
TIME TO MODERNIZE CHARTER AUTHORIZING IN CALIFORNIA: ANALYSIS & RECOMMENDATIONS

NATIONAL ASSOCIATION OF
CHARTER SCHOOL AUTHORIZERS

MARCH 2016

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.³

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)²

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 2014–15,⁴ 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.

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

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

⁴ 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.⁵

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.

⁵ "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.⁶

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.)

⁶ 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.⁷ 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.⁸

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.⁹ 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

⁷ California Education Code §47604.5(a)-(d) and §47607.4.

⁸ 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.

⁹ 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.¹⁰ 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.”¹¹

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.”¹²

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.¹³ 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.¹⁴ 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.

¹⁰ California Education Code §47607(a)(3).

¹¹ California Education Code §47607(b).

¹² From 2015 Charter School Program grant criteria.

¹³ CCSA and NACSA annual authorizer survey data (2015).

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