

**STATE OF HAWAII
BOARD OF EDUCATION**
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TO: Patricia Halagao
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AGENDA ITEM: Committee Action on draft of administrative rules for multiple
charter school authorizers

I. Background

At its January 19, 2016 general business meeting, the Board of Education ("Board") directed its staff to draft administrative rules for multiple charter school authorizers, pursuant to Hawaii Revised Statutes ("HRS") §302D-4, entitled "Chartering authority application for eligible entities."¹

¹ HRS §302D-4 provides as follows:

"(a) The commission created under section 302D-3 may authorize public charter schools anywhere in the State.

(b) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities may apply to the board, pursuant to this section, for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction.

(c) A county or state agency may apply to the board, pursuant to this section, for chartering authority.

(d) Governing boards of non-profit or charitable organizations, which are exempt from federal taxes under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, may apply to the board, and may be granted statewide chartering authority. Nonpublic sectarian or religious organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer under this chapter.

(e) The board shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the board shall not approve any application for chartering authority until July 1, 2014, or until the board adopts rules, whichever is later. By June 30 of each year, the board shall make available information and guidelines for all eligible entities concerning the opportunity to apply for chartering authority under this chapter. The application process shall require each interested eligible entity to submit an application that clearly explains or presents the following elements:

(1) Written notification of intent to serve as an authorizer in accordance with this chapter;

HRS §302D-4(e) provides, in pertinent part, “The [B]oard shall establish, through administrative rules, the annual application and approval process for all entities eligible to apply for chartering authority pursuant to this section; provided that the [B]oard shall not approve any application for chartering authority until July 1, 2014, or until the [B]oard adopts rules, whichever is later...”

Included in the development of a process to create multiple authorizers is also consideration of the transfer of oversight of a public charter school from one authorizer to another. These charter transfers are covered by HRS §302D-20, entitled “Charter transfers,” which provides:

“(a) Transfer of a charter contract, and of oversight of that public charter school, from one authorizer to another before the expiration of the charter term shall not be permitted except by special petition to the [B]oard by a public charter school or its authorizer. The [B]oard shall review such petitions on a case-by-case basis and may grant transfer requests in response to special circumstances and evidence that such a transfer would serve the best interests of the public charter school's students.

(b) The [B]oard may adopt rules pursuant to chapter 91 to carry out the purposes of this section.”

(2) The applicant entity's strategic vision for chartering;

(3) A plan to support the vision presented, including explanation and evidence of the applicant entity's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing, in accordance with this chapter;

(4) A draft or preliminary outline of the request for proposals that the applicant entity, if approved as an authorizer, would issue to solicit public charter school applicants;

(5) A draft of the performance framework that the applicant entity, if approved as an authorizer, would use to guide the establishment of a charter contract and for ongoing oversight and evaluation of public charter schools, consistent with the requirements of this chapter;

(6) A draft of the applicant entity's renewal, revocation, and nonrenewal processes, consistent with section 302D-18;

(7) A statement of assurance that the applicant entity seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of this chapter, and that if approved as an authorizer, the entity will fully participate in any authorizer training provided or required by the State; and

(8) A statement of assurance that the applicant will ensure public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures.

(f) By June 30 of each year, the board shall decide whether to grant or deny chartering authority to each applicant. The board shall make its decisions on the merits of each applicant's proposal and plans.

(g) Within sixty days of the board's decision, the board shall execute a renewable authorizing contract with each entity it has approved for chartering authority. The initial term of each authorizing contract shall be six years. The authorizing contract shall specify each approved entity's agreement to serve as an authorizer in accordance with the expectations of this chapter, and shall specify additional performance terms based on the applicant's proposal and plan for chartering. No approved entity shall commence charter authorizing without an authorizing contract in effect.

(h) This section shall not apply to the commission.”

Therefore, staff drafted two new proposed Hawaii Administrative Rules (“HAR”) chapters (attached as **Exhibit A**): HAR Chapter 8-515, Establishment and Oversight of Charter School Authorizers, and HAR Chapter 8-517, Charter Contract Transfers.

II. Administrative Rules Description and Justification

Statute does not provide much guidance regarding the process for creating multiple authorizers or charter transfers. Instead, statute authorizes the Board to develop administrative rules and process to carry out these purposes.

Consequently, Board staff accessed other resources in developing the draft of the proposed rules. Board staff researched national policy standards and issues regarding multiple authorizers, reviewed several states’ (Minnesota, Ohio, and Washington)² practices in starting and overseeing multiple authorizers, and spoke to a few experts about their respective state’s policies and practices for oversight of multiple authorizers. Based on this research, staff determined that the administrative rules should govern the entire lifecycle of an authorizer—including the establishment of a new authorizer, oversight and evaluation of existing and new authorizers, renewal or nonrenewal of an authorizer’s chartering authority, and, if necessary, the revocation of an authorizer’s chartering authority—as well as the transferring of charter schools between authorizers.

HAR Chapter 8-515, Establishment and Oversight of Charter School Authorizers, covers applications; oversight and evaluations; and renewal, nonrenewal, and revocation of authorizers’ chartering authority. HAR Chapter 8-517, Charter Contract Transfers, covers the application and process for transferring charter contracts between authorizers. Both chapters are described in further detail below.

These two proposed HAR chapters essentially establish the framework for an authorizer accountability system. Because the success of a charter school system relies heavily on authorizers holding their respective charter schools accountable for performance through quality authorizing practices, the two critical reasons for establishing an authorizer accountability system are ensuring high-quality charter school authorizing and preventing “authorizer hopping.” According to the National Association of Charter School Authorizers (“NACSA”), authorizing hopping “happens when a low-performing charter school finds a new authorizer to avoid accountability measures, usually school closure.”³ NACSA further explains:

“As the number of authorizers in some states has grown, the potential for a low-performing charter school to find another sponsor has also increased. The existence of multiple authorizers is supposed to provide a check on the possibility that the lone authorizer in a jurisdiction will become hostile to charter schools or develop undesirable or unchecked behaviors over time. This could include over regulation, biased decision making, or

² Minnesota and Ohio have historically dealt with issues with having too many low-quality authorizers, and both states have recently reformed their systems for overseeing authorizers, including creating authorizer performance evaluation systems. Before its charter school law was deemed unconstitutional, Washington began setting up systems for granting school districts chartering authority, including an application for districts to become new authorizers.

³ Excerpt from NACSA’s policy brief: Public Impact: Doyle, D. (2014), *Authorizer hopping: Motivations, causes and ways to stop it*, page 2, Chicago, IL: National Association of Charter School Authorizers (“*Authorizer Hopping*”). Attached as **Exhibit B** or available online at http://www.qualitycharters.org/wp-content/uploads/2015/08/PolicyBrief_AuthorizerHopping.pdf.

moratoriums on new schools. However, more authorizers mean more opportunities for a low-performing school to find an authorizer it can hop to, especially if doing so is in the authorizer's interest. And in the absence of clear expectations or accountability for authorizers in some states, the growth in the number of authorizers has also allowed for more low-quality authorizers to enter the market.”⁴

HAR Chapter 8-515, Establishment and Oversight of Charter School Authorizers

Proposed HAR Chapter 8-515 contains five subchapters:

- Subchapter 1, General Provisions
- Subchapter 2, Applications for Chartering Authority
- Subchapter 3, Oversight and Evaluation of Authorizers
- Subchapter 4, Renewal or Nonrenewal of Chartering Authority
- Subchapter 5, Revocation of Chartering Authority

Subchapter 1, General Provisions. Subchapter 1 designates the purpose of the chapter and defines terms found within the chapter. Notably, for the purposes of HAR Chapter 8-515, the term “authorizer” does not include the Commission, unlike the definition found in HRS Chapter 302D or the definition in HAR Chapter 8-517. This is to establish the difference between the Commission, which is statutorily created, and all other authorizers, as not all provisions in this chapter that apply to authorizers apply to the Commission.

Subchapter 2, Applications for Chartering Authority. Subchapter 2 requires the Board to develop an application, process, and schedule for new authorizers, pursuant to HRS §302D-4, including developing policies, criteria, or guidelines for evaluating applications based on nationally recognized principles and standards for quality charter authorizing. HRS §302D-6 requires that all authorizers “follow nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing responsibility. . .” and NACSA and the National Alliance for Public Charter Schools (“National Alliance”) contend that an accountability system for authorizers should “be grounded in and guided by national standards for the profession of public charter school authorizing[.]”⁵ Consequently, Subchapter 2 should require a process for evaluating applications for alignment with such standards.

Subchapter 2 further describes the minimum elements of the application and approval process. Many of these minimum elements mirror the statutory requirements that are required of authorizers’ application processes for new charter schools, pursuant to HRS §302D-13. The reason for this is to ensure that applications for new authorizers are evaluated with a level of rigor that is similar to what is done for new charter schools. NACSA and the National Alliance argue that authorizer accountability systems should “start, just like an accountability system for public charter schools, with a rigorous application and

⁴ Excerpt from *Authorizing Hopping*, page 4.

⁵ Excerpt from the National Alliance’s and NACSA’s report: Lin, Margaret (2015), *Holding Public Charter School Authorizers Accountable: State Experiences and Policy Recommendations*, page 3, Washington, DC: National Alliance for Public Charter Schools (“*Holding Authorizers Accountable*”). Attached as **Exhibit C** or available online at http://www.publiccharters.org/wp-content/uploads/2015/05/authorizer_accountability_final.pdf.

selection or approval process for entities seeking to become . . . authorizers (except for legislatively created state public charter school commissions).”⁶

Finally, Subchapter 2 describes the entities eligible to submit applications to the Board, pursuant to HRS §302D-4, and clarifies that any eligible entities that are private organizations, which includes private postsecondary institutions or nonprofit or charitable organizations, must be registered to do business in this state. Requiring eligible private postsecondary institutions or nonprofit or charitable organizations to be registered to do business in this state aligns with a similar statutory requirement for nonprofit organizations that are interested in applying for new charter schools.⁷ The requirement further ensures, through external verification from another state agency, that such private entities are legitimately organized as private postsecondary institutions or nonprofit or charitable organizations, as all such entities would need to be registered with the Department of Commerce and Consumer Affairs (“DCCA”).⁸

Statute allows for certain eligible entities to apply for statewide, regional, or local chartering authority but does not define “regional” or “local” chartering authority. Consequently, Subchapter 2 provides clarification by defining “regional chartering authority” and “local chartering authority.” However, there appears to be some inconsistencies in statute that the Board may want to consider proposing legislation to amend in the future. Statute allows state and county agencies to apply for statewide, regional, or local chartering authority but only allows nonprofit or charitable organizations to apply for statewide chartering authority. Since statewide authority is more encompassing, it seems unusual to expressly allow more geographically-specific authority to state and county agencies while only allowing nonprofit organizations statewide jurisdiction. Furthermore, it seems unreasonable to allow statewide authority to a county agency, as such authority can be outside of the agency’s normal operating jurisdiction.

In addition, the Board may want to consider a future proposal for a legislative amendment that allows the Board to disqualify an application from an entity that previously served as an authorizer but was uncooperative with the Board when its chartering authority terminated or expired. This would provide some incentive to entities that are losing their chartering authority to cooperate with the Board, especially when transferring charter contracts to another authorizer, and save the Board from dedicating resources to evaluating an application from an entity it already considers problematic. While statute does not explicitly disallow the Board from disqualifying an application from evaluation, it may be prudent for the Board to avoid overreaching its statutory authority and seek an amendment instead. In the meantime, Subchapter 2 includes a kind of placeholder provision that allows the Board to “disqualify any application as provided by law.”

Subchapter 3, Oversight and Evaluation of Authorizers. Subchapter 3 requires the Board to develop an authorizer performance evaluation system, not unlike the performance framework to which charter schools are held accountable, pursuant to HRS §302D-16. However, unlike the performance system for charter schools, there are little to no statutory guidelines for an authorizer performance system. Instead, HRS §302D-11(a) instructs the

⁶ Excerpt from *Holding Authorizers Accountable*, page 3.

⁷ HRS §302D-13 allows a nonprofit organization to establish an applicant governing board to develop and submit a charter application. HRS §302D-1 defines “nonprofit organization” as a “private, nonprofit, tax-exempt entity that: (1) Is recognized as a tax-exempt organization under the Internal Revenue Code; and (2) Is registered to do business in this State in accordance with chapter 414D.”

⁸ Private postsecondary education institutions operating in this state must be registered with DCCA pursuant to HRS Chapter 305J. Nonprofit organizations doing business in this state must be registered with DCCA pursuant to HRS Chapter 414D.

Board to “be responsible for overseeing the performance and effectiveness of all authorizers[.]” Consequently, staff considered other policy resources in determining the minimum elements of the authorizer performance evaluation system.

The authorizer performance evaluation system requires regular reviews or periodic formal evaluations of authorizers on their effectiveness in carrying out their duties in a manner consistent with the purposes of charter schools, as determined by the Board, and the spirit and intent of the charter school law; alignment to nationally recognized principles and standards for quality authorizing; and compliance with authorizing and charter contracts and applicable laws, rules, and regulations. The evaluation system also requires mechanisms for initiating and conducting special reviews of authorizers, pursuant to HRS §302D-11(c).

The first required element of the authorizer performance evaluation system is the assessment of the effectiveness of an authorizer in carrying out its duties in a manner consistent with the purpose of charter schools, as determined by the Board. According to NACSA, one significant cause of authorizer hopping is disagreements over the purpose of charter schools:

“Some authorizers do not consider high student outcomes the primary purpose of charter schools. Rather, they believe in school choice for the sake of choice, the potential of competition and innovation to drive reform, or that true accountability is solely in the hands of the free market as reflected by the community’s enrollment choices. Others contend that a low-performing charter school may still be valuable if it provides a safer learning environment than traditional public school options, especially when other high-quality schools are not available to students. For these reasons, some authorizers do not believe that charter schools should be closed in response to low performance.”⁹

To mitigate this issue, Subchapter 3 requires the Board to set the purpose of charter schools, based on the spirit and intent of HRS Chapter 302D, and evaluate the performance of authorizers in accordance with this purpose.

The second required element of the authorizer performance evaluation system is the application of nationally recognized principles and standards for quality charter authorizing in assessing authorizer performance. HRS §302D-11(c) requires and provides, in pertinent part, “[i]n reviewing or evaluating the performance of authorizers the [B]oard shall apply nationally recognized principles and standards for quality charter authorizing.” Further, NACSA recommends that states “adopt standards for charter school authorizing, such as NACSA’s *Principles & Standards for Quality Charter School Authorizing*, to create universal expectations for authorizer practices [and] evaluate authorizers on how well they meet those expectations for authorizer practice.”¹⁰

The third required element of the authorizer performance evaluation system are regular reviews or periodic formal evaluations. NACSA recommends that state policy should “set clear expectations for how and when the state will hold authorizers accountable for the performance of schools in their portfolios and authorizer actions.”¹¹ Further, NACSA and the National Alliance contend that authorizer accountability systems should include “regular

⁹ Excerpt from *Authorizing Hopping*, page 3.

¹⁰ Excerpt from *Authorizer Hopping*, page 6.

¹¹ Ibid.

state review and evaluation of all authorizers.”¹² Conceivably, the Board could conduct a full, formal evaluation of an authorizer prior to the expiration of its authorizing contract and use the results of the evaluation to inform contract renewal decisions and the length of the next contract term. If the authorizer’s contract is renewed but the results of the formal evaluation indicate that some areas need improvement, the Board could require more frequent regular reviews of the authorizer’s performance in those areas.

The fourth required element is the assessment of compliance of each authorizer. As is similarly required of charter schools pursuant to HRS §§302D-1 and -16¹³, each authorizer is required to comply with authorizing and charter contracts, Board policies, and applicable laws and regulations. Both Minnesota’s and Ohio’s performance evaluation systems also measure the compliance of authorizers.

The final required element is a mechanism for initiating and conducting a special review of an authorizer, pursuant to HRS §302D-11(c).¹⁴ Because such a review is tied to an authorizer’s performance, it is provided for in the performance evaluation system.

In addition to establishing the authorizer performance evaluation system, Subchapter 3 also provides a mechanism, in accordance with HRS §§302D-11(c) and (d)¹⁵, for dealing with an authorizer that the Board finds is not in compliance with a material provision of existing charter contracts or its authorizing contract, Board policies, or applicable laws and regulations. The Board is to notify an authorizer not in compliance of the identified problems in writing served through registered or certified mail. The authorizer has thirty days to respond and submit to the Board for approval a corrective action plan for remedying the problems in a reasonable time. The Board is to notify an authorizer that it intends to revoke its chartering authority if the authorizer fails to submit the necessary corrective action plan or does not make significant progress in remedying the identified problems in a reasonable time. However, if the authorizer is the Commission, the Board does not have authority to revoke its chartering authority because it is established by statute. Instead, the Board may terminate the terms of some or all of the members of the Commission, pursuant to HRS §302D-3(h).¹⁶

¹² Excerpt from *Holding Authorizers Accountable*, page 3.

¹³ HRS §302D-16(a) provides, in pertinent part, “The performance framework, as established by the authorizer, shall include indicators, measures, and metrics for . . . [o]rganizational viability.” Pursuant to HRS §302D-1, “organizational viability” means, among other things, “that a charter school: . . . (7) Complies with applicable federal, state, and county laws and requirements; . . . (9) Operates within the scope of its charter contract and fulfills obligations and commitments of its charter; (10) Complies with all health and safety laws and requirements; (11) Complies with all authorizer directives, policies, and procedures; and (12) Complies with all [B]oard policies deemed applicable to charter schools by the [B]oard.”

¹⁴ HRS §302D-11(c) provides, in pertinent part, “Persistently unsatisfactory performance of an authorizer’s portfolio of public charter schools, a pattern of well-founded complaints about the authorizer or its public charter schools, or other objective circumstances may trigger a special review by the [B]oard.”

¹⁵ HRS §302D-11(c) provides, in pertinent part, “In reviewing or evaluating the performance of authorizers the [B]oard shall apply nationally recognized principles and standards for quality charter authorizing. If at any time the [B]oard finds that an authorizer is not in compliance with an existing charter contract, its authorizing contract with the [B]oard, or the requirements of all authorizers under [HRS Chapter 302D], the [B]oard shall notify the authorizer in writing of the identified problems, and the authorizer shall have reasonable opportunity to respond to and remedy the problems. HRS §302D-11(d) provides, “If an authorizer persists, after due notice from the [B]oard, in violating a material provision of a charter contract or its authorizing contract with the [B]oard, or fails to remedy other identified authorizing problems, the [B]oard shall notify the authorizer, within a reasonable amount of time under the circumstances, that it intends to revoke the authorizer’s chartering authority unless the authorizer demonstrates a timely and satisfactory remedy for the violation or deficiencies.”

¹⁶ HRS §302D-3(h) provides, “Notwithstanding the terms of the members, the [B]oard may fill vacancies in the [C]ommission at any time when a vacancy occurs due to resignation, non-participation, the request of a majority of the [C]ommission members, or **termination by the [B]oard for cause**” (emphasis added).

Subchapter 4, Renewal or Nonrenewal of Chartering Authority. Subchapter 4 provides a renewal and nonrenewal process for authorizing contracts. While HRS §302D-4(g) requires the Board to execute renewable authorizing contracts with all approved authorizers, statute does not provide further guidance on how such contracts are renewed. As a result, Subchapter 4 is modeled after the contract renewal and nonrenewal process for charter schools under HAR Chapter 8-505 and in accordance with HRS §302D-18.

Subchapter 4 begins with the reasons an authorizing contract may not be renewed. These reasons are based on provisions within HRS §302D-11, as well as loosely based on HRS §302D-18(g), which provides reasons for charter school nonrenewal or revocation.¹⁷

Subchapter 4 also requires the Board to develop a chartering authority renewal application, process, schedule, and evaluation policies, criteria, or guidelines. The Board also must prepare a performance report for each authorizer whose authorizing contract will expire the following calendar year. Any weaknesses or deficiencies that may result in nonrenewal must be included in the report. After receiving the performance report, an authorizer seeking renewal is to submit a renewal application and respond to any identified weaknesses or deficiencies. If the authorizer disputes the Board's assessment, the Board must reaffirm, modify, or retract its notification of weaknesses or deficiencies. The Board is to make its final decision on whether or not to renew the authorizing contract within sixty days of receiving the renewal application and must inform the authorizer of the decision within fifteen days thereafter.

A difference between proposed HAR Chapter 8-515 and HAR Chapter 8-505 is that the Board is not required to hold a hearing if a contract holder who is at risk of being nonrenewed (or revoked) requests one, whereas the Commission is required to hold a hearing if requested. This requirement of the Commission is partially based in statute, as HRS §302D-18(h) requires that authorizers develop revocation and nonrenewal processes that "[p]rovide charter contract holders with an opportunity to submit documents and give testimony challenging the rationale for closure and supporting the continuation of the school at an orderly proceeding held for that purpose" and "allow charter contract holders access to representation by counsel, subject to [HRS §28-8.3], and to call witnesses on their behalf[.]" The Board has no such statutory requirements.

Subchapter 5, Revocation of Chartering Authority. Subchapter 5 provides a process for revoking chartering authority. While HRS §302D-11(d) allows the Board to revoke chartering authority from an authorizer, statute does not provide further guidance on how chartering authority is revoked. As a result and similar to Subchapter 4, Subchapter 5 is modeled after the contract revocation process for charter schools under HAR Chapter 8-505 and in accordance with HRS §302D-18.

Subchapter 5 begins with the reasons chartering authority may be revoked, pursuant to HRS §302D-11(c) and the noncompliance provisions within Subchapter 3. Whenever the

¹⁷ HRS §302D-18(g) provides, "A charter contract may be revoked at any time or not renewed if the authorizer determines that the charter school did any of the following or otherwise failed to comply with the provisions of this chapter:

- (1) Committed a material and substantial violation of any of the terms, conditions, standards, or procedures required under this chapter or the charter contract;
- (2) Failed to meet or make sufficient progress toward performance expectations set forth in the contract;
- (3) Failed to meet generally accepted standards of fiscal management; or
- (4) Substantially violated any material provision of law from which the charter school is not exempted."

Board has reason to believe that chartering authority should be revoked, the Board is to notify the authorizer in writing of the reason why revocation is contemplated and the date by which the authorizer is to respond. The Board is to make a final decision on whether or not to revoke chartering authority within thirty days and must inform the authorizer of the decision within fifteen days thereafter. As with Subchapter 4, the Board is not required to hold a hearing.

HAR Chapter 8-517, Charter Contract Transfers

Proposed HAR Chapter 8-517 governs the transfer of charter contracts between authorizers. Unlike the contents of proposed HAR Chapter 8-515, there is little statutory guidance relating to charter contract transfers and no administrative rules after which to model. However, with the creation of multiple authorizers, this chapter seeks to uphold the spirit and intent of HRS Chapter 302D, ensure accountability of both authorizers and charter schools, and prevent authorizer hopping.

HAR Chapter 8-517 requires the Board to develop a general charter transfer application and process. The minimum required elements of the charter transfer process are limited to the submission of a charter transfer application, an opportunity for the public to comment on any proposed charter transfer, and a timely decision by the Board on whether or not to allow the transfer. The opportunity for public comment is consistent with processes for any other major decision relating to a charter school or an authorizer, such as contract renewal or revocation.

In addition to these minimum process elements, there are several other transfer criteria that apply to all charter transfers:

1. No charter school is allowed to transfer its charter contract to another authorizer in an attempt to reduce the level of oversight or accountability to which the charter school is currently subject or to avoid possible revocation or nonrenewal of its charter contract. According to NACSA, this is the crux of authorizer hopping.
2. No authorizer is allowed to transfer a charter contract to another authorizer in an attempt to improve the overall performance of its own portfolio of charter schools or to avoid possible revocation or nonrenewal of the charter contract. NACSA reports, "Politics and procedures make it easier [for an authorizer] to let [a] school hop to a new authorizer than pursue permanent closure. In many instances, it is simply easier for an authorizer to allow a low-performing charter school in its portfolio to leave than it is to close the school down. Removing a failing charter school from an authorizer's portfolio, by any means, makes the authorizer's remaining portfolio of schools appear higher performing. . . . [A]uthorizer hopping could be perceived as politically advantageous to all three of the primary parties involved. . .but it creates a much larger problem for the school's students, that state's charter sector as a whole, and the taxpayers who support education."¹⁸
3. An authorizer shall not agree to accept a charter transfer nor shall it deny a charter transfer based on any financial incentives a larger portfolio of schools may provide to that authorizer. While the State does not provide funding to authorizers other than the Commission, there may be financial incentives for authorizing more schools. NACSA reports that, for some authorizers, "adding schools to their portfolios and

¹⁸ Excerpt from *Authorizer Hopping*, page 3.

keeping schools in their portfolio offer financial benefits that trump school performance considerations.”¹⁹ Statute arguably does not allow authorizers to charge fees from charter schools, but it does allow authorizers to sell services to their schools, pursuant to HRS §302D-10.²⁰

4. A charter school whose authorizer has initiated a closure of the school shall not be allowed to secure a charter contract from another authorizer. NACSA explains that a low-performing school can authorizer hop through two mechanisms, one being by transferring to a new authorizer during its charter contract term and the other being by “[letting] its current contract expire or be formally non-renewed or revoked and pursue a successive new school contract with a new authorizer.” Under the latter mechanism, “the failed charter school’s existing contract is terminated, but a new contract from the new authorizer enables the school to remain open.”²¹
5. Existing charter schools shall not be allowed to apply for a charter school under another authorizer as a way of *de facto* transferring oversight of the school from one authorizer to another and circumventing the charter transfer process, provided that this does not prevent existing charter schools from applying to another authorizer for replication or expansion purposes. This is similar to the previous point, except this requirement seeks to ensure that all schools go through the proper charter transferring channels, no school applies to another authorizer as a way of transferring oversight, and the Board maintains its statutory authority over charter transfers. This, however, is in no way intended to prevent replication or expansion of high-quality charter schools.
6. Authorizers must share among themselves information on charter schools that are transferring between them. NACSA reports that in some states, there is lack of communication and collaboration among authorizers and “no mechanism for sharing information about a school that is hopping. . . .As a result, the receiving authorizer sometimes does not know the extent of the problems that existed at the charter school before it applied to [transfer].”²²
7. All charter transfers must be in the best interest of students. HRS §302D-20 already requires this specifically of charter transfers that occur before the expiration of the charter contract term, and although self-explanatory, it is worth explicitly stating that the bottom line of any charter transfer should be that it is in the best interest of the school’s students.

As part of the charter transfer process, HAR Chapter 8-517 also establishes transfer processes specific to various transfer circumstances: transfers that occur at the end of a charter contract term, transfers that occur before the end of a charter contract term, and

¹⁹ Excerpt from *Authorizer Hopping*, page 2.

²⁰ HRS §302D-10 provides, “(a) No public charter school shall be required to purchase services from its authorizer as a condition of charter approval or renewal or of executing a charter contract, nor may any such condition be implied.

(b) A public charter school may, at its discretion, choose to purchase services from its authorizer. In such event, the public charter school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties’ mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the public charter school. An authorizer may not charge more than market rates for services provided to a public charter school.”

²¹ Excerpt from *Authorizer Hopping*, page 2.

²² Ibid.

transfers occurring due to the termination of an authorizer's chartering authority. Statute clearly indicates the Board is responsible for the latter two transfer circumstances but provides no guidance as to the first circumstance.

Considering the Board holds responsibility over other types of charter transfers, it is reasonable for the Board to assume responsibility and oversight over transfers that occur at the end of a charter contract term. However, as mentioned previously, no model rules or policies exist within this state to inform the development of the transfer process. Consequently, staff researched other states' policies and processes and developed HAR §8-517-4 based on concepts from Minnesota's change in charter school authorizer process, particularly Minnesota Statutes, section 124D.10, subdivision 23(c).²³

For a charter contract to be transferred at the end of the term, the school governing board must have met the terms of its expiring charter contract, including any performance requirements, and a proposed new authorizer must agree to accept the charter transfer. The current authorizer must inform the proposed authorizer of the school's performance status and any outstanding contractual obligations. The governing board submits to the Board and its current authorizer a letter indicating the intent to not renew the charter contract, while the proposed authorizer and governing board jointly submit to the Board a charter transfer application. The Board makes a final determination on the charter transfer application no later than sixty days before the expiration of the current charter contract. If the Board approves the transfer, the new authorizer and the governing board enter into a new charter contract that is effective upon the expiration of the current charter contract. If the Board does not approve the transfer, the governing board may withdraw its letter of nonrenewal and proceed with its authorizer's contract renewal process. However, if the letter is not withdrawn or no new charter contract is executed, the charter contract is considered nonrenewed, and the charter school must close.

This process for transfers that occur at the end of a charter contract term serves as a model for the processes for the other two charter transfer circumstances in addition to the limited statutory guidance. The next circumstance is a transfer that occurs before the end of a charter contract term.

A charter contract can only be transferred before the end of the term under special circumstance, pursuant to HRS §302D-20. An authorizer or school governing board may submit a letter to the Board requesting the transfer of a charter contract to another authorizer. However, an authorizer may only submit a letter with the mutual consent from the governing board. This is to ensure the authorizer is not avoiding its accountability responsibilities. The letter must explain the reason for the request, provide evidence that

²³ Minnesota Statutes, section 124D.10, subdivision 23(c) states: "If the authorizer and the charter school board of directors mutually agree not to renew the contract, a change in authorizers is allowed. The authorizer and the school board must jointly submit a written and signed letter of their intent to the commissioner to mutually not renew the contract. The authorizer that is a party to the existing contract must inform the proposed authorizer about the fiscal, operational, and student performance status of the school, as well as any outstanding contractual obligations that exist. The charter contract between the proposed authorizer and the school must identify and provide a plan to address any outstanding obligations from the previous contract. The proposed contract must be submitted at least 105 business days before the end of the existing charter contract. The commissioner shall have 30 business days to review and make a determination. The proposed authorizer and the school shall have 15 business days to respond to the determination and address any issues identified by the commissioner. A final determination by the commissioner shall be made no later than 45 business days before the end of the current charter contract. If no change in authorizer is approved, the school and the current authorizer may withdraw their letter of nonrenewal and enter into a new contract. If the transfer of authorizers is not approved and the current authorizer and the school do not withdraw their letter and enter into a new contract, the school must be dissolved according to applicable law and the terms of the contract."

the transfer is in the best interest of the charter school's students (as is expressly required by statute), and identify the proposed new authorizer that has agreed to the proposed transfer. The current authorizer must inform the proposed authorizer of the school's performance status and any outstanding contractual obligations. The proposed authorizer and governing board jointly submit to the Board a charter transfer application. The Board makes a final determination on the charter transfer application no later than sixty days before the end of the current term year of the current charter contract. If the Board approves the transfer, the new authorizer and the governing board enter into a new charter contract that is effective upon the end of the current term year of the current charter contract, thus terminating the previous charter contract.

The final circumstance is a transfer that occurs due to the termination of an authorizer's chartering authority. This process is guided by HRS §302D-11(e).²⁴

If an authorizer's chartering authority is terminated, the transfer of any charter contracts overseen by that entity to new authorizers is allowed. The former authorizer must inform the Board of each school's performance status and any outstanding contractual obligations. Each governing board overseen by the former authorizer submits a charter transfer application to the Board. Because the Board is responsible for managing the timely and orderly transfer of charter contracts under this circumstance, the Board solicits from the pool of existing authorizers a new authorizer for each charter school overseen by the former authorizer. All transfers will be with the mutual agreement of the proposed new authorizer and governing board. Because its chartering authority is granted by statute and is not at risk of termination except through legislative action, the Commission will serve as the default authorizer in cases where no other authorizer agrees or is available to accept the transfer of a charter contract overseen by the former authorizer. The Board makes a final determination on each charter transfer no later than ninety days before the start of the next school year. Upon the approval of each transfer, the new authorizer and the governing board enter into a new charter contract that is effective immediately and for the remainder of the contract term under the previous charter contract with the former authorizer.

III. Process for Promulgating Administrative Rules

After preliminary approval from the Board's Student Achievement Committee, staff will send the draft of the proposed administrative rules to the Department of the Attorney General ("AG") for legal review and approval "as to form" and to the Legislative Reference Bureau for technical review. The Board, likely at its February 16, 2016 general business meeting, will consider the draft of the proposed rules and, if approved, will request from the Governor approval to hold a public hearing on the proposed rules. (Note: If the Board makes changes to the draft after AG review, the AG will need to review the new draft and approve it "as to form" before requesting a public hearing from the Governor.)

After gubernatorial approval, the Board, in accordance with HRS Chapter 91, will publish the notice and hold a public hearing. The Board will consider the comments from the public and hold a decision-making meeting at which it makes any necessary changes to the proposed rules and adopts them. The AG reviews and approves the adopted rules "as to form." However, if the AG determines substantial changes have been made to the rules, another public hearing will need to be held.

²⁴ HRS §302D-11(e) provides, "In the event of revocation of any authorizer's chartering authority, the [B]oard shall manage the timely and orderly transfer of each charter contract held by that authorizer to another authorizer in the State, with the mutual agreement of each affected public charter school and proposed new authorizer. The new authorizer shall enter into a new charter contract with the charter school for the remainder of the charter term."

Upon AG approval “as to form,” the Board requests final approval of the rules from the Governor. The Governor approves and signs the rules and files copies with the Lieutenant Governor. The approved rules become effective ten days after being filed with the Lieutenant Governor.

IV. Recommendation

I recommend the following motion to the Committee:

“Moved to recommend the Board approve the draft of the proposed Hawaii Administrative Rules Chapters 8-515 and 8-517, as described in the memorandum dated February 2, 2016 and including any changes recommended by the Department of the Attorney General and the Legislative Reference Bureau, for public hearing in accordance with Hawaii Revised Statutes Chapter 91.”

Exhibit A

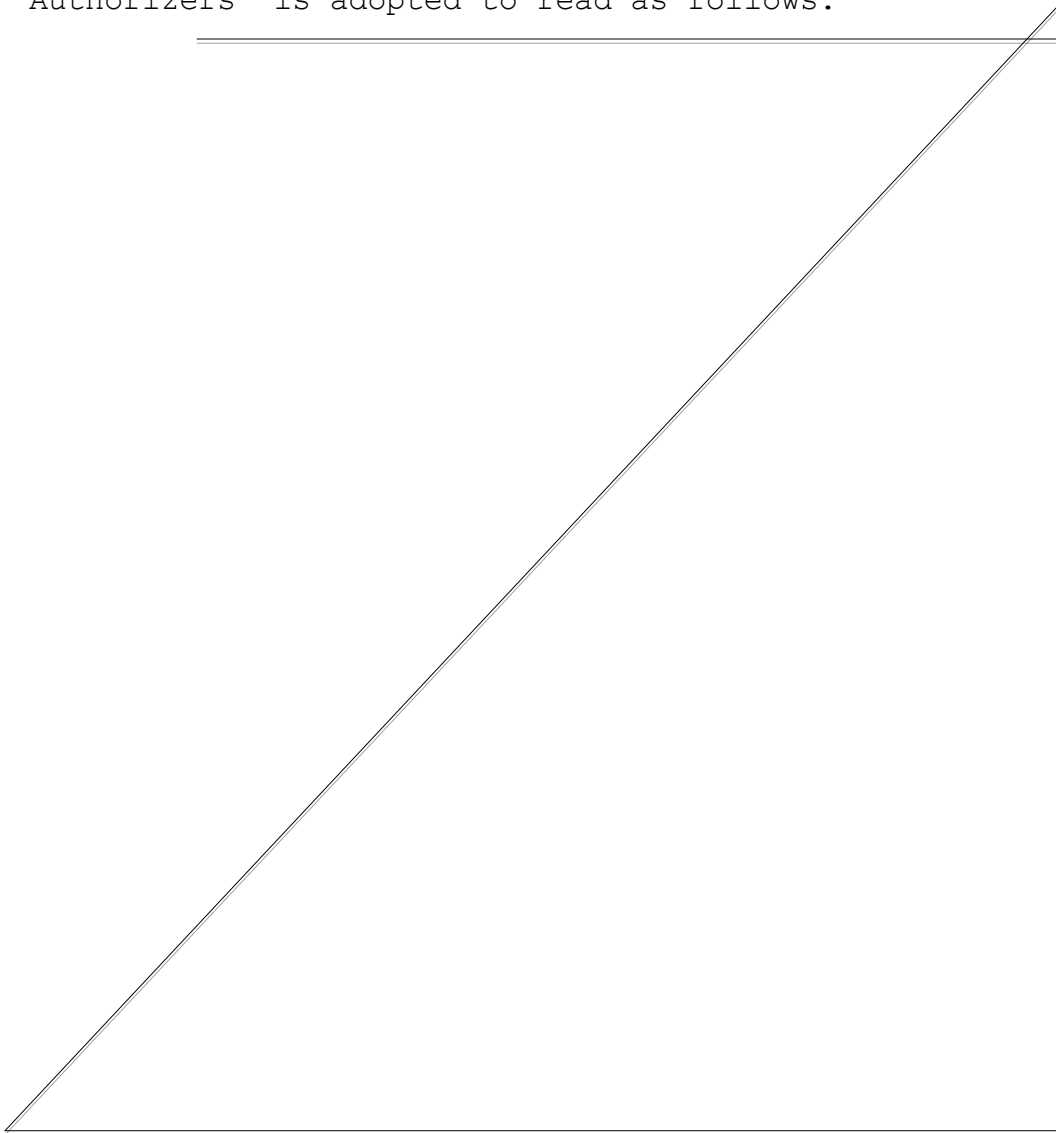
Draft of proposed Hawaii Administrative Rules Chapter 8-515, Establishment and Oversight of Charter School Authorizers, and Chapter 8-517, Charter Contract Transfers (Ramseyer format)

DEPARTMENT OF EDUCATION

Adoption of Chapters 8-515 and 8-517
Hawaii Administrative Rules

[adoption date]

1. Chapter 8-515, Hawaii Administrative Rules, entitled "Establishment and Oversight of Charter School Authorizers" is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 515

ESTABLISHMENT AND OVERSIGHT OF CHARTER SCHOOL
AUTHORIZERS

Subchapter 1 General Provisions

§8-515-1 Purpose
§8-515-2 Definitions
§8-515-3 Computation of time
§ 8-515-4 (Reserved)

Subchapter 2 Applications for Chartering
Authority

§8-515-5 Applications, generally
§8-515-6 Application and approval process
§8-515-7 Eligible entities
§§8-515-8 to 8-515-9 (Reserved)

Subchapter 3 Oversight and Evaluation of
Authorizers

§8-515-10 Performance evaluation system
§8-515-11 Noncompliance
§§8-515-12 to 8-515-13 (Reserved)

Subchapter 4 Renewal or Nonrenewal of

Chartering Authority

- §8-515-14 Reasons for nonrenewal
- §8-515-15 Application for chartering authority renewal
- §8-515-16 Performance report; notification of the prospect of nonrenewal
- §8-515-17 Nonrenewal decision by the board
- §8-515-18 (Reserved)

Subchapter 5 Revocation of Chartering Authority

- §8-515-19 Reasons for revocation
- §8-515-20 Notification of prospect of revocation
- §8-515-21 Revocation decision by the board

SUBCHAPTER 1

GENERAL PROVISIONS

§8-515-1 Purpose. This chapter governs the application process to become a charter school authorizer, oversight and evaluation of authorizers and the commission, renewal or nonrenewal of chartering authority, and revocation of chartering authority pursuant to chapter 302D, Hawaii Revised Statutes. [Eff _____] (Auth: HRS §302A-1112) (Imp: HRS §§302D-4, 302D-6, 302D-11)

§8-515-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Applicant" means the applicant who submits an application for chartering authority to the board.

"Authorizer" means an entity with chartering authority established pursuant to section 302D-4, Hawaii Revised Statutes. For purposes of this chapter, this term does not include the commission.

"Authorizing contract" means a fixed-term, renewable contract between an authorizer and the board that outlines the performance expectations of the authorizer and the roles, powers, and responsibilities for each party to the contract.

"Board" means the board of education.

"Commission" means the state public charter school commission established pursuant to section 302D-3, Hawaii Revised Statutes, with statewide chartering authority.

"Chartering authority" means the authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with charter applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts in accordance with chapter 302D, Hawaii Revised Statutes. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-4, 302D-11)

§8-515-3 Computation of time. The time in which any act provided in this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or state holiday and then it is also excluded. When the prescribed period of time is less than seven days, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation. [Eff] (Auth: HRS §302A-1112) (Imp: §91-2)

§ 8-515-4 (Reserved).

SUBCHAPTER 2

APPLICATIONS FOR CHARTERING AUTHORITY

§8-515-5 Applications, generally. (a) The board shall develop an application form, process, and processing schedule for applying to become an authorizer pursuant to section 302D-4, Hawaii Revised Statutes. The application form shall include a description of the application process and the application processing schedule.

(b) The board shall develop policies, criteria, or guidelines for evaluating applications for chartering authority based on nationally recognized principles and standards for quality charter authorizing. The policies, criteria, or guidelines may be included in the application form.

(c) The board shall make available the application form and the policies, criteria, or guidelines for evaluating applications to any person interested in establishing an authorizer. [Eff
] (Auth: HRS §302A-1112) (Imp: §302D-4)

§8-515-6 Application and approval process. (a) The annual application and approval cycle for chartering authority shall be no longer than twelve months.

(b) The application and approval process shall be determined by the board, and shall provide for and include, at a minimum, the following elements:

- (1) The submission of a notice of intent to apply for chartering authority to the board from each interested eligible entity;
- (2) The timely submission of a completed application for chartering authority to the board;
- (3) The timely review of the application by the board for completeness, and notification by the board to the applicant that the application is complete;

- (4) Upon receipt of a completed application, the review and evaluation of the application by qualified persons, including, but not limited to, an in-person interview with representatives from the applicant to assess the capacity of the applicant;
 - (5) An opportunity in a public forum for the public to provide input on each application for chartering authority; and
 - (6) Following the review and evaluation of an application for chartering authority, approval or denial of the application by the board in a meeting open to the public.
- (c) The board shall execute an authorizing contract with each entity it has approved for chartering authority pursuant to subsection 302D-4(g), Hawaii Revised Statutes.
- (d) If an application is denied, the board shall notify the applicant in writing, served by registered or certified mail with return receipt requested, stating the reason therefor, with specific references to the adopted policies, criteria, or guidelines for evaluating applications for chartering authority.
- [Eff _____] (Auth: HRS §302A-1112) (Imp: §302D-4)

§8-515-7 Eligible entities. (a) Governing boards of accredited public and private postsecondary institutions, including community colleges, technical colleges, and four-year universities shall be eligible to submit an application to the board for statewide, regional, or local chartering authority, in accordance with each institution's regular operating jurisdiction; provided that any private postsecondary institution is registered to do business in this state in accordance with state law.

(b) A state or county agency shall be eligible to submit an application to the board for statewide, regional, or local chartering authority.

(c) Governing boards of non-profit or charitable organizations, which are exempt from federal taxes

under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, shall be eligible to submit an application to the board for statewide chartering authority; provided that the organization is registered to do business in this state in accordance with state law. Nonpublic sectarian or religious organizations and any other charitable organization which in their federal Internal Revenue Service Form 1023, Part IV, describe activities indicating a religious purpose, are not eligible to apply to become an authorizer pursuant to subsection 302D-4(d), Hawaii Revised Statutes.

(d) For purposes of this subchapter, "regional chartering authority" means chartering authority within a county or an island-wide geographic area. For purposes of this subchapter, "local chartering authority" means chartering authority within one or more designated department of education complex areas.

(e) The board may disqualify any application as provided by law. [Eff _____] (Auth: HRS §302A-1112) (Imp: §302D-4)

§§8-515-8 to 8-515-9 (Reserved).

SUBCHAPTER 3

OVERSIGHT AND EVALUATION OF AUTHORIZERS

§8-515-10 Performance evaluation system. (a) The board shall develop a performance evaluation system to assess the effectiveness of all authorizers and the commission. The performance evaluation system shall, at a minimum:

- (1) Assess the effectiveness of an authorizer or the commission in carrying out its duties in a manner consistent with the purpose of charter schools, as determined by the board, and the spirit and intent of chapter 302D, Hawaii Revised Statutes;

- (2) Apply nationally recognized principles and standards for quality charter authorizing in assessing performance;
- (3) Include and provide for regular reviews or periodic formal evaluations;
- (4) Assess the compliance of each authorizer and the commission with existing charter contracts, its authorizing contract, board policies, rules, and laws, as applicable; and
- (5) Include and provide for mechanisms for initiating and conducting a special review of an authorizer or the commission pursuant to subsection 302D-11(c), Hawaii Revised Statutes.

(b) The performance provisions within each authorizing contract shall be based on the performance evaluation system. [Eff: 1/1/11] (Auth: HRS §302A-1112) (Imp: §§302D-6, 302D-11)

§8-515-11 Noncompliance. (a) If at any time the board finds that an authorizer or the commission is not in compliance with a material provision of existing charter contracts, its authorizing contract, board policies, rules, and laws, as applicable, the board shall notify the authorizer or commission in writing of the identified problems. The notice shall be served upon the authorizer or commission by registered or certified mail.

(b) The authorizer or commission shall have thirty days from the date of mailing of the notice to respond to the identified problems and submit to the board for approval a corrective action plan for remedying the problems in a reasonable time.

(c) If the authorizer fails to submit a corrective action plan or does not make significant progress in remedying the identified problems in a reasonable time, the board shall notify the authorizer that it intends to revoke the authorizer's chartering authority pursuant to subsection 302D-11(d), Hawaii Revised Statutes, and in accordance with subchapter 5.

(d) If the commission fails to submit a corrective action plan or does not make significant progress in remedying the identified problems in a reasonable time, the board may terminate the terms of some or all of the members of the commission pursuant to subsection 302D-3(h). [Eff] (Auth: HRS §302A-1112) (Imp: §§302D-3, 302D-11)

§§8-515-12 to 8-515-13 (Reserved).

SUBCHAPTER 4

RENEWAL OR NONRENEWAL OF CHARTERING AUTHORITY

§8-515-14 Reasons for nonrenewal. An authorizing contract may not be renewed for any of the following reasons:

- (1) Persistently unsatisfactory performance of the authorizer's portfolio of public charter schools;
- (2) Persistent, regular, or substantial violations of material provisions of a charter contract or the authorizer's authorizing contract;
- (3) Failure to meet or make sufficient progress toward performance expectations set forth in the authorizing contract; or
- (4) Failure to remedy other authorizing problems identified by the board.

[Eff] (Auth: HRS §302A-1112) (Imp: §§302D-4, 302D-11)

§8-515-15 Application for chartering authority renewal. (a) The board shall develop a chartering authority renewal application form, which shall be made available to each authorizer whose authorizing contract will expire the following calendar year. The renewal application form shall also include a

description of the renewal application process, the renewal application processing schedule, and the policies, criteria, or guidelines described in subsection (b).

(b) The board shall develop policies, criteria, or guidelines for evaluating chartering authority renewal applications; provided that evaluation criteria shall be based on the authorizing contract, performance evaluation system, and nationally recognized principles and standards for quality charter authorizing.

(c) An authorizer seeking renewal shall submit a renewal application to the board pursuant to the renewal policies, criteria, or guidelines adopted by the board. [Eff: 10/1/12] (Auth: HRS §302A-1112) (Imp: §§302D-4, 302D-11)

§8-515-16 Performance report; notification of the prospect of nonrenewal. (a) The board shall prepare a performance report for each authorizer whose authorizing contract will expire the following calendar year. The performance report shall summarize the authorizer's performance record to date, shall be in writing, and shall be served upon the authorizing contract holder by registered or certified mail.

(b) If applicable, the performance report shall notify the authorizing contract holder of any weaknesses, deficiencies, or concerns which may result in nonrenewal of the contract and shall include but not be limited to the following:

- (1) A clear and specific statement of the authorizer's weaknesses or deficiencies, with references to the applicable contract terms or performance standards that have not been met; and
- (2) A statement that the board will make its final decision on whether or not to renew the authorizing contract at a public meeting, including the date, time, and place of the meeting.

(c) The authorizer shall have thirty days from the date of mailing of the performance report to submit a renewal application, to respond to the performance report and any identified weaknesses, deficiencies, or concerns, to submit any corrections or clarifications for the report, and to request a hearing.

(d) If the authorizing contract holder disputes the board's assessment or claim of weaknesses or deficiencies, the board, after considering the authorizing contract holder's response, shall reaffirm, modify, or retract its earlier notification of weaknesses or deficiencies, and shall so notify the authorizing contract holder in writing served by registered or certified mail. [Eff]
(Auth: HRS §302A-1112) (Imp: §§302D-4, 302D-11)

§8-515-17 Nonrenewal decision by the board. (a) The board shall make a final decision on whether or not to renew the authorizing contract within sixty days following receipt of the application for contract renewal.

(b) Within fifteen days of making its decision to renew or not renew the authorizing contract, the board shall issue its decision in writing, served upon the authorizing contract holder by registered or certified mail with return receipt requested. The decision shall set forth, with reasonable specificity, the reason for its decision. [Eff]
(Auth: HRS §302A-1112) (Imp: §§302D-4, 302D-11)

§8-515-18 (Reserved).

SUBCHAPTER 5

REVOCATION OF CHARTERING AUTHORITY

§8-515-19 Reasons for revocation. Chartering authority may be revoked if an authorizer persists, after due notice from the board pursuant to subsection 302D-11(c), Hawaii Revised Statutes, and section 8-515-11 in violating a material provision of a charter contract or its authorizing contract with the board, or fails to remedy other authorizing problems identified by the board. [Eff _____] (Auth: HRS §302A-1112) (Imp: §302D-11)

§8-515-20 Notification of prospect of revocation. Whenever the board has reason to believe that chartering authority should be revoked, the board shall notify the authorizing contract holder in writing of the prospect of revocation. The notification shall be served by registered or certified mail with return receipt requested and shall include the following:

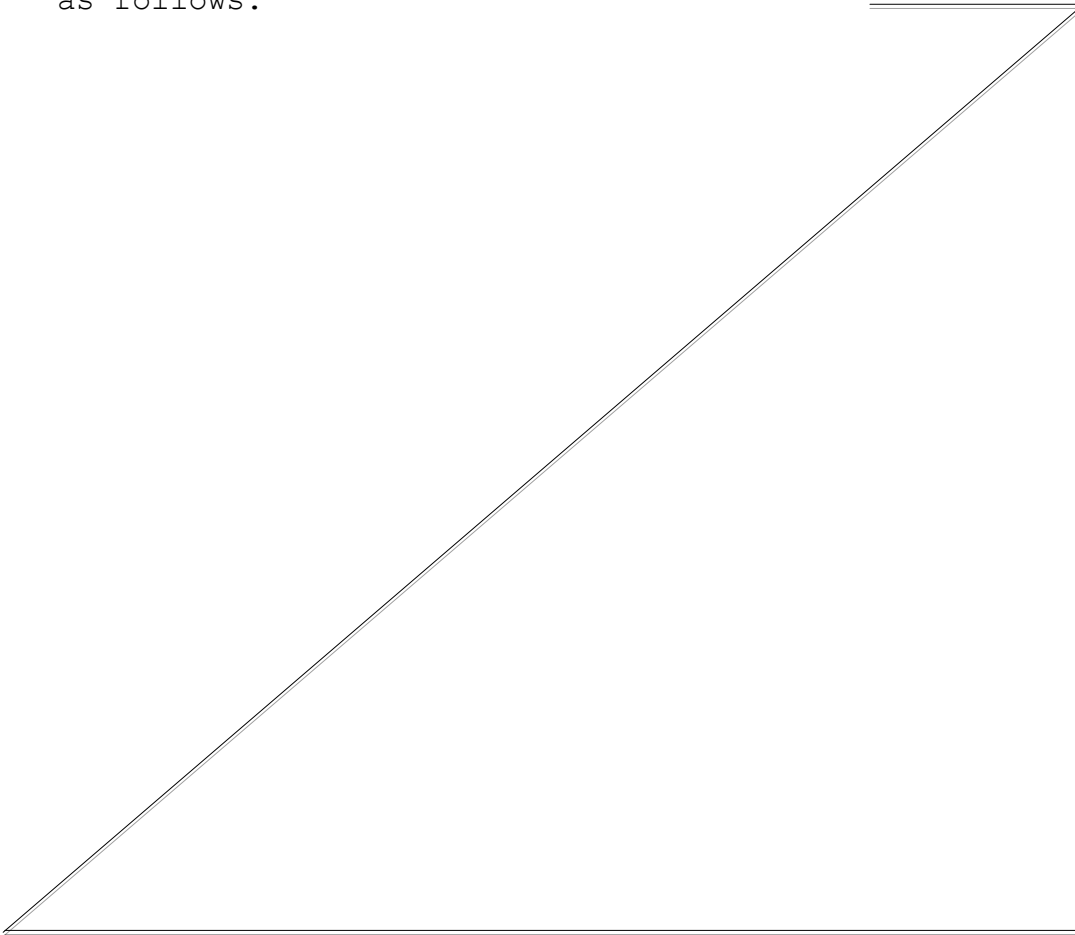
- (1) The reason why revocation is contemplated;
- (2) The date by which the authorizing contract holder shall respond, which date shall be not less than thirty days from the date of notification; and
- (3) A statement that the board will make its final decision on whether or not to revoke chartering authority at a public meeting, including the date, time, and place of the meeting. [Eff _____] (Auth: HRS §302A-1112) (Imp: §302D-11)

§8-515-21 Revocation decision by the board. (a) The board shall make a final decision on whether or not to revoke chartering authority within thirty days following receipt of the response from the authorizing

contract holder of the notice of prospect of revocation.

(b) Within fifteen days of making its decision on whether or not to revoke chartering authority, the board shall issue a report notifying the authorizing contract holder in writing, served by registered or certified mail with return receipt requested, of its final decision. The report shall set forth, with reasonable specificity, the reason for its decision. [Eff _____] (Auth: HRS §302A-1112) (Imp: §§91-2, 302D-11)

2. Chapter 8-517, Hawaii Administrative Rules, entitled "Charter Contract Transfers" is adopted to read as follows:



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"HAWAII ADMINISTRATIVE RULES

TITLE 8

DEPARTMENT OF EDUCATION

SUBTITLE 5

CHARTER SCHOOLS

CHAPTER 517

CHARTER CONTRACT TRANSFERS

§8-517-1	Purpose
§8-517-2	Definitions
§8-517-3	Transfer application and process
§8-517-4	Transfers at the end of a charter contract term
§8-517-5	Transfer before the end of charter contract term
§8-517-6	Transfers due to termination of authorizer's chartering authority
§8-517-7	Computation of time

§8-517-1 Purpose. This chapter governs the transfer of charter contracts between authorizers. [Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-11, 302D-20)

§8-517-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Authorizer" means an authorizer as defined in section 302D-1, Hawaii Revised Statutes, and includes the commission.

"Board" means the board of education.

"Charter contract" means a charter contract as defined in section 302D-1, Hawaii Revised Statutes.

"Charter school" means a charter school as defined in section 302D-1, Hawaii Revised Statutes.

"Charter transfer" means the transfer of a charter contract and the oversight of the charter school whose governing board holds that contract from one authorizer to another.

"Commission" means the state public charter school commission established pursuant to section 302D-3, Hawaii Revised Statutes.

"Chartering authority" means the authority to review charter applications, decide whether to approve or deny charter applications, enter into charter contracts with charter applicants, oversee public charter schools, and decide whether to authorize, renew, deny renewal of, or revoke charter contracts in accordance with chapter 302D, Hawaii Revised Statutes.

"Governing board" means a governing board as defined in section 302D-1, Hawaii Revised Statutes.

[Eff] (Auth: HRS §302A-1112) (Imp: HRS §§302D-1, 302D-11, 302D-20)

§8-517-3 Transfer application and process. (a) The board shall develop an application form and process for charter transfers in accordance with this chapter. The charter transfer application and approval process shall provide for and include, at a minimum, the following elements:

- (1) The submission of a charter transfer application to the board;
- (2) An opportunity for the public to comment on any proposed charter transfer; and
- (3) A timely decision by the board on whether to allow the transfer.

(b) The following requirements shall apply to any and all charter transfers:

- (1) No charter school shall be allowed to transfer its charter contract to another authorizer in an attempt to reduce the level of oversight or accountability to which the charter school is currently subject or to

- avoid possible revocation or nonrenewal of its charter contract;
- (2) No authorizer shall be allowed to transfer a charter contract to another authorizer in an attempt to improve the overall performance of its own portfolio of charter schools or to avoid possible revocation or nonrenewal of the charter contract;
 - (3) An authorizer shall not agree to accept a charter transfer nor shall it deny a charter transfer based on any financial incentives a larger portfolio of schools may provide to that authorizer;
 - (4) A charter school whose authorizer has initiated a closure of the school shall not be allowed to secure a charter contract from another authorizer;
 - (5) Existing charter schools shall not be allowed to apply for a charter school under another authorizer as a way of de facto transferring oversight of the school from one authorizer to another and circumventing the charter transfer process; provided that nothing in this chapter shall be construed to prevent existing charter schools from applying to another authorizer for replication or expansion purposes;
 - (6) Authorizers shall share among themselves information on charter schools that are transferring between them; and
 - (7) All charter transfers shall be in the best interest of students. [Eff]
(Auth: HRS §302A-1112) (Imp: §§302D-11, 302D-20)

§8-517-4 Transfers at the end of a charter contract term. (a) The transfer of a charter contract that is in its final contract year shall only be allowed if the governing board has met the terms of its expiring charter contract with its current authorizer, including any performance requirements, to

a degree that would have otherwise resulted in charter contract renewal with the current authorizer, and the proposed new authorizer agrees to accept the charter transfer; provided that the requirements in section 8-517-3(b) are met. The authorizer that is a party to the existing charter contract shall inform the proposed authorizer about the academic, financial, organizational, and operational performance status of the charter school, as well as any outstanding contractual obligations that exist.

(b) The governing board shall submit to the board and its current authorizer a written and signed letter of its intent to not renew the charter contract. The proposed authorizer and the governing board shall jointly submit to the board a charter transfer application. A proposed charter contract between the proposed authorizer and the governing board shall be submitted as part of the charter transfer application and shall identify and provide a plan to address any outstanding obligations from the existing charter contract.

(c) The charter transfer application shall be submitted and reviewed in accordance with the form and process establish pursuant to section 8-517-3(a); provided that the board shall make a final determination on the charter transfer application no later than sixty days before the expiration of the current charter contract.

(d) If the charter transfer is approved, the new authorizer and the governing board shall enter into a new charter contract effective upon the expiration of the charter contract between the current authorizer and governing board.

(e) If the charter transfer is not approved, the governing board may withdraw its letter of nonrenewal and proceed with its current authorizer's charter contract renewal process. If the charter transfer is not approved and the governing board does not withdraw its letter or enter into a new charter contract with its current authorizer, the charter contract shall be considered nonrenewed, and the charter school shall close in accordance with applicable law and the terms

of the charter contract. [Eff] (Auth:
HRS §302A-1112) (Imp: §§302-D-18, 302D-20)

§8-517-5 Transfers before the end of a charter contract term. (a) The transfer of a charter contract that is not in its final contract year shall only be allowed under special circumstances pursuant to section 302D-20, Hawaii Revised Statutes; provided that the requirements in section 8-517-3(b) are met.

(b) An authorizer or a governing board may submit to the board a written and signed letter requesting the transfer of a charter contract to another authorizer; provided that an authorizer may submit a letter only with the mutual consent of the governing board. The letter shall explain the reason for the request, provide evidence that the transfer is in the best interest of the charter school's students, and identify the proposed new authorizer that has agreed to the proposed transfer. The authorizer that is a party to the existing charter contract shall inform the proposed authorizer about the academic, financial, organizational, and operational performance status of the charter school, as well as any outstanding contractual obligations that exist.

(b) The proposed authorizer and the governing board shall jointly submit to the board a charter transfer application. A proposed charter contract between the proposed authorizer and the governing board shall be submitted as part of the charter transfer application and shall identify and provide a plan to address any outstanding obligations from the existing charter contract.

(c) The charter transfer application shall be submitted and reviewed in accordance with the form and process established pursuant to section 8-517-3(a); provided that the board shall make a final determination on the charter transfer application no later than sixty days before the end of the current term year of the current charter contract.

(d) If the charter transfer is approved, the new authorizer and the governing board shall enter into a

new charter contract effective upon the end of the current term year of the charter contract between the current authorizer and governing board. The effectuation of the new charter contract shall terminate the previous charter contract. [Eff] (Auth: HRS §302A-1112) (Imp: §302D-20)

§8-517-6 Transfers due to termination of authorizer's chartering authority. (a) If an authorizer's chartering authority is terminated due to the revocation, nonrenewal, or voluntary surrender of its authorizing contract, the transfer of any charter contracts overseen by that entity shall be allowed; provided that the requirements in section 8-517-3(b) are met. The entity whose chartering authority is terminated shall inform the board about the academic, financial, organizational, and operational performance status of each charter school in its portfolio, as well as any outstanding contractual obligations that exist.

(b) Each governing board overseen by the entity whose chartering authority is terminated shall submit to the board a charter transfer application.

(c) The board shall solicit from the pool of existing authorizers a new authorizer for each charter school overseen by the entity whose chartering authority is terminated. Each proposed charter transfer shall be with the mutual agreement of the proposed new authorizer and governing board; provided that if no other authorizer agrees or is available to accept the transfer of a charter contract overseen by the entity whose chartering authority is terminated, the commission shall be the new authorizer for that charter school.

(d) Each charter transfer application shall be submitted and reviewed in accordance with the form and process establish pursuant to section 8-517-3(a) or a special expedited process developed and adopted by the board notwithstanding section 8-517-3(a); provided that the board shall make a final determination on

each charter transfer application no later than ninety days before the start of the next school year.

(e) Upon the approval of each charter transfer, the new authorizer and the governing board shall enter into a new charter contract effective immediately. Any new charter contract shall be effective for the remainder of the contract term under the previous charter contract with previous authorizer. Notwithstanding section 8-517-4, if the remaining term of the charter contract with the previous authorizer is less than a year, the new authorizer and governing board shall enter into a new charter contract with a contract term no less than a year. [Eff
] (Auth: HRS §302A-1112) (Imp: §§302D-11, 302D-20)

§8-517-7 Computation of time. The time in which any act provided in this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or state holiday and then it is also excluded. When the prescribed period of time is less than seven days, Saturdays, Sundays, or state holidays within the designated period shall be excluded in the computation. [Eff
] (Auth: HRS §302A-1112) (Imp: §91-2)

3. The adoption of chapters 8-501 and 8-505, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on November 13, 2014, and filed with the Office of the Lieutenant Governor.

Chairperson, State Public
Charter School Commission

APPROVED AS TO FORM:

Deputy Attorney General

Exhibit B

The National Association of Charter School Authorizers' policy brief, "Authorizing Hopping: Motivations, Causes, and Ways to Stop It" (written by Daniela Doyle of Public Impact, 2014)

Authorizer Hopping: Motivations, Causes, and Ways to Stop It

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THE ISSUE IN BRIEF

The charter school movement is premised on the exchange of increased autonomy for increased accountability. Individual schools are given more flexibility in their actions, but in exchange, the schools can be closed if they fail to fulfill the terms of their charter or achieve their stated goals.

However, charter schools that are identified for closure do not always shut their doors. As authorizers become more adept at identifying low performance and enforcing accountability provisions, some schools have become more adept at avoiding closure altogether. One way schools do this is by “hopping” to a new authorizer, commonly referred to as “authorizer hopping.”¹ The scenario is usually a variation of the following: an authorizer signals to a failing school their plans to revoke or not renew the school’s charter contract; the school seeks out a new authorizer who agrees to keep the school open; and the failing school, which was identified for closure, avoids accountability and remains open. Experience shows that authorizer hopping can happen as long as there is a single authorizer willing and able to accept this failed school. Authorizer hopping represents the breakdown of charter school accountability.

NACSA RECOMMENDS

To prevent authorizer hopping, the National Association of Charter School Authorizers (NACSA) recommends that states employ a three-pronged approach that includes state policy, collaboration among authorizers, and public transparency.

1. States should enact policy that
 - » regulates the transfer of charter schools from one authorizer to another to prevent authorizer hopping;
 - » prevents charter schools that are closed from securing a new authorizer;
 - » strengthens authorizing laws and holds authorizers accountable for their actions. This starts with clearly defined standards and expectations for authorizers and continues with regular authorizer reporting, evaluation, and, when necessary, sanctioning of failing authorizers.
2. Authorizers should *complement* state policy directives by sharing information on schools and operators among themselves to ensure that school quality drives decision making.
3. Research, policy, and news organizations should publicly share data that will identify and illustrate problems when they exist and explicitly call on authorizers to account for their actions.



nacsa
NATIONAL ASSOCIATION OF
CHARTER SCHOOL AUTHORIZERS

The problem of authorizer hopping

Authorizer hopping happens when a low-performing charter school finds a new authorizer to avoid accountability measures, usually school closure. Depending on the jurisdiction, a school can hop by using one of two mechanisms:

- It can let its current contract expire or be formally non-renewed or revoked and pursue a successive new school contract with a new authorizer. In this scenario, the failed charter school's existing contract is terminated, but a new charter contract from the new authorizer enables the school to remain open.
- It can transfer to a new authorizer during the course of its charter term. This happens as it becomes clear, through regular school-level performance reports or other authorizer action, that the school will likely fail to uphold the terms of its charter, and its authorizer will revoke or not renew its contract. The new authorizer assumes responsibility for the charter school during the remainder of its charter term and is responsible for the subsequent renewal, which will likely be granted despite evidence of failed performance.

Consider what happened in Indiana when it became clear that nearly a quarter of schools sponsored by one of the state's biggest authorizers, Ball State University (BSU), ranked in the bottom 15 percent of schools statewide.² BSU made a bold move; it developed and implemented an accountability framework that led to the nonrenewal of seven of its charter schools the following year. Yet two of those schools remained open as public charter schools after hopping to new authorizers willing to sponsor them.³

Why it happens

Why would an authorizer sponsor a low-performing charter school? Our interviews with authorizers and departments of education highlighted five reasons:

1. **The absence of clear expectations for authorizers.** NACSA's *Principles & Standards for Quality Authorizing* outline the attributes of a high-quality authorizer, but at the state policy level, there is often little guidance for what constitutes a high-quality authorizer.⁴ Consequently, authorizers have set widely varying standards not just for their schools, but also for their own roles and actions as authorizers. Contrary to sector standards, some authorizers have viewed their role more as an educational partner, involved in school-level implementation, than as an oversight body. In Indiana, for example, a new authorizer picked up one of the schools that BSU did not renew with the goal of becoming deeply involved in the school's turnaround efforts.⁵
2. **Financial incentives for authorizing more schools.** The authorizers interviewed were quick to say that high-quality authorizing is no cash cow. Yet for some authorizers, adding schools to their portfolios and keeping schools in their portfolio offer financial benefits that trump school performance considerations.
 - **Providing services.** There is evidence to suggest that some unscrupulous organizations may enter into authorizing as a way to make money. In these instances, the authorizer may generate large sums of money not through authorizing activities, but by selling services to the schools it authorizes. In Ohio, for example, a number of authorizers sell management services, such as payroll and financial reporting, to their schools for tens of thousands of dollars each year.⁶
 - **Operating at scale.** Authorizers often receive little state funding to operate, and therefore fund their operating expenses by charging charter schools a fee, often between one and three percent of the school's per-pupil funding. Consequently, the authorizer must sponsor some minimum number of schools to keep even one dedicated staff person on the payroll. Particularly in the absence of authorizer accountability, some authorizers may choose to expand their portfolio to meet the goal of financial solvency, even at the expense of school quality.
3. **Lack of communication and collaboration among authorizers.** In many states, authorizers do not communicate regularly with one another. They have no mechanism for sharing information about a school that is hopping and no uniform system for addressing and assessing school transfers. In Ohio, for example, there are nearly 70 authorizers, but few channels for many of them to work together. As a result, the receiving authorizer sometimes does not know the extent of the problems that existed at the charter school before it applied to switch.

4. **Disagreement over the purpose of charter schools.** Some authorizers do not consider high student outcomes the primary purpose of charter schools. Rather, they believe in school choice for the sake of choice, the potential of competition and innovation to drive reform, or that true accountability is solely in the hands of the free market as reflected by the community's enrollment choices. Others contend that a low-performing charter school may still be valuable if it provides a safer learning environment than traditional public school options, especially when other high-quality schools are not available to students. For these reasons, some authorizers do not believe that charter schools should be closed in response to low performance.
5. **Politics and procedures make it easier to let the school hop to a new authorizer than pursue permanent closure.** In many instances, it is simply easier for an authorizer to allow a low-performing charter school in its portfolio to leave than it is to close the school down. Removing a failing charter school from an authorizer's portfolio, by any means, makes the authorizer's remaining portfolio of schools appear higher performing. When closures can lead to litigation and appeals—including the possibility a school will prevail and stay open in the authorizer's portfolio—it may be easier and more expedient for an authorizer to improve its collective performance by allowing a school to hop away, rather than by pursuing permanent closure. Ultimately, authorizer hopping could be perceived as politically advantageous to all three of the primary parties involved. The outgoing authorizer can shed a low-performing school and avoid a difficult public debate about whether the school deserves to close, the new authorizer can generate funds, and the charter school can continue operating. In other words, authorizer hopping provides an avenue for each of these parties to solve *its individual problem*, but it creates a much larger problem for the school's students, that state's charter sector as a whole, and the taxpayers who support education.

Factors in state law enable authorizer hopping

Misguided motivations may encourage authorizer hopping, but components of state laws make it possible.

Legislative loopholes. In some states, loopholes in the charter law allow schools that are non-renewed to make small changes and re-open as “new” schools. As of 2013, seven Ohio charter schools forced to close for under-performance reopened the next year as “new” schools, although nothing at those schools had substantially changed. In some cases, even the school building remained the same.⁷ Recent changes proposed in Ohio may address these problems. According to state law, a charter school in Ohio must develop a new plan, find new leadership, and appoint a new board before it can apply to re-open as a new school. In some cases, schools have met the letter of the law, if not the spirit, by changing a single board member, hiring some new staff, and revising the curriculum slightly. In other instances, they have not taken even those steps. Under the Ohio law, it ultimately falls to the new authorizer to examine a charter school's application and determine if the school is in fact “new” or not, and as long as a few authorizers are willing to approve these “new” schools, the problem will persist absent new legislation.

Unrestricted transfers. Few state laws contemplated the possibility of a charter school transferring between authorizers when they were created. By default, this often leads to a permissive transferring environment where individual authorizers are left to create their own disparate practices as the need arises. In addition to fostering authorizer hopping, a permissive transfer environment creates a disincentive for authorizers to invest time and energy in their charter schools for fear that the school might abandon the authorizer, taking the authorizer's investment with them.

One easy fix for authorizer hopping would be to prohibit schools from transferring authorizers altogether. However, while rare, there are some compelling reasons unrelated to non-renewal or revocation concerns why a charter school may want to change authorizers. Interviewees disagreed about which reasons for transferring should be valid, but generally believed that the right should be protected by statute. They agreed that the list of valid reasons for transfers is short. For example, when an authorizing entity decides to close its authorizing office, as was the result of 2009 legislation in Minnesota those “orphaned” schools needed to find a new authorizer. There are also cases of schools seeking to transfer to a district authorizer that may offer a subsidized facility and better financing to a desirable school. Neither example involves a school seeking to avoid accountability.

Growth in the number of authorizers. Finally, as the number of authorizers in some states has grown, the potential for a low-performing charter school to find another sponsor has also increased (See sidebar, “How Many Authorizers *Should* There Be?”). The existence of multiple authorizers is supposed to provide a check on the possibility that the lone authorizer in a jurisdiction will become hostile to charter schools or develop undesirable or unchecked behaviors over time. This could include over regulation, biased decision making, or moratoriums on new schools.

However, more authorizers mean more opportunities for a low-performing school to find an authorizer it can hop to, especially if doing so is in the authorizer’s interest. And in the absence of clear expectations or accountability for authorizers in some states, the growth in the number of authorizers has also allowed for more low-quality authorizers to enter the market. Our research found that smaller authorizers overseeing just one or two schools were much more likely to allow a low-performing school to join its portfolio, compared to larger, more established (and often more thoughtful) authorizers.

A three-pronged approach to curb authorizer hopping

No single strategy is likely to curb authorizer hopping entirely. Rather, a combination of three essential strategies can together have the greatest impact: legislative action governing authorizers and charter schools; industry collaboration by authorizers; and public transparency from news, research, and policy groups (See sidebar, “The Need for a Three-Pronged Approach”). It is often much easier to implement these policies in states establishing new charter laws or before authorizer hopping becomes an issue than after the fact.

1. Start with State Policy

Legislative action represents a starting point for addressing authorizer hopping. Policies that aim to tackle authorizing hopping directly and those that strengthen authorizing more generally are both critical parts of the solution. In states considering adding new authorizers, these policies should be established in the same legislation that creates the new authorizers to stop authorizer hopping before it ever starts.

Explicitly regulate school transfer and closed schools. Several states where authorizer hopping has taken place have passed legislation specifically aimed at blocking it. These concepts can be applied to places where authorizer hopping is occurring as well as places where authorizing hopping could arise from the creation of additional authorizers. These laws

- *place limits on transfers.* Limit the conditions in which a charter school can transfer authorizers. This could include requiring third-party approval before a school can transfer authorizers (such as from the Department of Education) or prohibiting or imposing conditions on the transfer of chronically low-performing schools. A 2009 charter law in Minnesota requires that when a charter school wants to transfer authorizers, both the incoming and outgoing authorizers must grant their approval or the transfer cannot take place.

How Many Authorizers *Should* There Be?

If one authorizer is too few and 100 is too many, how many authorizers should a state have? There is no magic number, but the interviewees we spoke to from various state departments of education and charter school organizations generally agree that the best number can probably be counted on one hand. Interviewees pointed to evidence that an authorizer marketplace that is too large inevitably leads to lower-quality options as they compete with one another. “Are multiple authorizers a good thing? Yes. But there’s a point of diminishing return,” James Goenner, president and CEO of the National Charter Schools Institute explained. “Authorizers that are unwilling or unable to serve as a force for quality are part of the problem—not the solution.” Fewer, high-quality authorizers are therefore preferable to more authorizers of varied quality.

- *require chronically low-performing charter schools to close.* Default closure laws ensure that chronically low-performing charter schools are closed irrespective of their authorizer or history of authorizers. Eight states currently have enforceable default closure laws. In addition, laws should ensure that schools closed for performance remain closed and prohibit authorizers from authorizing schools that have been closed. In 2011, Ohio revised its charter closure law, which requires that authorizers close schools rated in “Academic Emergency” for at least two of the previous three school years.⁸
- *identify an entity to handle exceptions.* Exceptional circumstances do arise and state policy needs to identify which entity can determine if there is a legitimate exception that needs to be made. In 2013, Indiana enacted new legislation that requires any school that has been non-renewed to submit a proposal to the state board describing how it will address its deficiencies. A new authorizer can sponsor the school only if the state board approves the proposal.

In addition, new laws should address any potential loopholes in the state’s charter laws, such as clearly defining what constitutes a “new” school and restricting the amount of money that the authorizers can receive for services rendered.

Set and support minimum performance standards for authorizers while practicing authorizer accountability.

Good authorizing policies can also address many of the motivations for authorizer hopping described above. They prevent authorizer hopping by setting a minimum floor for authorizing actions and establish basic authorizer accountability. These policies have the added benefit of impacting all authorizing activities in the state, through the entire lifecycle of a charter school, and should aim to

- clearly define the primary purpose of charter schools as providing a high-quality educational option for students;
- set a high bar for attaining and retaining the power to authorize, including submitting for state approval a plan that includes a clear and transparent process for approving new charter applications and evaluating the schools in their portfolios in order to prevent authorizing hopping;

The Need for a Three-Pronged Approach

Preventing authorizer hopping requires three components: legislative action, industry collaboration by authorizers, and public transparency.

On their own, any of these options could underwhelm.

Industry collaboration by authorizers, for example, relies on the voluntary participation of all authorizers in any given jurisdiction. However, it is unlikely that, absent pressure to do so, all charter authorizers will voluntarily take the tough stand on charter quality that is needed, either from new laws or public calls for action. Barring these two essential strategies, a single rogue authorizer willing to accept hopping schools is enough to destabilize accountability for all the other authorizers.

In fact, according to authorizers we spoke to in three states, high-quality authorizers were among the strongest supporters of new laws aimed at curbing authorizer hopping and raising authorizer quality as a way to improve student performance. Ultimately, authorizers want to know that if they decide to close a school due to low performance, that decision will stick, and its students will have an opportunity to find a better educational option.

At the same time, overly prescriptive state policies could over-regulate the authorizing process, removing oft-needed discretion to make difficult decisions through the use of narrow definitions or processes. With the goal of policing the bad authorizers in the state, poor legislation could also stifle authorizers’ ability to act in the nuanced way sometimes demanded of them. Ultimately, the right set of policies should reflect a balancing act that includes legislation, industry collaboration, and public transparency.

- adopt standards for charter school authorizing, such as NACSA's *Principles & Standards for Quality Charter School Authorizing*, to create universal expectations for authorizer practices;
- evaluate authorizers on how well they meet those expectations for authorizer practice;
- require authorizers to publicly report on the academic, fiscal, and operational health of the schools in their portfolios;
- set clear expectations for how and when the state will hold authorizers accountable for the performance of schools in their portfolios and authorizer actions;
- empower the state to take action if an authorizer fails to meet those expectations for portfolio or authorizer performance, including imposing sanctions on or closing the authorizer, if need be;
- fund authorizers in a way that minimizes incentives to approve or renew low-performing schools.

Minnesota provides an example of recent policy change in these areas. The state has adopted a series of new laws and charter language in the last five years. In 2009, the state passed a new law that requires all authorizers—including existing authorizers—to submit a plan to the state explaining how they will evaluate their charter schools and to receive approval from the state to serve as an authorizer. In addition, in 2013 the state clarified that improving student learning and achievement is the primary purpose of charter schools, thus de-legitimizing one argument for accepting hopping schools. As a follow-up to these laws, the Minnesota Department of Education has worked closely with authorizers to establish new standards and expectations.

According to the authorizer leaders with whom we spoke, these legislative actions have been a game changer in Minnesota. Today, there are 26 authorizers, down from 55 in 2009, the year the new law was passed. And while eight charters transferred authorizers the year before the law was enacted, just three schools have done so in the two years since the legislation was fully implemented.⁹ Interviewees in Minnesota recognize that authorizer quality is still not where it needs to be, but low-performing charter schools now know that they cannot avoid accountability for student performance by finding a sympathetic authorizer.

2. Complement Policies with Industry Collaboration

According to our interviewees, state legislation can have a monumental impact on authorizer hopping by establishing new rules. But the legislative options described above work best when authorizers complement those efforts through cooperation and collaboration.

In Indiana, three authorizers sponsor approximately 90 percent of charter schools in the state. The “big three” recently began meeting informally, sometimes with other authorizers joining, as well. During these meetings, they discuss shared challenges and brainstorm possible solutions. In addition, when any of the authorizers moves to deny a charter application or non-renew a school, they share data and discuss their decision. According to all three authorizers, as a result of these meetings and their shared focus on charter school performance, it is highly unlikely that any one of them would sponsor a charter school that another has denied or closed.

Of course, willing authorizers can self-regulate through authorizer cooperation and communication, but it is often authorizers outside of these groups that will accept a low-performing school into its portfolio. Self-regulation and authorizer communication do not impact these authorizers, and as such, state policy provides a necessary measure to create and enforce uniform policies against authorizer hopping.

3. Reinforce Policies with Public Transparency

In addition to legislatures, departments of education, and authorizers, research, policy, and news groups can also play a meaningful role in curbing authorizer hopping. Research organizations have the ability to use data to identify and illustrate problems that might otherwise fly under the radar. Similarly, policy organizations such as the Thomas B. Fordham Institute in Ohio and The Mind Trust in Indiana can and have called out schools, authorizers, and departments of education when they have failed to live up to their promises to support student achievement. In addition, the news media can play a role raising issues and concerns for public discussion when they arise.

Conclusion

As authorizers bolster their accountability measures, schools will increasingly turn to authorizer hopping to avoid closure. Well-designed policies and appropriate authorizer oversight by the state, the authorizing sector, and the public can help to address the causes and effects of authorizer hopping. Several states with a pronounced history of authorizer hopping are already implementing many of these new policies and learning from a three-pronged approach that draws on policy measures, authorizer collaboration, and public transparency.

NACSA recommends that states confronting authorizing hopping and/or considering the addition of new authorizers implement policies and practices that prevent authorizer hopping to ensure failing schools remain closed.

For more information on authorizer hopping and authorizing practices, visit the National Association of Charter School Authorizers: www.qualitycharters.org.

- 1 The process is sometimes referred to as “authorizer shopping.” We prefer to use “hopping” when it is done by an existing school. The expression “authorizer shopping” captures the process when charter applicants who have not yet been approved to open a school look around for the easiest authorizer from which to get their initial application approved, as opposed to “hopping” to a new authorizer after approval to avoid an impending closure.
- 2 The Associated Press. (December 23, 2012). “Ball State’s charter school oversight criticized.” *The Herald Bulletin*. http://www.heraldbulletin.com/news/local_news/article_8a170e5f-66aa-500c-8893-5cbd9596805b.html
- 3 Two other schools remained open as private schools, and the remaining three schools closed.
- 4 NACSA. (2012). *Principles & Standards for Quality Charter School Authorizing*. http://www.qualitycharters.org/assets/files/images/stories/publications/Principles.Standards.2012_pub.pdf
- 5 Shawgo, K. (August 12, 2013). “Trine oversees its 2nd charter: Hands-on method meets approval.” *Journal Gazette*. <http://www.journalgazette.net/article/20130812/LOCAL04/308129969/1026>
- 6 Bush, B. & Richards, J. (January 12, 2014). “Watchdogs can profit from charter school oversight.” *The Columbus Dispatch*. <http://www.dispatch.com/content/stories/local/2014/01/12/watchdogs-can-profit-from-oversight.html>
- 7 Livingston, D. (September 6, 2013). “Failing charter schools often close, reopen with little change.” *Akron Beacon Journal*. <http://www.ohio.com/news/education/failing-charter-schools-often-close-reopen-with-little-change-1.426798>
- 8 In addition, charters serving grades 4-8 must show that students made less than one year of academic growth in either reading or math during that time period.
- 9 Because so many authorizers closed as a result of the 2009 legislation, a large number of schools transferred to new authorizers for reasons unrelated to their performance. The window for these transfers related to authorizers closing ended in 2011.

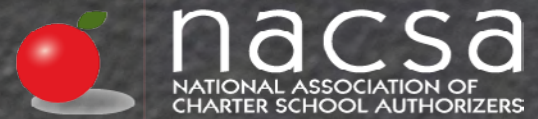
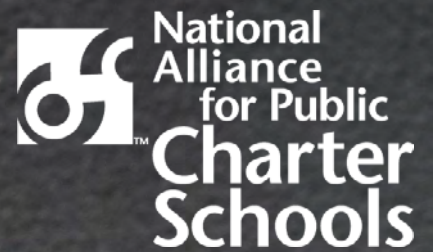
The National Association of Charter School Authorizers (NACSA) is committed to advancing excellence and accountability in the charter school sector and to increasing the number of high-quality charter schools across the nation. To accomplish this mission, NACSA works to improve the policies and practices of authorizers—the organizations designated to approve, monitor, renew, and, if necessary, close charter schools. NACSA provides professional development, practical resources, consulting, and policy guidance to authorizers. It also advocates for laws and policies that raise the bar for excellence among authorizers and the schools they charter. For more on NACSA, please visit www.qualitycharters.org.

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Exhibit C

**The National Alliance for Public Charter Schools' and the National Association of
Charter School Authorizers' joint report, "Holding Public Charter School
Authorizers Accountable: State Experiences and Policy Recommendations"
(written by Margaret Lin, 2015)**

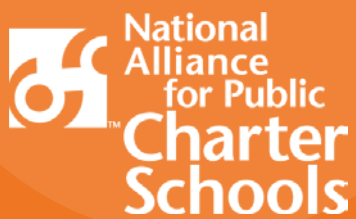
A red apple and a stack of books are positioned on the left side of the cover. The apple is at the top, and the books are stacked below it, with colors including orange, yellow, red, and green.

Holding Public Charter School Authorizers Accountable

State Experiences and Policy
Recommendations

By Margaret Lin

May 2015



nacsas
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Introduction

Accountability is one of the central values of the public charter school concept. To date, most attention from policymakers and other education leaders has focused on school-level accountability. However, as more states have come to appreciate the essential role of public charter school authorizers in a quality public charter school movement, policymakers are increasingly recognizing the need to include provisions for authorizer accountability in state public charter school laws and policies.

In 2009, the National Alliance for Public Charter Schools released a model public charter school law that covered new ground in several areas, including authorizer accountability.¹ Likewise, the National Association of Charter School Authorizers (NACSA) has provided guidance on the need for strong authorizer accountability in state policy.² These national leadership organizations have recognized the need to hold authorizers accountable for their authorizing practices and the performance of the public charter schools they oversee, driven by the following rationale:

- The purpose of public charter school authorizing is to establish and support excellent public charter schools.
- As the entities responsible for approving and overseeing public charter schools, authorizers should be accountable for the quality of schools they allow to operate.

Over the last several years, numerous states have enacted laws and policies to strengthen authorizer accountability. These states reflect a diverse range of policy and authorizing environments, from primarily district-driven authorizing states to those that have a single statewide authorizer to those that have a variety of organizations (including nonprofits and higher education institutions) serving as public charter school authorizers. Given all of this recent activity, it is timely to look at how various states are addressing this important matter to see what lessons can be learned to inform and improve state policy initiatives on authorizer accountability across the nation.

This brief will first present the state policy provisions recommended by the National Alliance and NACSA to promote authorizer accountability and provide a

look at the extent to which states across the country have adopted these provisions. Next, the brief will highlight and discuss the experiences and lessons from four states—Colorado, Hawaii, Minnesota, and Ohio—that have taken action on authorizer accountability in diverse policy and authorizing environments. Lastly, drawing from these state experiences, the brief will offer recommendations to strengthen state policies on authorizer accountability, augmenting the ideas already advanced by the National Alliance’s model law and NACSA policy guidance.

State Policy Provisions for Authorizer Accountability: A National Look

What does a system for holding public charter school authorizers accountable look like in state policy? A state-level accountability system for authorizers should:

- Be grounded in and guided by national standards for the profession of public charter school authorizing;
- Start, just like an accountability system for public charter schools, with a rigorous application and selection or approval process for entities seeking to become (or, under previous law, continue as) authorizers (except for legislatively created state public charter school commissions);
- Include annual public reporting on authorizer and public charter school performance and regular state review and evaluation of all authorizers; and
- Include mechanisms for sanctioning underperforming authorizers and ultimately terminating authorizers that fail to meet quality standards and performance expectations.

More specifically, the state policy provisions on authorizer accountability advanced by the National Alliance’s model law and NACSA’s policy guidance, respectively, are described briefly below. The matrix on page 10 provides a national look at authorizer accountability policies across the country—showing the extent to which every state with a public charter school law currently incorporates these authorizer accountability policies as recommended by the National Alliance’s model law and NACSA’s policy guidance.

The National Alliance Model Law's Recommended Provisions

The National Alliance's model law provides for a comprehensive state-level authorizer accountability system, starting with a voluntary corps of authorizing agencies. The agencies must have affirmatively demonstrated their interest in chartering to the state, except for a legislatively created state public charter school commission. All authorizers must annually report to the state on the performance of the public charter schools they oversee.³ As envisioned in the model law, the authorizer accountability system should be overseen by a state-level body empowered to take action against poor performance through authorizer sanctions and, where warranted, revocation of the right to authorize public charter schools. This oversight body may be—but does not have to be—the state board of education.

Following are the elements of a statewide authorizer accountability system recommended in the model law, along with a brief explanation of the rationale for each provision.⁴

Registration process for local school boards to affirm their interest in chartering to the state:

This provision is designed to allow any local school board to become a public charter school authorizer, while ensuring that only local school boards that demonstrate affirmative interest—by at least registering as an authorizer with the state—shall have the right to undertake this important role and its accompanying responsibilities. Simply put, a state registration process would help to ensure that only local school boards that truly want and have a strategic vision for the role would become authorizers—and conversely, local school boards that do not want to authorize public charter schools (or are uncertain or hesitant about it) would not take it on. Only three states currently establish such a registration process in their public charter school law.

Application process for other eligible authorizing entities: This provision allows certain entities (as designated in each state's law) other than local school boards and a legislatively created state public charter school commission to apply to the state to serve as public charter school authorizers. Assuming some entities earn state approval, this provision allows alternatives to authorizing by local school boards and a legislatively created state public charter school commission. Only four state laws currently provide for such an authorizer application process.

Authorizer submission of an annual report, which summarizes the agency's authorizing activities as well as the performance of its school portfolio:

This provision requires every authorizer in the state to provide an annual public report to the state, summarizing the authorizer's work over the past year and reporting on the performance of the public charter schools the authorizer oversees. Annual public reporting promotes transparency and facilitates state monitoring to ensure that all authorizers are carrying out effective, responsible oversight, thereby protecting the public investment in the state's public charter school movement. State public charter school laws are very mixed in the extent to which they require such annual authorizer reporting.

Regular review process by authorizer oversight body:

This provision requires a state-level authorizer oversight body to monitor and regularly evaluate the performance of every authorizer in the state. The oversight body may be—but does not have to be—the state board of education. State laws are mixed in the extent to which they require such regular performance evaluation of all authorizers in the state.

Authorizer oversight body with authority to sanction authorizers, including removal of authorizer right to approve schools:

This provision adds teeth to the authorizer accountability system, empowering the state oversight body to sanction authorizers for poor performance or inadequate oversight of public charter schools. In severe circumstances, the state may terminate an authorizer's chartering authority. State laws are mixed in the extent to which they incorporate this sanctioning and termination provision.

The elements above work together as an accountability system to promote public transparency in authorizer practice and performance and facilitate state monitoring and regular evaluation of all authorizers in a state. Such an accountability system is important to ensure that all authorizers are carrying out effective, responsible oversight of public charter schools, thereby protecting the public investment in the state's public charter school movement.

Recommended Provisions in NACSA Policy Guidance

The elements of NACSA's state policy guidance that directly promote authorizer accountability are designed to ensure that authorizers follow nationally recognized professional standards for public charter school authorizing. This expectation is grounded in the last two decades of national experience and learning about what it takes to select, oversee, and evaluate public charter schools effectively. This knowledge is reflected in NACSA's *Principles & Standards for Quality Charter School Authorizing*. States can promote quality public charter schools by statutorily requiring all authorizers to meet and follow these professional standards—which a growing number of states (13 to date) have done.

In examining the quality of public charter school authorizers, NACSA believes that it is necessary to analyze the performance of public charter schools in the authorizer's portfolio as well as the implementation of practices that ensure that the authorizer preserves school autonomy while protecting student rights and public interests.

NACSA also believes that authorizer accountability and school accountability are inextricably linked. State policies that explicitly give authorizers the power to close schools, for example, are necessary to hold authorizers accountable for closing schools. Accordingly, the elements of NACSA's policy guidance that provide for authorizer standards, performance contracting, renewal standards, and default closure of failing schools all support a system in which authorizers can be held accountable for the quality of the schools they oversee.

The provisions of NACSA's state policy guidance that directly address authorizer accountability are the following.⁵

Establish authorizer standards: The state should endorse national standards of quality public charter school authorizing and expect all authorizers to meet these standards.

Evaluate authorizers on authorizer standards: A state entity should periodically evaluate authorizers on their fulfillment of the standards, on the performance of their portfolio of public charter schools, and on each authorizer's record of high-stakes decisions.

Require annual authorizer report on school performance: Every authorizer should provide an annual public report on the performance of its schools. This report should provide both individual and overall portfolio performance for the public charter schools the authorizer oversees, as measured by the state assessment and accountability system and the authorizer's performance framework.

Provide for sanctions for failing authorizers: State law should require authorizers to face sanctions or, if warranted, have their chartering authority revoked if they do not meet professional standards or if their schools are persistently low performing.

Authorizer Accountability in Four States

Authorizer accountability initiatives are relatively new across the states. The following vignettes describe initial authorizer accountability efforts from four states reflecting diverse policy and authorizing environments. Specifically, these vignettes will offer a look at:

- Two states that have instituted intensive authorizer accountability policies and actions to tighten up authorizing in environments where the quality of authorizers varied widely, with some not performing their responsibilities well. (Minnesota and Ohio);
- A state dominated by district authorizers of varying capacity and commitment to authorizing where state policies have worked to spur some lower-capacity or lower-interest district authorizers to release exclusive chartering authority voluntarily in some cases—thereby allowing a state public charter school commission to authorize schools in those jurisdictions (Colorado); and
- A state that needed a major policy “reset” and new authorizing environment to improve its public charter schools and thus overhauled its public charter school law and started fresh with a new statewide authorizer in order to remedy years of weak authorizing practice (Hawaii).

Tightening up Authorizing in Minnesota

Minnesota is a key example of a state that has instituted intensive authorizer accountability policies and actions to tighten up authorizing in an environment where the quality of authorizers varied widely, with some not performing their responsibilities well. These reforms have, since 2009, nearly halved the number of authorizers while strengthening their capacity.⁶

Nearly two decades after blazing the public charter school movement's trail with the nation's first public charter school law, Minnesota found itself with a public charter school movement of varying quality and not enough authorizers (originally called "sponsors" in Minnesota) providing robust oversight of public charter schools. In 2009, 57 authorizers of diverse agency types were scattered throughout the state, many of them overseeing only one or two public charter schools. While strong oversight by authorizers was envisioned from the beginning of the state's movement, some roles for authorizers were undefined by the state's charter school law. Also, while some authorizers closed under-performing charters, other authorizers acted more like public charter school partners and advocates than authorizers carrying out arm's-length oversight and holding schools to performance standards. Some authorizers also lacked the resources to carry out a strong oversight role.

In 2009, the Minnesota Association of Charter Schools (MACS), with support from the Center for School Change, introduced the "Charter School Accountability and Innovation Act," which responded to concerns about the varying quality of schools and authorizers. That effort built upon a package of reforms relating to authorizers and accountability offered in 2007 by MACS and the Center and a 2008 Minnesota Office of Legislative Auditor report that concluded that the state's authorizers "vary widely in the amount of oversight they provide and their ability to provide it."

As a result of all of this activity, the legislature enacted legislation in 2009 clarifying authorizers' responsibilities and charging the Minnesota Department of Education (MDE) with evaluating the state's many authorizers and holding them accountable for meeting quality standards and performance expectations. Minnesota's reforms produced key changes to strengthen authorizer accountability in Minnesota:

- Eliminating MDE's role as an authorizer and instead charging it with approving, overseeing, and evaluating the state's diverse authorizers;
- Requiring all entities wishing to become (or continue as) authorizers to apply to and be approved by MDE, pursuant to a rigorous process aligned with NACSA's Principles & Standards;
- Requiring all approved authorizers to operate under performance contracts with MDE;
- Requiring all authorizers to undergo systematic review and evaluation by MDE every five years, which empowers MDE to assess authorizers' performance, identify any corrections needed, apply corrective action, and if warranted, terminate a contract between an authorizer and a public charter school;
- Tasking MDE with providing qualitative annual feedback to authorizers on their performance and compliance with their contract expectations;
- Requiring MDE to publish an annual report on each authorizer's portfolio performance, which provides the data that are the basis for MDE's qualitative feedback to authorizers;
- Giving MDE the authority to sanction or terminate authorizers that do not meet the requirements and expectations stated in their performance contracts; and
- Increasing the fee formula for authorizer funding under a uniform fee structure, which has been instrumental in enabling authorizers to build capacity to meet the state's new professional standards and performance expectations.

The 2009 legislation significantly reformed Minnesota's authorizing sector. The most visible—and fairly dramatic—impact of Minnesota's reforms has been to cut the number of authorizers almost in half, from 57 authorizers in 2009 to 26 currently. The authorizer application and approval process has essentially "reconstituted" and rebuilt the state's authorizing environment. Minnesota's authorizer landscape now includes the following types of entities: single-purpose authorizers, school districts, higher education institutions, and charitable nonprofit organizations. Some former authorizers chose not to apply for

approval because they did not have the staff, capacity, or desire to meet the state's new authorizing standards. Others applied but were not approved.

Minnesota's authorizer accountability reforms have brought a clear focus on quality for both authorizers and public charter schools throughout the state. There has been a distinct shift from the partner-like sponsor relationship that formerly prevailed among some Minnesota authorizers to a new performance-focused oversight role. In addition, the now smaller authorizer community across the state works together regularly as a professional community. Authorizers that oversee about 90 percent of the public charter schools in the state meet monthly "to share practices and conduct professional development and help each other navigate in a constantly changing environment."⁷

Reforming the Authorizing Sector in Ohio

Ohio is another example of a state that has instituted intensive authorizer accountability policies and actions to tighten up authorizing in environments where too many low-capacity authorizers of diverse agency types proliferated.

In 2012, Ohio enacted significant legislative reforms to strengthen the quality and accountability of its public charter schools (known as "community schools" in Ohio) and authorizers (called "sponsors" in Ohio). Like Minnesota, Ohio allows various types of entities to serve as public charter school authorizers including local school boards, county educational service centers, state universities, nonprofit organizations meeting certain criteria, and the Ohio Department of Education (ODE).

By the mid-2000s, Ohio was widely regarded as a "Wild West" for public charter schools, having captured the national spotlight for its "dramatic expansion of charter schools operated by people who clearly lacked the capacity to run great schools and who were, in fact, running troubled schools that should be closed."⁸ In response to widespread concerns—including those of public charter school advocates—about the quality and accountability of the state's freewheeling public charter school movement, Ohio's legislature passed accountability measures for public charter schools in 2005 and 2008. Even with these new laws, quality remained a concern and spurred the 2012 reforms, which included raising the bar for authorizers.

Under previous law in Ohio, public charter school authorizers falling into the bottom 20 percent of all authorizers in the state (based on the performance index scores of their schools) would be prohibited from granting new public charter school contracts (i.e., authorizing any more public charter schools). Ohio's 2012 legislative reforms significantly strengthened authorizer oversight and evaluation by the state. Under the 2012 law, ODE is charged with giving every authorizer an annual performance rating (exemplary, effective, or ineffective) based on three equally weighted components:

- The academic performance of the public charter schools overseen by the authorizer (excepting schools less than two years old and schools serving a majority of special education students);
- The authorizer's adherence to quality practices; and
- The authorizer's compliance with applicable laws and rules.

Those receiving a rating of ineffective are prohibited from authorizing new public charter schools.⁹

Ohio's 2012 legislative reforms to build authorizer accountability also included:

- Requiring ODE, in consultation with Ohio public charter school authorizers, to prescribe quality authorizing practices and to develop and publish an instrument to measure adherence to those practices;
- Requiring those quality practices to be based on standards developed by NACSA or any other national organization for public charter schools;
- Allowing peer review of an authorizer's adherence to the quality practices prescribed by the state, while requiring that peer reviewers complete training established or approved by ODE;
- Requiring all new authorizers and most (but not all—a dozen authorizers were exempted from this requirement for various reasons) already-operating authorizers to be approved by ODE and execute a sponsorship performance contract with the state;
- Requiring current authorizers to go through the state evaluation to be renewed as authorizers;

- Requiring all authorizers to meet standards for exemplary or effective practices or lose the right to authorize new public charter schools; and
- Allowing ODE (which was already permitted to authorize a limited number of public charter schools directly under previous law) to assume authorization or oversight of a public charter school whose contract has been voided due to its authorizer being prohibited from chartering additional schools.

In contrast to Minnesota, Ohio exempted some existing authorizers from the authorizer application process. However, Ohio has required all authorizers to participate in a system of comprehensive authorizer evaluations and accompanying sanctions for poor performance.

Although Ohio's 2012 legislative reforms did not take effect until January 2015, ODE has been proactive in piloting an authorizer evaluation system and beginning to implement the new law's principles in advance. In the two years before the new law took effect, ODE piloted and refined an authorizer evaluation process and tools with six authorizers. In consultation with stakeholders, ODE developed and piloted a detailed authorizer evaluation instrument that is aligned with NACSA's Principles & Standards and tailored to Ohio's public charter school environment and legislative requirements. Peer participation, review, and engagement have been important in strengthening Ohio's authorizer evaluation framework and in establishing buy-in for the initiative overall. ODE welcomed stakeholder input in the pilot evaluations through a stakeholder work group that included participation from the Ohio public charter school authorizers association, the Ohio public charter schools association, and representatives from different types of authorizers in Ohio. ODE deliberately incorporated peer review into its pilot authorizer evaluations while engaging NACSA to train reviewers. In addition, NACSA consultants have advised and participated in the pilot evaluations.

Subsequently, ODE began to scrutinize authorizers' public charter school approval and renewal practices and actions, applying the evaluation criteria developed through the pilot. In the past year, ODE prevented authorizers whose authorizing practices were significantly deficient from granting charters to new public charter schools, producing considerable early impact. In fall 2013, 55 new public charter schools

opened in Ohio, 15 of which failed and closed midyear. In fall 2014, though, only 11 new public charter schools opened, all of which are operating smoothly so far.

If proposed legislation currently under consideration is adopted, ODE plans to implement the authorizer evaluation system by tying it to a steeply sloped curve of incentives and consequences based on quality. ODE will evaluate and rate every authorizer in Ohio, with consequences planned for each rating.¹⁰

- **Poor** (new rating to be added in 2015 contingent on proposed legislation being enacted into law): An authorizer rated poor will have its chartering authority completely revoked, and the public charter schools it oversees will be required to find new authorizers.
- **Ineffective:** An authorizer rated ineffective will be placed on a one-year corrective action plan and will not be permitted to authorize any more public charter schools in that year. The authorizer will be required to demonstrate commitment and invest the resources necessary to earn an effective rating within one year or will lose its chartering authority.
- **Effective:** An authorizer rated effective will be considered in good standing.
- **Exemplary:** An authorizer rated exemplary will be rewarded with flexibility and access to extra public charter school development opportunities, such as eligibility for particular state grants.

ODE will expect all authorizers to demonstrate ongoing, long-term development efforts and continuous improvement.

Since Ohio began strengthening its accountability requirements in 2005, the state has closed one authorizer outright. Another authorizing entity is going out of business at the end of June 2015, arguably due in part to authorizing failings exposed and criticized by ODE's quality review.¹¹

The early promise shown by 2012's authorizer reforms has led some Ohio policy experts and leading authorizers to believe that, out of all the state's reform efforts, the authorizer evaluation initiative is likely to have the greatest positive impact on the state's

public charter school movement. Their case will be strengthened if the proposed legislation aiding ODE's implementation of the authorizer evaluation system becomes law.

Improving District-Dominated Authorizing in Colorado

Colorado has taken a creative approach to authorizer accountability in a state dominated by district authorizers of varying capacity and commitment to authorizing. State policies have worked to spur some lower-capacity or lower-interest district authorizers to release exclusive chartering authority (voluntarily in some cases), thereby allowing a state public charter school commission to authorize schools in those jurisdictions. All of these changes have been made in a state where a strong tradition of local control has limited the types of state reforms that can realistically be instituted.

Colorado has 45 active district authorizers and the Colorado Charter School Institute (CSI), a state public charter school commission established by law in 2004 with limited statewide jurisdiction (explained below). As a public charter school commission, the CSI is focused solely on quality authorizing as its mission.

For the first decade of Colorado's public charter school movement, only local school boards were permitted to authorize public charter schools. Many local boards were reluctant or hostile authorizers or otherwise had little capacity to authorize well. As a result, the success of Colorado's public charter school movement was limited by low-quality and sometimes hostile authorizing. In more recent years, authorizer practices around the state have improved somewhat. Still, the small scale of authorizing by the majority of Colorado's local district authorizers (which are often small and rural) remains an ongoing challenge preventing these districts from developing the institutional focus required to invest in best practices and build chartering expertise.

In this district-dominated chartering environment, Colorado's approach to building authorizer quality and accountability includes state statutory mechanisms and policies that motivate stronger authorizer practice and provide local school boards that do not want to authorize public charter schools (either generally or in specific cases) an opt-out route—thereby avoiding many problems that result from involuntary

authorizing. In particular, Colorado law:

- Requires that all authorizers meet state-adopted standards consistent with national standards (state policy references NACSA's Principles & Standards for this purpose);
- Requires all authorizers to produce annual public reports on public charter school performance;
- Provides charter applicants and schools the right to appeal charter approval and renewal decisions made by local district boards to the state board of education (SBE);
- Establishes the CSI both as an alternative authorizer and a model authorizer for the state; and
- Empowers the SBE to revoke a district's exclusive chartering authority for cause.

The CSI has been one of the pillars of the above framework. The CSI holds statewide chartering authority except in districts granted exclusive chartering authority within their geographic boundaries either by statute or SBE action. State law allows the exclusive authority granted by the SBE (as opposed to by statute) to be challenged by complaint to the SBE. In turn, the SBE may revoke any district's exclusive authority for cause (which the SBE has yet to do).

As a result, the CSI may authorize public charter schools directly in districts that are determined by the SBE to demonstrate a pattern of treating public charter schools in a hostile manner. In addition, the CSI may authorize where a district voluntarily releases a particular school or applicant to apply under CSI's purview.

The CSI currently authorizes 34 public charter schools across Colorado. Two-thirds of these schools operate in districts that have exclusive chartering authority but have released particular public charter schools or applicants to apply to the CSI, allowing the CSI to authorize public charter schools in the districts' boundaries. These local boards have selectively released applicants or existing public charter schools for a variety of reasons including lack of capacity to authorize well—knowing they cannot meet the state's standards for quality authorizing. Further, some local board authorizers engage in an even more innovative approach to delegating day-to-day authorizing work to a capable agency without relinquishing chartering

State Authorizer Accountability Matrix

	AK	AR	AZ	CA	CO	CT	DC	DE	FL	GA	HI	IA	ID	IL	IN	KS	LA	MA	MD	ME	MI	MN	MO	MS	NC	NH	NJ	NM	NV	NY	OH	OK	OR	PA	RI	SC	TN	TX	UT	VA	WA	WI	WY					
Authorizer and Program Accountability (National Alliance’s Model Law Components)																																																
Green = Meets criteria; Yellow = Partially meets criteria; Red = Does not meet criteria																																																
4A. At least a registration process for local school boards to affirm their interest in chartering to the state	Red	Gray	Red	Red	Yellow	Gray	Gray	Red	Red	Red	Gray	Red	Red	Red	Red	Red	Red	Gray	Red	Yellow	Red	Green	Yellow	Gray	Gray	Red	Gray	Red	Green	Red	Yellow	Red	Red	Red	Red	Gray	Red	Red	Red	Red	Red	Green	Red	Red	Red			
4B. Application process for other eligible authorizing entities	Gray	Gray	Red	Gray	Gray	Gray	Gray	Red	Gray	Green	Gray	Red	Gray	Red	Gray	Gray	Green	Gray	Gray	Gray	Red	Green	Yellow	Gray	Gray	Gray	Gray	Gray	Green	Gray	Yellow	Red	Red	Gray	Gray	Yellow	Gray	Gray	Red	Gray	Gray	Gray	Gray	Gray	Gray	Gray		
4C. Authorizer submission of annual report, which summarizes the agency’s authorizing activities as well as the performance of its school portfolio	Red	Yellow	Yellow	Red	Yellow	Red	Green	Red	Yellow	Yellow	Green	Red	Red	Yellow	Green	Red	Yellow	Yellow	Red	Green	Red	Green	Yellow	Yellow	Yellow	Red	Red	Green	Green	Yellow	Yellow	Red	Red	Red	Red	Yellow	Red	Green	Red	Yellow	Green	Red	Yellow	Green	Yellow			
4D. A regular review process by authorizer oversight body	Red	Green	Yellow	Yellow	Yellow	Green	Green	Yellow	Red	Yellow	Green	Red	Yellow	Green	Green	Red	Yellow	Green	Red	Green	Yellow	Green	Green	Green	Green	Yellow	Yellow	Yellow	Green	Yellow	Green	Red	Yellow	Yellow	Green	Yellow	Yellow	Red	Yellow	Red	Yellow	Red	Green	Yellow	Yellow	Yellow		
4E. Authorizer oversight body with authority to sanction authorizers, including removal of authorizer right to approve schools	Red	Green	Yellow	Yellow	Yellow	Green	Green	Yellow	Red	Yellow	Green	Red	Yellow	Green	Green	Red	Yellow	Green	Red	Green	Green	Green	Green	Green	Green	Yellow	Green	Yellow	Green	Yellow	Green	Red	Yellow	Yellow	Green	Yellow	Yellow	Red	Yellow	Red	Green	Yellow	Yellow	Red	Green	Yellow	Red	
4F. Periodic formal evaluation of overall state public charter school program and outcomes	Red	Green	Red	Red	Green	Green	Green	Green	Green	Green	Green	Green	Red	Green	Red	Green	Yellow	Yellow	Red	Green	Green	Red	Green	Green	Green	Green	Red	Green	Yellow	Green	Green	Green	Green	Red	Red	Red	Green	Green	Green	Red	Green	Green	Red	Green	Red	Red		
NACSA Recommended Policy Criteria																																																
1. Endorse and apply national industry standards for quality authorizing																																																
1a. Establishing authorizer standards: The state endorses national industry standards of quality public charter school authorizing and expects all authorizers to meet these standards.	0	0	0	0	3	0	1	3	0	0	3	0	0	3	3	0	3	0	0	3	0	3	1	3	0	0	0	3	3	0	3	0	0	0	0	0	0	3	3	3	0	0	3	3	0			
1b. Evaluating authorizers on authorizer standards: Some entity in the state will periodically evaluate authorizers on the standards.	0	0	0	0	0	0	3	0	0	0	3	0	0	0	0	0	2	0	0	3	0	3	3	1	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	3	0	0	3	0	0	
1d. Annual authorizer report on school performance: Each authorizer will provide an annual report on the performance of its schools.	0	0	0	0	3	0	3	0	0	0	3	0	2	3	3	0	0	0	0	3	0	3	0	3	3	0	0	3	3	0	2	0	0	0	0	0	3	0	3	0	0	3	0	2				
1e. Sanctions for failing authorizers: Authorizers may be closed or face other sanctions if they do not meet professional standards or if their schools do not perform adequately.	0	0	0	0	0	0	0	0	0	0	3	0	0	2	3	0	3	0	0	1	0	3	3	0	0	0	0	0	0	3	0	3	0	0	0	0	0	0	0	0	0	0	3	0	0	3	0	0

Data Sources:

National Alliance for Public Charter Schools, “Measuring Up to the Model,” 2015 State Summaries, <http://www.publiccharters.org/get-the-facts/law-database/states>.

National Association of Charter School Authorizers, State Policy Gap Analysis.

authority: They contract with the CSI to provide public charter school application review and/or oversight services under a partnership authorization memorandum of understanding.

Rebooting Authorizing in Hawaii¹³

Hawaii is an example of a state that needed a major policy reset and new authorizing environment to improve its public charter schools. Thus, it overhauled its charter law and started fresh with a new statewide authorizer to remedy years of weak authorizing practice.

Far off in the Pacific, Hawaii has had an active public charter school movement since 1994, growing to serve more than 10,000 students across seven islands today. For years, however, public charter school authorizing in Hawaii lacked clear legislative authority and structure, guidance on responsibilities, and resources to carry out the job effectively. Before major reform in 2012, Hawaii's sole authorizer was the state Charter School Review Panel, an all-volunteer board trying to carry out an enormous amount of work and important public responsibilities with no professional staff. By 2010, the lack of public charter school accountability and adequate oversight was so serious and widely recognized that a legislative "reboot" was necessary to remedy nearly two decades of weak, dysfunctional authorizing.

Over two years, a state task force composed of legislators, the Hawaii Public Charter Schools Network, and other local stakeholders and supported by national partners (NACSA, the National Alliance, the National Governors Association, and the Center for School Change) developed an overhaul of Hawaii's public charter school law, policies, and authorizer practice. This effort was designed to build—indeed, to introduce—both public charter school and authorizer accountability. This thorough restructuring was challenging, given that Hawaii's public charter school movement was already nearly two decades old—and there were more than 30 public charter schools operating across the state—when the law was overhauled in 2012, resulting in an entirely new law and authorizing system replacing what the schools knew. The top-to-bottom reform was necessary, however. Hawaii's new public charter school law laid the groundwork for authorizer effectiveness and accountability by creating an entirely new authorizing structure and policy environment.

Hawaii's new public charter school law is largely aligned with the National Alliance and NACSA recommendations for authorizer accountability. Significant reforms in state law rebuilt the authorizing environment and promote authorizer accountability.

- A new Hawaii State Charter School Commission replaced the Charter School Review Panel as the state authorizing agency and receives sufficient resources to perform its role well. Appointed by and reporting to the SBE, the Commission assumed oversight of all then-operating public charter schools in Hawaii upon its creation.
- A variety of other types of eligible entities (postsecondary institutions, state and county agencies, and nonprofit organizations) must to apply to the SBE for chartering authority if interested in becoming an authorizer. If approved, such entities receive an initial six-year, renewable and revocable authorizing contract with the SBE. (To date, no eligible entities have applied to become authorizers.)
- The authority and responsibilities of public charter school authorizers in Hawaii have been clarified.
- All authorizers are required to develop and maintain authorizing standards consistent with national professional standards.
- All authorizers are required to use performance-based public charter school contracts and performance frameworks to provide an enforceable foundation for school accountability.
- Every authorizer is required to provide an annual public report to the SBE, summarizing the academic performance of all public charter schools in its portfolio as measured by state standards.
- The SBE is required to provide oversight for all authorizers in the state, including reviewing authorizer annual reports, determining whether authorizers are fulfilling their authorizing contracts, and revoking or not renewing authorizing contracts if warranted.
- The SBE is required to apply nationally recognized principles and standards when evaluating authorizer performance.

Hawaii's overhaul of its public charter school law has replaced a nonperforming, dysfunctional authorizing environment with a new one focused on quality. An important part of building this new environment was the extensive engagement of public charter school operators and other stakeholders, such as the SBE, throughout the change process. Both individually and collectively, through the state public charter school association, Hawaii's public charter schools provided input at each step of changing the authorizing environment in policy and practice. As one public charter school leader—who was an initial member of the new Commission—put it, “It’s the herding cat syndrome: creating systems that work for 30-plus independent schools is hard. But the process was fair and transparent, logical and reasonable. People felt listened to. That builds trust on the part of school operators.”¹⁴

The early impact of Hawaii's 2012 reforms can be seen partly in the performance management system the Commission has instituted, including public charter school contracts that incorporate academic, financial, and organizational performance frameworks, setting clear expectations for all public charter schools. In addition, this year the Commission is revoking a charter for financial and organizational failure, Hawaii's first public charter school closure.

Recommendations for State Policy on Authorizer Accountability

States should ensure that public charter school authorizers are held to high standards of performance and accountability. By doing so, states can improve the performance of their public charter school movements. The examples in this brief illustrate how states with different policy and authorizing environments have instituted reforms and enacted policies to strengthen accountability for authorizers. Though it may not be politically or constitutionally feasible in a particular state to implement every provision of the National Alliance's model law or NACSA's policy guidance, every state can adopt some kind of policy strategy to strengthen authorizer accountability within its own policy and authorizing environment.

The implementation of the authorizer accountability policies in states as diverse as Colorado, Hawaii,

Minnesota, and Ohio offers a number of lessons for policymakers and advocates in other states seeking to strengthen their public charter school movements. These recommendations include:¹⁵

Consult existing policy resources for guidance.

In building an accountability system for authorizers, states should make use of existing policy resources for guidance, particularly the National Alliance's model law and NACSA's policy guidance.¹⁶

Establish professional authorizing standards for all authorizers in the state. Public charter school authorizing is a unique and complex profession. For guidance in this relatively new and constantly evolving field, it is important to establish national standards for quality authorizing—namely, NACSA's *Principles & Standards*—in the state public charter school statute as the foundation of essential guidelines for authorizer practices and accompanying state-level authorizer approval, monitoring, and evaluation processes. Authorizers and other education leaders in states that have established these authorizing standards in state policy attest to their value in making essential authorizer expectations clear, providing guidance to authorizers and state oversight officials, and explaining authorizer improvement efforts to the state's public charter school community.

If a state chooses to develop its own authorizer standards to closely reflect the state context, those standards should be similar in scope and rigor to NACSA's *Principles & Standards*, including:

- Covering all phases of public charter school authorizing (from applications to contracts to oversight to renewals and closures);
- Maintaining viable options for creating new public charter schools without excessive impediments to approval;
- Protecting the autonomy of public charter schools; and
- Protecting the rights of students and the public interest.

Establish reasonable barriers to entry for new authorizing entities. States that have had low (or no) barriers to entry for authorizing—resulting in a proliferation of authorizers with differing motivations

and varying degrees of commitment to quality authorizing—have paid a price in the quality of their public charter school movements. Improving the quality of public charter schools across a state often needs to start with tightening up authorizing and establishing sensible barriers to entry for the challenging work of quality public charter school authorizing. Thus, the first step in building an accountability system for authorizers is a rigorous approval process grounded in clear and high professional standards on the front end. At the same time, states should create a state public charter school commission to ensure that there is at least one authorizer in place.

To tighten up a multiauthorizer environment, require all authorizers (old and new) to apply for state approval. States instituting an authorizer application and approval requirement to strengthen the quality of their authorizers should apply this requirement to all authorizing entities, including all those already operating in the state, except a legislatively created state public charter school commission. Exempting any currently operating authorizers (other than a state commission) from front-end evaluation would compromise the immediate quality control mechanism that a comprehensive authorizer application and approval process would provide statewide. States might appropriately tailor and streamline the application and approval process for currently operating authorizers, but they should not exempt any authorizers (other than a state commission) from the front-end review. Authorizers already performing well (and whose schools are performing well) would be well positioned to earn approval readily, while the review process would identify those authorizers meriting closer monitoring or termination.

Set clear, consistent, and rigorous standards and timelines for approving authorizers. States should clearly define the timing and administration of the authorizer application and approval process so that all authorizer applicants (whether prospective new authorizers or currently operating authorizers requiring approval under a new law) understand and are required to meet clear, consistently rigorous standards for approval within a publicly known and predictable timeframe. Such standards should include an examination of the performance of existing public charter schools for any currently operating authorizers seeking approval.

Encourage and engage peer input and peer review in a state's authorizer evaluation initiative.

In developing a statewide authorizer accountability system, states will benefit from engaging authorizers, public charter schools, and other stakeholders in meaningful ways to develop the new system from the beginning. Doing so will build peer support for the system from quality authorizers who have an interest in promoting professionalism in their sector and strengthening the public charter school movement as a whole. Likewise, engaging input from the public charter school community and stakeholders will help to promote broad understanding of authorizer accountability as important to strengthening the public charter school movement and building community support for public charter schools.

Provide for sufficient resources to carry out state oversight. Overseeing robust authorizer accountability imposes considerable new responsibilities on the state and requires sufficient internal state agency capacity and, quite likely, the resources to engage outside expertise. State policy should provide adequate resources to enable the state to carry out its authorizer oversight role effectively.

In planning sufficient resources for state oversight, states should also consider the size and complexity of their current public charter school authorizing sector and how much their designated state oversight agency can realistically accomplish each year with the new resources planned. Depending on local and state circumstances, each state should decide how much of the state's reform efforts and resources should be directed to front-end authorizer selection versus back-end authorizer evaluation and sanctioning. Comprehensive authorizer evaluations that involve site visits, stakeholder interviews, school surveys, and the like are labor intensive and costly and may not be needed for every authorizer in the state. A state may establish criteria to determine which authorizers or triggering circumstances merit more intensive review than a baseline annual review of the authorizer's school performance data and the authorizer's annual report on its practices.

Provide for sanctioning and termination of authorizers that fail in their essential duties.

Authorizers that repeatedly approve new public charter schools that fail and allow those failing schools to stay open should lose the ability to approve more schools and perhaps lose their authorizing powers entirely. To

establish clear expectations for authorizers and ensure enforcement of quality standards, states should consider creating automatic triggers for sanctions. For example, states could empower a state oversight agency to sanction an authorizer or, if warranted, revoke any authorizer's chartering authority if the authorizer:

- Demonstrates abuse of its chartering authority through a documented pattern of actions that violate the letter, spirit, or intent of the public charter school law;
- Repeatedly authorizes public charter schools that fail to meet state standards;
- Repeatedly allows failing schools to stay open; or
- Persistently (or egregiously) fails to meet state standards for quality authorizing.

Define what happens when a state terminates an authorizer. State policy should explicitly define what happens when a state terminates an authorizer for failure to meet standards in order to protect schools, students, and families from confusion and turmoil if their authorizer is terminated. Without a pre-established course of action that provides for all stakeholders in the event of authorizer closure, state oversight agencies might be reluctant to close authorizers, especially those that oversee numerous schools. It makes sense to allow public charter schools to be transferred to a quality authorizer that is willing and has the capacity to assume oversight, but state policy should provide for an organized process for a school to select or designate a qualified authorizer well positioned to assume transferred public charter schools.

Define what happens to schools “orphaned” by an authorizer termination. State policy should contemplate and provide for a course of action for “orphaned” public charter schools that no authorizer in good standing is willing to “adopt” or assume. One option is for the state authorizing oversight body to transfer oversight to a designated state authorizer—such as a state public charter school commission or the state department of education—for a defined grace period, such as one or two years. During this transitional period, the school would be required to improve its outcomes and find a permanent authorizer in good standing with the state or face closure.

Oversee public charter school transfers at the state level. In states with multiple authorizers operating under a dynamic accountability system, a public charter school may need to find a new authorizer if its current authorizer either decides to withdraw from authorizing due to lack of will or capacity to meet the state's accountability expectations or is terminated from authorizing by the state. In either situation, the state authorizing oversight body should manage and oversee transfer requests to ensure that any proposed transfer would best serve the interests of the public charter school's students and that all requirements for transfer take place according to an orderly and timely process. This approach will also prevent the problem of “authorizer hopping” that has occurred in some states, whereby schools slated for closure either by their authorizer or under a default closure law have avoided closure by reorganizing and finding a new authorizer.

About the Author

Margaret Lin consults nationally on charter school accountability, authorizing, governance and policy for leading education organizations. She has authored numerous publications and resources to assist and improve the practices of charter schools and authorizers. Margaret began her work in the charter school movement by co-founding and operating Chicago's first charter school resource center. She later co-founded and has held various leadership roles with the National Association of Charter School Authorizers (NACSA), including serving as its first executive director and as its Vice President of Knowledge and senior advisor. A former English teacher in Japan and Rotary Foundation Scholar in Belgium, Margaret holds a J.D. from Stanford Law School.



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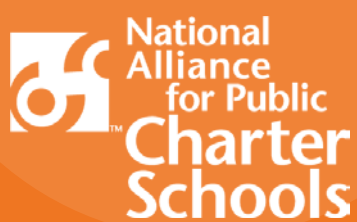
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Endnotes

- ¹ *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, National Alliance for Public Charter Schools, 2009, <http://www.publiccharters.org/publications/model-law-supporting-growth-high-quality-public-charter-schools>.
- ² National Association of Charter School Authorizers, Policy Guides and Recommendations, <http://www.qualitycharters.org/policy/policy-guides.html>.
- ³ The entire model law is explained and set forth in *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, National Alliance for Public Charter Schools, 2009, <http://www.publiccharters.org/publications/model-law-supporting-growth-high-quality-public-charter-schools>.
- ⁴ These elements correspond to components 4A-4E in the National Alliance's report, *Measuring Up to the Model: A Ranking of State Charter School Laws, Sixth Edition*, which analyzes each state's public charter school law against the National Alliance's model law. These elements are set forth in full in the model law.
- ⁵ In addition to the NACSA policy provisions discussed in this brief that directly promote authorizer accountability, NACSA recommends the following state policies to create a policy environment that supports and enables strong, effective public charter school authorizing: (1) follow NACSA-recommended policies on performance management; (2) apply school performance standards at renewal and close failing schools; and (3) establish a statewide alternative authorizer, preferably a state charter school commission. More detailed guidance and explanation of these policies can be found at <http://www.qualitycharters.org/policy/policy-guides.html>.
- ⁶ A primary source of information for this vignette is "Building Systems to Evaluate and Sanction Failing Authorizers," NACSA Policy Case Study, National Association of Charter School Authorizers, 2014.
- ⁷ "Building Systems to Evaluate and Sanction Failing Authorizers," NACSA Policy Case Study, quoting Molly McGraw-Healy.
- ⁸ Setting a Minimum Threshold for Performance and Default Closure of Charter Schools," NACSA Policy Brief, National Association of Charter School Authorizers, 2014, p. 2, quoting Terry Ryan.
- ⁹ See Ohio Revised Code, Sec. 3314.016 as amended by HB 555.
- ¹⁰ David Hansen, Testimony on Education Provisions of House Bill 64, FY 16-17 Biennial Budget to Ohio House of Representatives, Finance Subcommittee on Primary and Secondary Education, Feb. 26, 2015.
- ¹¹ Doug Livingston, "State to Close Portage County Educational Service Center; Eight Charter Schools to Lose Sponsor," Akron Beacon Journal, January 30, 2015.
- ¹² "Setting a Minimum Threshold for Performance and Default Closure of Failing Schools," NACSA Policy Brief, National Association of Charter School Authorizers, 2014, p. 4, quoting Darlene Chambers.
- ¹³ A primary source of information for this vignette is "Alignment for Change in Hawaii," NACSA Case Study, National Association of Charter School Authorizers, 2013.
- ¹⁴ "Alignment for Change in Hawaii," NACSA Case Study, p. 9, quoting Curtis Muraoka.
- ¹⁵ In addition to implementing these recommendations to strengthen authorizer accountability, there are several other steps that states should take in order to improve their state's authorizers, including providing authorizer funding and detailing in state law the responsibilities of authorizers as they pertain to the public charter school application process, performance-based public charter school contracts, oversight and monitoring, and renewals and closures. For more information about these other issues, see *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, National Alliance for Public Charter Schools, 2009, <http://www.publiccharters.org/publications/model-law-supporting-growth-high-quality-public-charter-schools>; and National Association of Charter School Authorizers, Policy Guides and Recommendations, <http://www.qualitycharters.org/policy/policy-guides.html>.
- ¹⁶ *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, National Alliance for Public Charter Schools, 2009, www.publiccharters.org; and *On the Road to Better Accountability: An Analysis of State Charter School Policies*, National Association of Charter School Authorizers, 2014, www.qualitycharters.org.



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