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TIME TO MODERNIZE  
CHARTER AUTHORIZING  
IN CALIFORNIA:  
ANALYSIS &  
RECOMMENDATIONS

NATIONAL ASSOCIATION OF  
CHARTER SCHOOL AUTHORIZERS

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## EXECUTIVE SUMMARY

With 1,184 charter schools educating nine percent of the state's students, California is by far the largest charter schooling state in the country. California's 324 charter school authorizers are almost all local school districts. Several are among the nation's largest authorizers, but more than 90 percent of California's authorizers oversee five or fewer charter schools. This means charters are subjected to a patchwork of differing authorizing standards, requirements, and practices. Serious efforts are underway to improve the professional practices of authorizers, but today, inconsistent and ineffective authorizing has produced too little charter school autonomy in some cases and too little charter school accountability in others.

California's charter schools and authorizers face several distinct obstacles:

- Inconsistent authorizer capacity and expertise
- A politicized authorizing structure and process
- Lack of professional authorizing standards
- Lack of distinct, transparent performance agreements
- Weak state-level oversight of authorizers, with little enforcement authority
- Ineffective charter renewal processes that can distort accountability

*California should move on four fronts to improve its charter authorizing climate and capacity:*

- 1. Reinforce authorizer professionalism.** Adopt national industry standards for quality charter authorizing and require authorizers to meet them. Increase transparency through annual reports on high-stakes decisions.
- 2. Strengthen school-level accountability.** Give authorizers and charter schools the tools needed to create clear agreement on performance expectations and commitments—including a Memorandum of Understanding (MOU) for each charter school and renewal decisions based on performance, not promises.
- 3. Strengthen state oversight and support.** Develop a quality control office to support the State Board's oversight functions. Increase the range of technical support needed for strengthening authorizers' professional practices.
- 4. Expand options for high-quality authorizing.** Consider a hybrid state/local approach or regional authorizing bodies. An improved authorizing structure should guarantee that every authorizer wants to be in the business and has the capacity and will to do the job correctly.

## TIME TO MODERNIZE CHARTER AUTHORIZING IN CALIFORNIA

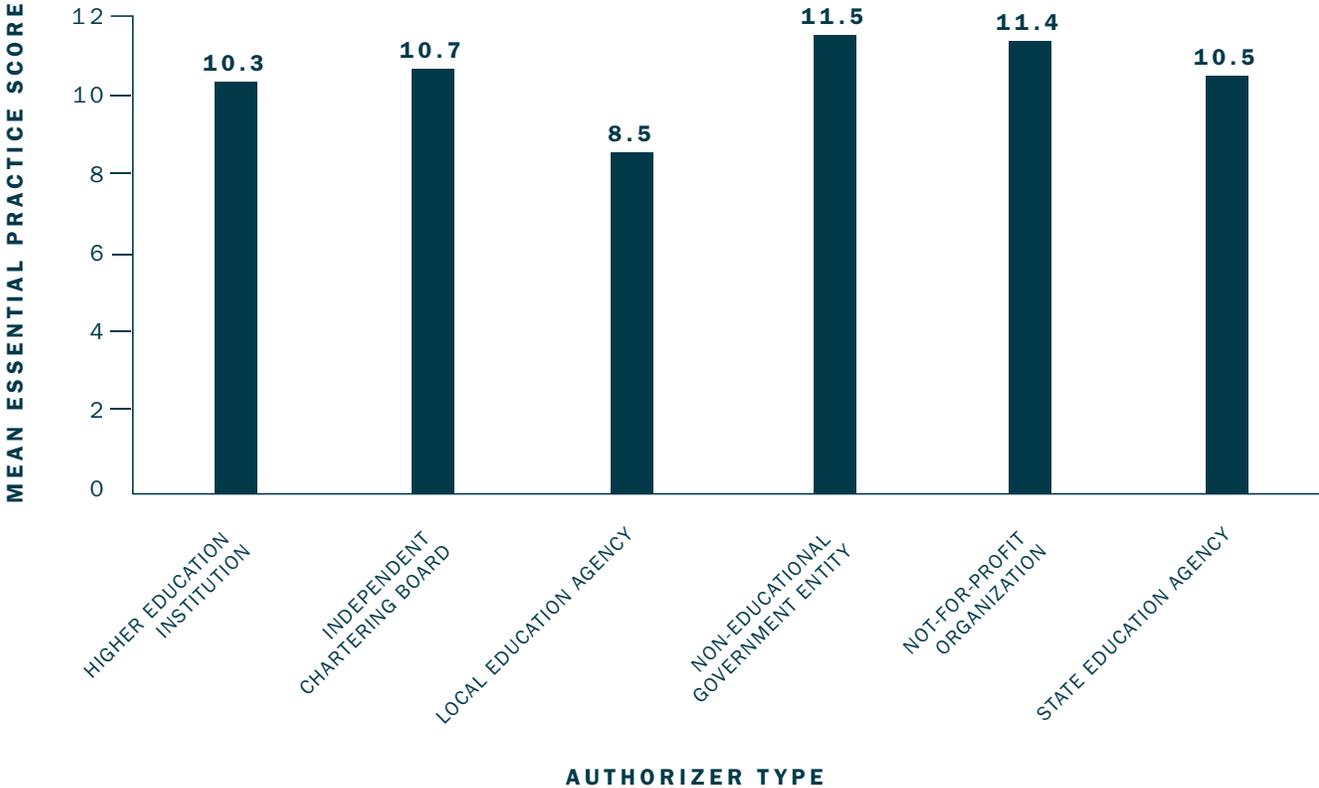
Since its enactment in 1992, California's charter school law has been amended numerous times by both legislation and initiative. Changes have clarified everything, from schools' legal status, to funding, to provision of facilities. Yet the fundamental architecture of oversight and governance of California charter schools has remained untouched. To enable charter schools to provide excellent education to students throughout the state and to keep California a national leader in charter school policy, it is time to modernize the state's approach to charter authorization.

While California's charter school sector continues to grow and achieve some highly visible successes, the state's authorizing structure creates troublesome obstacles to its quality and vitality. Hundreds of local school districts retain sole authority to grant, oversee, and renew charters, subjecting charter schools to a patchwork of differing authorizing standards, requirements, and practices. While some authorizers build strong capacity and observe nationally recognized best practices, too many lack needed expertise. Many authorizers are also hampered by a lack of legal tools needed to oversee charter schools effectively.

Charter advocates have long contended that district-only authorizing can narrow learning opportunities when promising charter applications are denied by unfriendly school boards. Active charters may also suffer from indifferent district oversight.

New evidence from an annual survey of the nation’s authorizers conducted by the National Association of Charter School Authorizers (NACSA) lends weight to these misgivings. Data culled from survey responses examines how well individual authorizers are implementing the *12 Essential Practices*, a set of fundamental professional practices that authorizers should adopt to realize the intent of state charter laws. Among all types of authorizers, Local Education Agencies or “LEAs”—which dominate the authorizing map of California—are far less likely than other types of authorizers to implement these critical practices.<sup>1</sup>

## USE OF ESSENTIAL PRACTICES BY AUTHORIZER TYPE



<sup>1</sup>The State of Charter School Authorizing, National Association of Charter School Authorizers (2015), <http://www.qualitycharters.org/research-policies/archive/essential-practices/>

NACSA is committed to helping California fulfill its promise to more than a half-million charter school students and their families. NACSA is the only national organization dedicated to building, strengthening, and supporting charter authorizing as a profession. Its [Principles & Standards for Quality Charter School Authorizing](#), a foundational text for authorizers, was recently cited by the U.S. Department of Education as a primary source of guidance for states that want to strengthen charter oversight. Nationwide, 20 states have adopted *Principles & Standards*, either directly or by reference, into state law and policy.

NACSA has high hopes for improving California's charter school policy through the kind of vigorous debate that typifies the Golden State's education policymaking. To help move these discussions forward, NACSA offers this examination of California's charter authorizing structure and recommends a short list of policy fixes aimed at enhancing achievement and protecting public and taxpayer interests.

# THE CURRENT STATE OF CHARTER AUTHORIZING IN CALIFORNIA: OVERVIEW OF STRUCTURE AND LANDSCAPE

With 1,184 charter schools educating nine percent of the state's students, California is by far the largest charter schooling state in the country. It also has the largest number of charter authorizers: 324. Unlike other states that have empowered universities, state boards, and large not-for-profits to authorize charter schools, California law allows school districts to remain the primary gatekeepers of the state's charter system. Any district can authorize, with no evidence of capacity or intent required.

California also has a two-tiered appeal structure in which charter petitions denied locally can be approved by County Offices of Education (COEs) or the State Board of Education (SBE). A COE may either authorize the school or uphold the denial. If denied by the COE, the school may then appeal to the SBE, which may also choose to uphold the denial or authorize the school. In addition to their appeal authority, COEs may also directly authorize schools of countywide benefit, and the SBE may directly authorize schools of statewide benefit.

Most California authorizers oversee a small number of charter schools: 90 percent of active authorizers in the state—293 authorizers—oversee five or fewer schools each. Of these, 155 oversee just one charter school. A significant swath of the state's charter schools is overseen by entities whose primary business is running district schools, not approving and overseeing great charters.

At the other end of the spectrum, California has some authorizers that oversee a large number of schools. Los Angeles Unified School District (LAUSD), with 264 charter schools, serves the largest number of charter school students of any authorizer in the U.S. Other large authorizers include Oakland Unified School District, San Diego Unified School District, and several county offices of education.<sup>3</sup>

## PRACTICES

Whether large or small, an effective authorizer is defined by the use of nationally recognized professional practices. Regrettably, California charter authorizers as a group fall far below national norms in implementing NACSA's *Essential*

## CALIFORNIA CHARTER FACTS

LAW ENACTED IN 1992

324 AUTHORIZERS

97% OF SCHOOLS AUTHORIZED BY LOCAL EDUCATION AGENCIES (LEAs)<sup>2</sup>

1,184 CHARTER SCHOOLS

12% OF PUBLIC SCHOOLS ARE CHARTERS

544,980 CHARTER STUDENTS

9% OF PUBLIC SCHOOL STUDENTS IN CHARTERS

*Practices* for quality charter authorizing. While 61 percent of large authorizers nationally are implementing eleven or all twelve of the *Essential Practices*, just two in California (LAUSD with 12 and Oakland Unified with 11) are in that class. Among the sample of 30 California authorizers who responded to NACSA's 2015 national survey who collectively oversaw 54 percent of California's charter schools in 2014–15,<sup>4</sup> the picture is not encouraging:

- Only 37 percent have a dedicated mission focused on quality charter authorizing (vs. 55 percent nationwide).
- Only 37 percent produce an annual public report on the performance of the charter schools they oversee (vs. 63 percent nationwide).
- Only 17 percent use external experts to help review and assess charter petitions (vs. percent nationwide).
- Only 57 percent use performance contracts to hold charter schools accountable for meeting clear, agreed-upon expectations (vs. 86 percent nationwide).

Even compared to states with similar, district-based authorizing structures such as Colorado and Florida, these are very low rates of adherence to the dozen minimum practices that NACSA has identified as essential for sound authorizing.

<sup>2</sup> LEAs include County Offices of Education. A County Office of Education may authorize on appeal and may also directly authorize schools of countywide benefit.

<sup>3</sup> Data from NACSA's 2015 annual survey of charter school authorizers (data self-reported by responding authorizers).

<sup>4</sup> Data from NACSA's 2015 annual survey of charter school authorizers (data self-reported by responding authorizers).

# KEY PROBLEMS WITH CALIFORNIA'S CURRENT CHARTER AUTHORIZING AND OVERSIGHT STRUCTURE

Ineffective authorizing has produced too little charter school autonomy in some cases and too little charter school accountability in others. California's charter schools and charter school authorizers face several distinct obstacles to producing a charter sector with the potential to improve student achievement:

- Inconsistent authorizer capacity and expertise
- Politicized authorizing structure and process
- Lack of professional authorizing standards
- Lack of distinct, transparent performance agreements
- Weak state-level oversight of authorizers, with little enforcement authority
- Ineffective charter renewal processes that can distort accountability

Each of these obstacles to success is rooted in state policy and many have been recognized in studies conducted during the past dozen years. The next section discusses them and presents NACSA's recommendations for improvement.

## SO MANY AUTHORIZERS, TOO LITTLE FOCUS ON AUTHORIZING

California's district-reliant authorizing structure is perhaps the foremost challenge to consistent quality charter school authorizing, a point made by both the Legislative Analyst's Office and the Little Hoover Commission.<sup>5</sup>

Hundreds of California school districts have chartered at least one school. They have not asked for this responsibility, nor have they had to present evidence of capacity or intent. State law simply says that they are tasked with being charter authorizers in addition to their primary responsibility of school system oversight. So far, no district has lost the right to charter because of negligent performance.

To be sure, there are some advantages to local oversight, including direct familiarity with student needs and relationships with social services. But the current policy has produced a crazy quilt of charter oversight characterized by extreme variances in authorizing attitudes, practices, and

quality from one district to the next.

Many of these districts are tiny jurisdictions to begin with, and therefore, will never charter at greater scale—in fact, of the state's 324 authorizers, 155 oversee just one charter. In such cases, the complex requirements of charter approval and oversight are handled by a fraction of one employee's time—if anyone is designated at all as the go-to person for charter schools. Without a change in policy or additional forms of support, the odds are slim that most California authorizers will develop the needed skills.

## INSUFFICIENT INSULATION FROM DISTRICT POLITICS

Despite the inherent tension between direct management of public schools and serving as an authorizer of charters, it's quite possible for traditional districts to become effective authorizers. Among California districts, two are already implementing 11 or 12 of NACSA's 12 [Essential Practices](#). But in small authorizing districts such as those that dominate the California landscape, it is difficult to create a tight focus on authorizing practice and to build the insulation needed to keep that practice from being buffeted by district politics. Larger districts with factionalized boards have also produced instances of questionable approvals or turndowns, renewals of charter schools that have not earned the right to continue, and instances of micromanagement by staff trying to anticipate every possible objection from a divided board.

These political dynamics play out in appeals of initial petitions and renewals reaching the State Board, appeals which have increased steadily since the appellate process was established in 1998. Such appeals tend to be from well-prepared charter petitioners who come ready to challenge any negative decision; applicants without deep pockets are often deterred by the cost of an appeal. The volume of appeals—40 in the past six years alone—has turned the SBE into one of California's busiest chartering venues, draining energy from its main mission of setting statewide education policy. Since it oversees schools approved on appeal, the SBE has itself become a large authorizer, overseeing 33 schools in 2015—a task the SBE was not designed to do.

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<sup>5</sup> "Assessing California's Charter Schools," Legislative Analyst's Office (2004); *Smarter Choices, Better Education: Improving California's Charter Schools*, Little Hoover Commission (2010); "California's Charter Schools: Oversight at All Levels Could Be Stronger to Ensure Charter Schools' Accountability," Bureau of State Audits (2002).

## INADEQUATE AUTHORIZER FUNDING

California authorizers receive a percentage of charter school Average Daily Attendance funding and can also charge each charter school up to one percent of their revenue for oversight costs, or up to three percent of revenue if the authorizer is providing a substantially rent-free facility to the school. This sounds straightforward enough, but it creates some serious imbalances.

The one-percent allocation is relatively low by national standards and can be inadequate to support quality authorizing unless an authorizer oversees a sizeable portfolio of schools. Only authorizers that actually have facilities to offer may charge the three-percent fee—which limits that funding stream to large urban school districts with declining enrollment. Appellate authorizers (county offices and the SBE) generally do not have school facilities and therefore are always limited to the one-percent oversight fee. In addition, there is no funding for petition review processes or appeals; these costs are claimed through mandated cost recovery (a state reimbursement), which has been chronically underfunded.

The bottom line is this: while authorizing resources are tight for all, small authorizers are stuck without the means to build badly-needed oversight capacity.

## LACK OF PROFESSIONAL AUTHORIZING STANDARDS

California statutes provide very little guidance for the state's authorizers. The charter law states only a few basic duties, such as acting on petitions and conducting site visits, but provides no consistent professional expectations for the complex and challenging work of authorizing.

Many authorizers simply focus on basic compliance, doing what the law directly requires but losing sight of the larger intent: to foster a high-quality charter sector. This tendency is reinforced by the state's appeals structure, because compliance-focused practices are easier to defend in appeals. Without a strong set of statewide professional authorizing standards driven by guiding principles, all parties—authorizers, charter schools, and other stakeholders—can argue about

the letter of the law instead of working toward a robust, high-performing charter sector for California.

Nationally, 20 states have incorporated some version of NACSA's *Principles & Standards* into state law, either by reference or by excerpting key requirements. This is a step California should take, as well.

## LACK OF PERFORMANCE AGREEMENTS

More than 90 percent of the nation's largest authorizers execute performance contracts with their charter schools. In most other states, once a charter proposal is approved, the authorizer and the charter school negotiate and execute a binding performance contract that articulates performance expectations, responsibilities of both the school and authorizer, and the zone of autonomy to which a charter school is entitled. This is the norm across the nation and one of NACSA's 12 recommended *Essential Practices* for quality charter authorizing.<sup>6</sup>

In California, it is common practice to treat the approved charter petition itself as the contract. Why is this a problem?

Charter contracts exist primarily for the benefit of the school. An approved charter petition, which may be hundreds of pages with attachments, includes not only the intended accountability goals, but also innumerable extraneous details that can invite a hostile authorizer to focus inappropriately on minutiae—and worse, to play a game of “gotcha” at renewal time. By providing a limited set of clear, enforceable performance expectations, a contract lets both school and authorizer know what is required for charter renewal.

In California, this question has additional nuance because some local authorizers and the State Board of Education use a Memorandum Of Understanding (MOU) with their charter schools. As long as the MOU is legally binding and includes the requisite academic, financial, and operational elements, the difference in nomenclature should not be troubling. (The State Board of Education's MOU, for example, is virtually the equivalent of most charter contracts used in other states.)

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<sup>6</sup> NACSA *Spotlight on Essential Practices*, National Association of Charter School Authorizers (2013), <http://www.qualitycharters.org/wp-content/uploads/2015/08/Spotlight-on-12-EPS.pdf>

However, the practice of using MOUs is not required, and their scope and quality vary across the state.

California now requires Local Control Accountability Plans (LCAP) for each school and district, including charter schools. Charter applicants must include LCAP goals and metrics in their charter petition, and an authorizer can refuse to renew a charter for failure to meet these goals. LCAP could form the basis of academic accountability goals for California charters.

### **WEAK STATE-LEVEL OVERSIGHT OF AUTHORIZERS AND LACK OF ENFORCEMENT AUTHORITY**

California provides little state-level oversight of charter authorizers themselves. It provides no state authority that can address grievances about authorizer performance beyond appeals of petition, revocations, or renewal decisions.

Under current state law, the SBE can intervene in charter schools under certain severe circumstances and take appropriate action, including revoking the charter. However, the SBE has never exercised this authority.<sup>7</sup> County superintendents have investigative authority over charter schools in their jurisdiction, but lack the authority to officially intervene.

Outside of the appeals structure, judicial intervention, and the SBE's never-used limited intervention powers, there are no other formal but less drastic mechanisms to identify, address, or sanction poor authorizing practices:

- There is no objective way to distinguish conscientious authorizers from those that are hostile, overbearing, negligent, or otherwise performing poorly.
- There are no transparency mechanisms to ensure that an authorizer is annually verifying and appropriately measuring the academic, financial, and organizational performance of the charter schools it oversees.
- There are no mechanisms to review and evaluate, either periodically or selectively, the quality and performance of authorizers based on the performance of their schools or standards of quality authorizing.
- The State has no authority to prevent or sanction

authorizers who abuse for financial gain the charter law's limited exemption to in-district chartering—a situation that has prompted litigation among districts and led to serious questions of conflict.<sup>8</sup>

With no system to identify good or bad authorizing and no state enforcement authority or mechanisms, there is little incentive for an authorizer to improve its practices, other than the threat of appeals or judicial action.

### **UNDEFINED AND WEAK CHARTER RENEWAL PROCESS**

The number of charter schools in the bottom quartile of California Charter Schools Association's (CCSA) performance curve has increased in the past several years, from 199 schools in CCSA's 2011 report to 235 today. To be clear, this represents a declining proportion of the total number of charter schools in the state. Yet, the fact that the number has been increasing even while NACSA, CCSA, and others are calling for the closure of failing charter schools indicates the need to do more.

California's charter school renewal code has two significant problems: an undefined process and a weak standard. Schools are subject to an unpredictable renewal process that is a disservice to charter schools, authorizers, and the general public.

#### ***California has no distinct renewal process***

Charter renewal should primarily reflect how well a school has performed against the goals in its current charter term. While some states and authorizers ask additional questions about plans for the next charter term, these are of secondary importance to the question of whether the school has fulfilled its current contractual obligations.

California's charter school law actively bars this kind of renewal process. Charter renewals follow the same standards, content requirements, and petition process as new charter petitions.<sup>9</sup> Therefore, they lack the substance appropriate to inform a meaningful, performance-focused renewal decision. Some sophisticated authorizers have developed work-arounds using public data and information they have collected during

<sup>7</sup> California Education Code §47604.5(a)-(d) and §47607.4.

<sup>8</sup> In one example, the Acton-Agua Dulce Unified School District chartered a school outside its boundaries, violating the intent of California's charter school law and drawing a lawsuit from other districts. ("Five Santa Clarita Valley Superintendents Speak Out on Einstein Academy," *Santa Clarita News*, 5/13/ 2013). A similar issue has arisen more recently with respect to charters in San Diego County.

<sup>9</sup> California Education Code §47607(a)(2).

the charter term. But lacking any comprehensive framework for decision making, the law allows both schools and authorizers to cherry-pick data that can sway district boards toward their preferred outcome.

Some authorizers take a minimalist approach, simply checking whether a charter school has remained within the bounds of legal compliance. While an essential component of any renewal review, this says little or nothing about how well the school has fulfilled its educational mission. Moreover, a hostile authorizer can often find some compliance deficit to justify a politically influenced non-renewal.

**California's renewal standard can be inappropriately applied and overly subjective**

Paradoxically, California appears to have a strong renewal standard on paper, because the charter law sets forth minimum performance expectations that schools must achieve to earn renewal.<sup>10</sup> However, this is intended as a “floor” for renewal. It appears that too many authorizers are using it as a “ceiling” and stamping their approval on any school that meets it.

The renewal standard is undermined by a large loophole giving authorizers considerable discretion to renew schools that fail to meet even minimum performance standards. Under California's charter law, a charter school may not be renewed unless the school meets a defined threshold of academic achievement on state standards or the authorizer determines that “the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.”<sup>11</sup>

This “safety net” provision is there for good reason: it was intended to address rare cases where schools might warrant additional consideration despite falling below the minimum Academic Performance Index (API) renewal standard. In practice, it has come to mean that *closure is not the expected*

*outcome for a failing charter at renewal time.* Any authorizer seeking to avoid confrontation with a disappointed operator, or avoid the painful process of closure, can often find an escape route.

There are also two technical problems with current renewal policy:

- First, when the state's API was suspended, the legislature did not provide an explicit replacement for the API-based renewal thresholds, leaving a large hole in the basic design of the renewal process.
- Second, California's law continues to reflect outdated federal guidance by requiring that a chartering entity “consider increases in pupil academic achievement for all groups of pupils served...as the most important factor in determining whether to grant a charter renewal.” Recognizing the need to give equal weight to financial probity and legal compliance, the U.S. Department of Education now urges “using increases in student academic achievement as one of the most important factors in renewal decisions.”<sup>12</sup>

In 2014, roughly 95 percent of eligible California charters won renewal. This is considerably higher than the 79 percent renewal rate found in NACSA's annual survey.<sup>13</sup> And this is not a one-year blip: over the five years from 2011 to 2015, among California authorizers responding to NACSA's annual survey, just five percent of charter schools were denied renewal by their authorizer for any reason.<sup>14</sup> This track record raises serious questions about both the practices of authorizers and the incentives built into the law.

Commendably, the CCSA has tried to address this weakness through its Public Call for Non-Renewal. Using its own stringent criteria, the Association annually calls for the closure of low-performing charter schools. State policy should give more support to this brand of “tough love” for charters.

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<sup>10</sup> California Education Code §47607(a)(3).

<sup>11</sup> California Education Code §47607(b).

<sup>12</sup> From 2015 Charter School Program grant criteria.

<sup>13</sup> CCSA and NACSA annual authorizer survey data (2015).

<sup>14</sup> NACSA annual authorizer survey data (2015). The State of California does not collect comprehensive data on non-renewals.

## **WHY ISN'T THE SAFETY NET IN CALIFORNIA'S RENEWAL STANDARD WORKING AS INTENDED?**

There may be several factors that contribute to the overuse of the safety net by California authorizers. According to some authorizers and policy experts queried by NACSA, there are several factors:

- The renewal threshold was an ambitious bar when originally written but did not grow along with API, effectively lowering the bar.
- Authorizers may be advised by counsel to use the safety net provision for all schools, presumably putting the authorizer in a stronger position in appeals. There is currently little case law on the subject to offer clear guidance.
- Schools pressure authorizers to employ the lowest standard possible to keep the school open.
- School board members feel more confident in justifying their decision to constituents when they can say they have considered every legal basis for their decision.

## FOUR STEPS CALIFORNIA CAN TAKE NOW

California is unique among states for its breadth and complexity. In matters of public policy, the State usually leads rather than follows—indeed, it was one of the first states to pass a charter school law. NACSA encourages state policymakers to think anew and to create an environment in which California’s charter schools can grow with quality and integrity.

In seeking to modernize the design of California’s authorizing vehicles, we need not start from scratch. NACSA brings to this process a storehouse of knowledge about best authorizing practices and policies that California can adapt to fit its own traditions and particular situation.

The following is a short list of recommendations addressing key leverage points for the redesign of state authorizing. These reforms will foster quality growth; professionalize the work of authorizing; establish strong performance management systems; and strengthen statutory guidance on charter renewal and closure.

### 1. REINFORCE AUTHORIZER PROFESSIONALISM

#### *Adopt statewide professional standards*

Nationwide, 20 states have already adopted national industry standards for quality charter authorizing, in most cases based directly on NACSA’s Principles & Standards for Quality Charter School Authorizing. California should do likewise—and require authorizers to meet them.<sup>15</sup>

Codifying authorizing standards in statute or policy can establish consistent expectations for professional practice, whatever an authorizer’s type or size. By defining the basic tenets of sound authorizing, standards provide the State with an objective, professional basis for judgment in charter school appeals and authorizer evaluations. NACSA recommends that California endorse NACSA’s *Principles & Standards*; create incentives for authorizers to follow the standards, especially with respect to opening strong charter schools and closing weak ones; and rely on the *Principles & Standards* to shape evaluations that will hold authorizers accountable for their performance.

#### *Heighten transparency*

To facilitate public accountability and inform State oversight, California should beef up its data collection on authorizing activities with annual reports on closures, openings, renewals, and other changes. The State should also require all authorizers to produce annual public reports on the performance of their portfolio of charter schools—a task that could easily be accomplished with a charter-specific LCAP template.

As noted earlier, California’s current method of funding authorizers is unbalanced, leaving smaller authorizers (including counties) unable to staff their work properly. Rather than recommending a quick fix, NACSA suggests that the Legislature commission an independent, one-year study of authorizer finances, looking both at needs and expenditures, with particular attention to whether fees are fully dedicated to authorizing purposes. That report should be published and used to stimulate dialogue leading to a legislative proposal for adequate and consistent funding of authorizer duties.

### 2. STRENGTHEN SCHOOL-LEVEL ACCOUNTABILITY

Strengthening school level accountability starts by giving authorizers and charter schools the tools needed to create clear agreements on performance expectations and commitments.

#### *Create an MOU for each charter school*

It’s time to require that all authorizers use strong performance management tools reflecting national industry standards.

In almost all other states, this means executing a performance contract between an authorizer and every charter school it oversees—a legally binding agreement between the authorizer and school governing board, separate and distinct from the charter petition, with provisions that establish the school’s legal status, affirm its autonomy, and describe the mutual obligations of both school and authorizer.

Recommended by California’s Little Hoover Commission, this is NACSA’s most fundamental recommendation as best practice

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<sup>15</sup> For more guidance on adopting or endorsing NACSA’s professional standards in state law, see “Endorsing NACSA’s *Principles & Standards for Quality Charter School Authorizing*,” NACSA Policy Brief, National Association of Charter School Authorizers (2014) and “Setting a Minimum Threshold for Performance and Default Closure of Failing Schools,” NACSA Policy Brief, National Association of Charter School Authorizers (2014), <http://www.qualitycharters.org/policy-research/state-policy-agenda/state-policy-resources/>.

in the area of charter school performance accountability. Because a number of authorizers are already using MOUs that are virtually the equivalent of contracts, NACSA recommends that California leverage this progress and extend it to all charter schools.

Each MOU should state the conditions of the school's operation (e.g., address, length of term, assurances about compliance with the law) and articulate the rights and responsibilities of *both the school and authorizer* regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms.

### **Require a performance framework**

Incorporated within the MOU and serving as the basis for school evaluations and all charter renewal decisions,<sup>16</sup> a performance framework sets forth performance standards, measures, and targets that qualify a charter school for renewal. The performance framework should address academic, financial, and organizational performance.

Instead of broad, long-term goals, a performance framework allows the authorizer to annually evaluate the progress of the school in meeting performance expectations. The charter school then uses this information to inform its plans for performance improvement.

Integrating Local Control Accountability Plan (LCAP) requirements will take some work, because they are not currently aligned with any renewal threshold. Authorizers must be part of the goal-setting process, and the state education department should provide both them and charter schools ample technical support in creating viable frameworks.

### **In renewals, emphasize performance, not promises**

California should establish in law a distinct renewal process focused primarily on how well the school has met the academic, financial, and organizational goals of its current charter. State statute should require a renewal petition process entirely separate—both substantively and procedurally—from that used for initial petitions.

A renewal statute reflecting national best practices should contain the following requirements:<sup>17</sup>

- Renewal decisions should be based on analyses of objective evidence defined by the performance framework in the charter agreement.
- All authorizers should be required to provide to each school, well in advance of the renewal decision, a cumulative performance report stating the authorizer's summative findings on the school's performance in academic and non-academic areas and its prospects for renewal.
- Each school should be provided an opportunity to correct or augment the authorizer's performance report.
- Authorizers should grant renewal only to schools that (a) have achieved the academic targets stated in the charter contract, (b) are organizationally and fiscally viable, and (c) have been faithful to the contract and applicable law.

A renewal process such as this makes renewal predictable for both charter schools and authorizers, narrowing the chances for surprises and politically driven decisions.

### **Eliminate the loopholes in default closure for failing charters**

The State should make explicit, in law, that charter schools failing to meet the state's academic performance standards for renewal will be closed. The law should define, with appropriate rigor and implementation guidance,

- what level of poor performance, and how many years of it, will trigger automatic closure;
- a short list of exceptions (e.g., Alternative Schools Accountability Model [ASAM] schools); and
- a process through which authorizers can state extenuating circumstances that should allow them to keep a school open (for example, a natural disaster affecting one year's test results).<sup>18</sup>

## **3. STRENGTHEN STATE OVERSIGHT AND SUPPORT**

### **Develop a quality control office to support the State Board**

California's State Board of Education has authority to oversee authorizing but has rarely, if ever, used it, in part because it lacks a designated vehicle for quality control. California should

<sup>16</sup> For more guidance on the content of a strong performance framework that meets national industry standards, see *Principles & Standards for Quality Charter School Authorizing*, National Association of Charter School Authorizers (rev. 2012), pp. 14, 23, <http://www.qualitycharters.org/for-authorizers/principles-and-standards/>.

<sup>17</sup> *Principles & Standards for Quality Charter School Authorizing*, National Association of Charter School Authorizers (rev. 2012).

<sup>18</sup> For more guidance on crafting a strong state-level default closure policy, see "NACSA Policy Recommendation: Closing Failing Schools," National Association of Charter School Authorizers (2014) and "Setting a Minimum Threshold for Performance and Default Closure of Failing Schools," NACSA Policy Brief, National Association of Charter School Authorizers (2014), <http://www.qualitycharters.org/policy-research/state-policy-agenda/state-policy-resources/>.

establish a system for effective (but not intrusive) state-level oversight of authorizing. Given that most authorizing is done within school districts, it should be made clear that the unit of accountability in these cases is the entire district, including the school board—not just the office that directly handles charter matters.

NACSA does not recommend at this time that the California Department of Education be given this responsibility, but that a separate entity (such as a respected research or policy analysis institution) be charged with supporting the State Board with respect to authorizer accountability. It should possess strong analytical capacity and would be charged with making well-informed reports and recommendations to assist the State Board in its oversight responsibilities. The entity would

- review and evaluate, periodically and selectively, the quality and performance of the state’s authorizers;
- review authorizers’ renewal decisions and make recommendations on whether the State Board should uphold or overturn them; and
- investigate allegations of inappropriate authorizing (such as out-of-district chartering that violates current law) and make recommendations for remedy.

California’s current district-only authorizing structure limits the State’s ability to impose sanctions on authorizers that fail to discharge their responsibilities, since each district now has an effective monopoly. If authorizing powers are taken away from districts, qualified operators will have no place to go with their petitions. Nonetheless, the State should have the ability to sanction an authorizer or, if warranted, revoke any authorizer’s chartering authority. Sanctions could include a restriction on fees, dispatching a state-appointed manager to serve as authorizer while the district prepares an improvement plan, and finally, removal of chartering authority. These measures must be carefully designed to avoid adverse impacts on the charter sector or leaving any jurisdiction without a viable authorizer. Sanctioning may be appropriate if an authorizer

- demonstrates abuse of its chartering authority through a

documented pattern of actions that violate the letter, spirit, or intent of California’s charter law;

- repeatedly authorizes charter schools that fail to meet state standards;
- fails to make renewal decisions that uphold the state’s established renewal standards;
- fails to close schools that perform below the state’s renewal standards; or
- persistently fails to meet state standards for quality authorizing.

### **Expand technical supports**

The State can play a key role in providing professional support geared to the needs of both large and small authorizers across the state. An appropriate state entity could offer small authorizers training, essential authorizing tools, and professional support to enable these authorizers to conduct basic quality authorizing and oversight, even if they will never charter more than a few schools. This would complement California Authorizers Regional Support Network (CARNet), the federally supported initiative (spearheaded by the Alameda County Office of Education) to build the quality and effectiveness of small authorizers in California.<sup>19</sup> (NACSA is an active partner in developing the CARNet program.)

The Fiscal Crisis and Management Assistance Team (FCMAT), a state service created in 1991 to assist school districts (and later, charter schools) by providing “fiscal advice, management assistance, training, and other related school business services,” is one logical source of support.<sup>20</sup> Although it works with districts, its current services do not directly support the improvement of authorizing. The legislature should approve an expansion of FCMAT’s portfolio to include such services, particularly those that can build critical capacity in small and mid-sized authorizers.

## **4. EXPAND OPTIONS FOR HIGH-QUALITY AUTHORIZING**

California should redesign its authorizing structure so every authorizer wants to be in the business and has the capacity and will to do the job correctly.

California’s authorizing problems stem from a policy that

<sup>19</sup> For a brief description of the Charter Authorizer Regional Support Network, see <http://www2.ed.gov/programs/charter-nationalleadership/acoef.pdf>.

<sup>20</sup> “FCMAT’s Mission”: <http://fcmat.org/>

simply assigns responsibility to local school districts and counties—and then fails to follow through with the kind of flexibility and support those agencies need.

In communities where a strong charter petition simply can't get a hearing, where a sloppy petition is approved through negligence, or where a local board plays politics with renewal decisions rather than attending to evidence, alternatives are clearly needed. Both the Little Hoover Commission (LHC) and Legislative Analyst's Office have previously recommended alternative authorizers as a priority improvement for California.<sup>21</sup>

California's challenge is to combine the strengths of local oversight with assurance that every sound charter proposal gets a fair hearing and partnership with a strong and constructive authorizer. As new paths are opened, state law should ensure that all new options offer high-quality authorizing. The door should be shut firmly on "authorizer shopping," when a charter school chooses an initial authorizer or changes authorizers specifically to avoid accountability.

NACSA suggests three potential approaches:

### ***A State/District Authorizing System***

In recent years, 16 states and the District of Columbia have established statewide authorizing bodies—commissions, boards, or institutions whose sole purpose is to foster excellent charter schools. In most cases, they have full statewide jurisdiction, but in a few states where local control is highly valued, they work in tandem with district authorizers, an approach that could work in California.

Colorado has a strong tradition of local control, and for that reason its statewide Charter Schools Institute cannot approve schools in districts that have established their bona fides and gained exclusive chartering authority from the State Board of Education. Such a system could work in California by providing charter petitioners anywhere in the state direct (not just appellate) access to a quality authorizer option, while enabling conscientious local districts to continue serving as authorizers.

An independent chartering body could be connected to the State Department of Education, but would need sufficient independence to focus solely on chartering quality schools. Creating such a body—perhaps limiting its reach to districts without exclusive chartering authority—would sharply reduce the charter-related workload of the State Board of Education, freeing it from having to hear most appeals. Instead the State Board would be solely required to approve local districts' requests for exclusive authority.

### ***Regional Authorizing Bodies***

Another option—which may make sense in light of the state's vast size and population—is to establish a small number of alternative authorizers for specific geographic regions. Given the authorizing experience of many County Offices of Education (COEs) in the state, California could readily designate as alternative authorizers a handful of COEs around the state that are already experienced in authorizing. Such regional alternatives could also help develop, demonstrate, and disseminate model practices to California's hundreds of authorizers.

Another option would allow campuses of the state university system to function as authorizers within defined regions. Universities are recognized as authorizers in 16 states, and among their number are some of the most esteemed authorizers in the country, including the State University of New York.

### ***Opt-Out/Default Options***

One problem with early charter laws—including California's—is that they simply designated categories of agencies as authorizers "by right," with no need to demonstrate their capacity or, conversely, to say that they don't want to take on the job. Small school districts that have neither the means nor the interest to become effective authorizers should have an automatic default option whereby applications in their communities would be passed to another level—initially the surrounding county, but also any regional or statewide body—that would have a larger charter portfolio and staff designated for oversight.

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<sup>21</sup> "Assessing California's Charter Schools," Legislative Analyst's Office (2004); Smarter Choices, Better Education: Improving California's Charter Schools, Little Hoover Commission (2010).

## CONCLUSION

California has more charter schools and more charter school students than any state in the nation, and more growth is expected. Yet, just as the quality of charter schools is uneven, so is the quality of the oversight of those schools. There are ample commonsense opportunities for California to improve. NACSA looks forward to discussing these proposals with California policymakers, district and county education officials, charter authorizers and operators, and the many stakeholders who contribute to the success of all California students.

# REFERENCES

*Note: All NACSA Policy Guides, Policy Recommendations, and related policy resources are available at <http://www.qualitycharters.org/policy-research/state-policy-agenda/state-policy-resources/>.*

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