



## **CHARTER AUTHORIZERS: THE TRUTH ABOUT STATE COMMISSIONS**

### **INTRODUCTION**

Every few years there is a flurry of activity across the country to create or amend state charter school laws. Through 2011 and 2012, states such as North Carolina, Massachusetts, Georgia, and Indiana, changed their laws to remove caps on how many schools can open or to give charter schools access to facilities funding. Two additional states, Maine and Washington, created new laws, and while overdue, the core of those laws vests authority in a new kind of authorizing commission which undermines the very concept of independent quality authorizing. This paper shows how and why lawmakers and policy advocates need to revisit what has become a dangerous trend in charter policy debates.

The evidence is clear that quality charter schools are directly correlated to quality authorizers. States with multiple, independent authorizers -- independent legally and managerially from existing local and state education agencies -- produce more and better opportunities for students. States that have definitively independent and preferably multiple authorizers afford schools a high degree of autonomy with accountability and consequently nurture high

quantities of high quality schools. **States with strong, multiple chartering authorities have almost three and a half times more charter schools than states that only allow local board approval.** Independent authorizers are entities that are outside the legal scope of related state education entities or actors but are still held publicly accountable. Independent authorizers are better able to hold charter schools accountable because they have full control over how they evaluate charter schools. A strong charter authorizer must be vigilant in monitoring its charter school portfolio, without becoming an over-bureaucratic policing agent.

In most cases, universities have proven to be exceptional authorizers, combining the infrastructure of existing higher education institutions (financial, legal, human resources, educational, etc.), a very high degree of public and legislative scrutiny and a compelling interest in improving the pipeline for their students. They are also progressive and forward thinking in many cases, and their Chancellors or presidents are always looking for opportunities to be distinctive. Most of all, they are relentless in marketing and as a result, the leaders of

higher education institutions are most sensitive to criticism and want to look good. It's no wonder then, that the states which lead the national rankings for creating new opportunities for students and having successful charters also have independent, multiple authorizers, almost all with universities as part of the portfolio and not subject to state education department oversight, either in an advisory or control capacity. These exemplary states with these institutions include New York, with the State University of New York Charter Schools Institute; Michigan, where public universities, including the impressive Central Michigan University can authorize charter schools; and Washington, DC, which has the only completely independent charter board in the nation, the DC Public Charter School Board.

Conversely, charter school commissions, like those currently in place in states like Maine and Washington, and introduced in Tennessee, North Carolina and Pennsylvania among others, offer no evidence of success, have been subject to more political oversight and bureaucratic interference than any other chartering institutions, and have shunned many charter applications, even by proven providers, because they employ external consultants who have varying degrees of expertise. And yet, sadly, many charter advocates and policymakers have become convinced that this is a “best practice” model that works in practice.

As will become clear, charter school commissions are not only not independent (no matter how a law is written) but they are often antagonistic, bureaucratic and the antithesis of the charter school concept.

## STATE COMMISSIONS: FAILING TO ADVANCE THE CAUSE OF SUCCESSFUL CHARTER CHOICES FOR FAMILIES

- The Idaho Public Charter School Commission was created to approve brick-and-mortar charter applications only after they have been rejected by school boards, and for the purpose of approving and monitoring virtual charter schools. Since its inception in 2004, it has grown increasingly reliant on the state education department, including per legislation, being “located in the office of the state board of education”. The commission has also developed its own additional processes and procedures to grow its influence.
- The New Mexico Public Charter School Commission is an independent entity that was created, like many of the above efforts, to ensure applicants received a fair evaluation and were properly monitored. Getting an application considered in front of the Commission has become more bureaucratic and process-driven than was the case when school districts and the State Board of Education were the only path to review. Applicants complain of paperwork and minutiae and a lack of focus on high standards and capability to perform.

- While The Maine Charter School Commission consists of members that are all appointed by the state board with some legislative input, including people sympathetic to the Governor's agenda, it nevertheless has failed to embrace its mission as a charter authorizer, has been influenced in its approach to chartering by the influential opponents of the teachers unions and school boards, and has created a bureaucratic review process that puts considerations of money ahead of kids.

- The South Carolina Public Charter School District is another commission model authorizer in which the Governor appoints its members and has become beholden for staff support to the state education department. Despite the Education Secretary not being a legal member of this entity, the District/Commission model authorizer relies heavily on the administrative, legal and regulatory guidance of the department, which is a deterrent to charter applicants. Thus in 2012, seven years after the new District/ Commission was created, advocates rallied behind a new legislative proposal and today, university authorizers exist with the potential to rectify the situation.

These are just four of the wildly varying, current examples of commission model authorizers that are characterized as independent in theory and often in law, but become directly intertwined in the traditional educational delivery model. The cultural mindset that frowns on out-of-the-box thinking pervades these commissions, making them susceptible to additional oversight by the state education agencies that often house their staffs and meetings. Indeed, one state education secretary whose state was considering a similar model said that he liked the commission model precisely so he could keep his finger on their work at all times.

Many advocates will point out when promoting the notion of a charter school commission in proposed legislation that the governor or education chief in a particular state is a charter advocate. Whether a superintendent or secretary of education is allegedly friendly to the notion of charter schools or not should never influence the adoption of the commission model. Not only are they political beasts, susceptible to political pressure and temporary, but anyone who understands even a small amount about the working of state education agencies knows that it's the permanent staff who have longevity, who often make the day-to-day decisions and interpret the laws differently than what well-meaning policymakers may have intended.

State education agency employees in Georgia sought early to interfere in the deliberations of the Georgia Charter Schools Commission when the employees became unnecessarily involved in the process of reviewing applications. It's extraordinary that many advocates would then consider these bodies independent entities when commissioners may be chosen by the state board, may be staffed by state education employees, may be funded and regulated

by the same rules, and in some cases may be housed within the walls of the state education department.

This type of “independent” authorizer has failed since 2006, when the Florida Schools of Excellence Commission (FSE) was first created as an alternative authorizer. At that time, while the FSE’s legal independence was clear in law, its members who were appointed by the Governor, were immediately told by then-Commissioner Eric Smith that it was he, the Commissioner, who was the legal overseer of the commission and thus they could rely on his department to staff and manage their work. In fact, that was not the intent of the law, but because the Commission members were fond of Smith, they deferred to his actions. It took months for the Commission to set up a process and receive applications as a result, and because of the delay, the opposition had time to identify problems and sharpen its legal assault. In early 2007, the Florida State School Boards Association sued the state on Florida-specific statutes claiming the Commission to be unconstitutional. The court agreed and Commissioner Smith, who was given the decision as to whether or not to appeal -- despite the fact it should have been the Commissioners who made such a decision -- declined to appeal to the state’s highest court and in December, 2008, the Florida Schools of Excellence commission was ruled unconstitutional. To this day, while legal evidence suggests an independent authorizer would not be unconstitutional and the decision was flawed, only school boards can approve charters in the Sunshine State and few charter advocates have an appetite for opening back up the issue.

Florida’s northern neighbor Georgia failed to understand this experience when policymakers voted to create the Georgia Charter Schools Commission in 2009. It relied heavily on the state department of education, to the point that several applicants filed suit over the Commission not following its mandate to swiftly review charter applications. The Commission became mired in state agency rules and guidance, and the State’s Superintendent of Public Instruction became heavily involved with all deliberations. The law was later challenged and deemed unconstitutional. The legislature voted to send this issue to the 2012 ballot for voters to decide whether to amend the state constitution, and the amendment was passed.<sup>1</sup>

However, if the Commission is reinstated as originally designed, charters authorized under this quasi-independent agency would continue to be dependent on the state’s department of education, whose existing Commissioner was hostile to its creation. An effective Commission requires complete independence to have a positive impact on the development of sound educational options in Georgia, something policymakers and advocates -- who initially assumed that if they just had the right composition of members it would all work out -- had to learn the hard way. Time will tell whether it will be able to withstand the regulatory creep that has occurred in other states when such entities have been in business for a few years or more.

In Maine, where the relatively new commission is compromised of members appointed by the State Board of Education (and three of the commission members must be members of the state board) have become sensitive to the political pressure of

<sup>1</sup> See [House Resolution 1162](#) for more information

the anti-charter state union and school districts. Despite a flurry of early applications from many accomplished individuals and organizations, only two very small charter schools have opened since the law was created in 2011 and three more approved. Commission members have been openly critical of the approaches and ideas offered by many applicants and have conceded that they have neither the time nor expertise to understand the issues that they must face. In January 2013, when four out of five applications were rejected, a frustrated Governor LePage remarked, "I am asking them for the good of the kids of the state of Maine, please go away. We don't need you. We need some people with backbones." LePage has resolved to strengthen the state's law with truly independent authorizing.

A recent round of charter reviews in another state is illustrative of the role a department of education can play in discouraging or dismantling the charter process. New Jersey's Department of Education (the Department) is the sole authorizer in that state. The New Jersey charter law is silent on the issue of whether and how virtual schools might come into existence. It simply authorizes the Department to review and approve charter applications. Hundreds of pages of regulations and procedures have been created by the Department and the State Board of Education to guide this process, and such procedures are often at odds with the intent of the law and charter schooling. One example is the state's requirement that charters are only permitted to draw students from contiguous districts, a rule that has no legislative root. That rule had an impact in a proposal to create statewide virtual school, which was seen generally as a drain on the local district. The Department issued a financial impact statement to the host district for a potential virtual charter that claimed the charter would drain that district of \$15

million if permitted to open. That document created a firestorm across the community and the state. It assumed that every student in the statewide virtual school would come from the host district, when in fact the application made clear that the likely students would come from and span the entire state. On another point, the reviewers told the applicant that there is no evidence online learning is successful for students in lower grades, when in fact, enormous evidence of and support for such programs exists nationwide.

An independent authorizer would have reviewed the application with the intention of trying to determine how such a proposal might work for students, not how such a proposal might not work for students. An independent authorizer without any other job save for chartering schools would have a team of people who make it their business to study the research-based evidence of success of all schooling models, curriculum and assessments. They would draw upon expertise outside of their organization as they seek to create such expertise. They would not make assumptions rooted in conventional ways of thinking, use their own personal bias, or make enormous mistakes about financial impact of schools. Finally, they would not worry about whether their Governor or politicians would be offended by their approval of a "new" or "untried" school in their state, which appears to have been part of the issue in the New Jersey decision to reject the application. Their job would be to vet the qualification and potential for success, and be agnostic about whether "new" is controversial.

Indeed such theory actually works in the nation's best authorizers in the nation.

## BEST-PRACTICE MODEL AUTHORIZERS

It remains a mystery why other national and state charter advocates are not vocal advocates for charter authorizers that already exist and are demonstrating enormous success with students. Perhaps it's because of the 'not-invented-here-syndrome' or perhaps it's because they really have not studied the issue and evidence in depth.

The purpose and evidence that exists today for the establishment of independent and multiple authorizers is confirmed in a [recent report](#) from Columbia University's Teachers College that concludes that independence from traditional systems results in higher student performance. It's also clear when you look at the individual results of states and their authorizers that should be the model for any serious charter researcher, advocate or interested policymaker.

## BELOW ARE SOME OUTSTANDING EXAMPLES OF THESE INDEPENDENT CHARTER SCHOOL AUTHORIZERS:

- [The State University of New York](#) was given the authority in 1998 to open a charter schools institute, where up to 230 charter school applications can be approved. That office, housed in the Chancellor's office and paid separately by legislative appropriations, is responsible for the highest quality charter schools in New York.
- Any public university in **Michigan** may authorize charter schools. This led to eleven major universities opening up charter school offices, which are responsible for the majority of the state's nearly 350 charter schools. These offices focus on quality applicants, and monitor state and federal accountability measures.
- [The Governor Engler Center for Charter Schools at Central Michigan University](#) sponsors 59 schools serving more than 30,000 students. It is one of the nation's model charter authorizers because of their performance-based management tools and streamlined oversight and monitoring so that the important information is reported without burdening the schools or staff. Other authorizers have begun to use their tools across the country.
- **Indiana** followed Michigan's model and authorized public universities in the state charter law. Today [Ball State University](#) leads the pack in authorizing nearly half of the state's 78 schools. The Mayor of Indianapolis can authorize schools and more recently a new state charter school board was created to also authorize and oversees charter schools.
- The independent [DC Public Charter School Board](#) is the only charter school authorizer in Washington, DC after the DC Board of Education transferred all charter school authorizing power over to them. While it is the only authorizer, it is a model to the nation for its effective oversight and performance management tools that hold schools accountable and the DC PCSB schools consistently outpace conventional public school achievement.

Other states permit a wide variety of authorizers -- from nonprofit organizations to universities -- to participate in chartering but have experienced numerous challenges from having done so. When amended, their laws did not take into consideration best practice authorizing, causing several entities to become authorizers that were not equipped to do so and causing many 'bad news' stories to surface about lack of [credible authorizing \(see page 9 for Ohio's story\)](#).

However, state leaders have reformed the processes in each, inserted more state oversight (which would not have been necessary had these states simply expanded authorizing to existing, proven higher education institutions), and while they are doing remarkably better, they are not considered model states to emulate on authorizing when amending one's charter law.

- **Minnesota** passed the nation's first law without universities involved, but amended it later to allow any postsecondary institution, and nonprofits who meet certain criteria, to authorize charters. Today, the state is home to 165 charter schools, a majority of which have demonstrated high levels of accountability given lessons and implementation of achievement-based oversight.
- The initial **Ohio** charter law gave authority to the University of Toledo to charter schools in its area. Other state universities and any nonprofit organization was approved to authorize charter schools in 1999, creating a flurry of activity as the state ceded its involvement to many unproven actors. The state has now scaled back authorizing and put strict controls in place to monitor chartering and charter management activities, resulting in an overly bureaucratic process that subjects charter schools to many rules and regulations that hamper traditional public schools.

## CONCLUSION - ADVICE TO POLICYMAKERS AND LOCAL ADVOCATES

Fourteen consecutive evaluations of charter school laws demonstrate the link between strong authorizers and [strong schools](#). State laws that vest authority in existing power structures for charter schools, and that are unclear about authority, funding and freedom, compromise those schools and make up the lion's share of the failed schools in this country.

The use of the state charter commission model has begun to stymie charter growth, create new bureaucracies and discourage innovators and parents from participating. Commissions have also created a new "cottage industry" of consultants who are readily employed and move from state to state reviewing charter applications for communities which they often know little about, and from organizations and individuals of whom they have no personal knowledge. In Louisiana, such consultants rejected applications by nationally recognized, successful charter organizations citing their tax status in one case and their lack of credibility in another for why



their sound applications would be rejected. Such a case was eventually the result of the consultancy organization being dismissed from that state, and today Louisiana's universities, while permitted to authorize, are hesitant to step up to the plate to become involved in what has become a complicated and onerous process that the state education department would likely control.<sup>2</sup>

Unlike these cases, independent entities are empowered to evaluate their charter school portfolio regularly and they do so. They create state of the art technology and assessment rubrics, and manage entry and implementation relentlessly. While not tied to the state education system through rules and regulations, they are held accountable by the public and the state legislature. Some states with a variety of other kinds of authorizers have or are also exploring language that reduces or removes authorizer authority if significant numbers of their schools fail to meet state benchmarks.

Beyond the cases referenced in this paper, there are numerous other examples of states that have set up quasi-independent authorizers and have stunted charter school growth and the problem continues

in state houses around the country. Continuing this pattern of creating state charter school commissions will handcuff the charter school movement at a time when parents need and deserve more quality, educational options for their children.

Policymakers must pay close attention to the proposals that come before them creating these commission-like authorizers. They would do well to review the well-written legislation in each of the states that are home to the most successful chartering process and schools, states which it is important to note also experience less hostility and tension over their creation of charter schools than the states where commissions are in power. Model legislation must focus on creating authorizers that are separate from existing state and local education agencies, empower existing institutions (like colleges and universities) which already have public and documented success and a business infrastructure. Without these critical steps, the lawmakers today will be creating the new education establishment of tomorrow, with one set of people in power, the interest of parents and educators secondary, and the future of education behind.

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<sup>2</sup> In 2012, Louisiana passed legislation, which allows for universities and certain nonprofits to be charter authorizers, but they must first apply to the state board of education to receive permission. This is not the correct university model because all the power still rests in the state's hands.



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opportunities for decades to come. This paper is a composite of many resources from the center, which is expert at writing, interpreting and researching legislation. Additional resources on chartering include:

- [The Essential Guide to Charter School Law Making: Model Legislation for States Grounded in Experience and Practice](#), The Center for Education Reform, 2012
- [2013 Charter School Law Ranking & Scorecard](#), The Center for Education Reform, 2013
- [The Importance of Multiple Authorizers in Charter School Laws](#), The Center for Education Reform, 2011
- [The State of Charter Schools: What We Know - And What We Do Not - About Performance and Accountability](#), The Center for Education Reform, 2011
- [The Parent Power Index](#), The Center for Education Reform, last updated 2013
- [2010 Annual Survey of America's Charter Schools](#), the Center for Education Reform, 2010
- [The Garden State's Missed Opportunity: Weak Charter Law Emboldens Faulty Review Process](#), The Center for Education Reform, 2011

