purchase or replacement of fixtures and equipment), including financing to cover planning, development, and other incidental costs;

(c) Enhancing the availability of loans (including mortgages) and bonds; and (d) Obtaining lease guarantees.

(4) Funds provided under a grant under this subparagraph may not be used by a recipient to make direct loans or grants to public charter schools.

#### (H) Access to District Facilities and Land

(1) A public charter school shall have a right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or unused portions of a public school facility or property located in a school district from which it draws its students if the school district decides to sell or lease the public school facility or property.

#### (I) Contracting for Use of Facilities

(1) A public charter school may negotiate and contract at or below fair market value with a school district, the governing body of a state college or university or public community college, or any

other public or for-profit or nonprofit private entity for the use of facility for a school building.

(J) Use of Other Facilities under Preexisting Zoning and Land Use Designations

(1) Library, community service, museum, performing arts, theatre, cinema, church, community college, college, and university facilities may provide space to public charter schools within their facilities under their preexisting zoning and land use designations. (K) Exemptions from Ad Valorem Taxes and Certain Fees

(1) Any facility, or portion thereof, used to house a public charter school shall be exempt from ad valorem taxes.

(2) Public charter school facilities are exempt from assessments of fees for building permits, fees for building and occupational licenses, impact fees, service availability fees, and assessments for special benefits.

Section 8. {Caps.}

(A) This article hereby removes the limit [of XXX] as established in the Charter School Law on the number of approved charter schools as of the effective date in Section 9.

(B) This article hereby removes the limit [of XXX] as established in the Charter Schools Act on the number of students in a district who can enroll in a charter school as of the effective date in Section 9.

Section 9. {Effective Date.}

The Next Generation Charter Schools Act will be in effect beginning no later than July 1, [year].



## FIGHTING FOR EDUCATION INNOVATION & OPPORTUNITY

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