Governance and Regulation

Updated 2015

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How do federal and state laws govern charter schools?

The major federal education policies under Presidents George W. Bush and Barack Obama—No Child Left Behind and Race to the Top, respectively—both sought to expand and support charter schools.1 For example, President Obama’s 2009 Race to the Top initiative approved several approaches to “turning around” traditional public schools deemed to be underperforming, including converting them into charter schools. Race to the Top also encouraged states to lift caps on the number of charter schools they allow.2

While encouragement may come from the federal government, ultimately it is up to individual states to decide whether to allow charter schools. In doing so, state policymakers must consider many questions about how charter schools should operate, be funded and be regulated. Some of these questions include the following:

• Will there be a limit on the number of charter schools allowed? If so, what should the limit be?
• How will charter schools be funded, and how will funding be distributed to them?
• What types of entities can apply to create a charter school, and how will the application process work?
• What types of entities will authorize, monitor and close charter schools?
• What should trigger charter school closures?
• Which state regulations that apply to traditional public schools should also apply to charter schools, such as rules about contracting and purchasing?
• Can charter school teachers unionize?
• What kinds of training or certifications should charter school teachers have?

State policymakers must consider many other issues, such as student transportation, responsibility for maintaining charter schools’ buildings, whether to allow online charter schools and whether charter school teachers can participate in public school teachers’ retirement systems. Our 10 Questions for Policymakers is designed to help elected officials, administrators and staff members think through these and other questions about charter school policies in their jurisdictions.

What do charter school authorizers do?

While states set many of the rules for charter schools, authorizers interpret and implement those rules. The National Association of Charter School Authorizers (NACSA)—an organization that describes itself as “committed to advancing excellence and accountability in the charter school sector and to increasing the number of high-quality charter schools across the nation”—estimates that there were 712 authorizers in 2008 and 1,045 authorizers by 2013.3

When an organization wants to create a charter school, it submits an application to the authorizer in its jurisdiction. The authorizer decides whether to approve the new charter school. If an application is denied, some states have processes that allow applicants to appeal. The specifics of these appeals processes vary from state to state.4 NACSA conducts an annual survey of authorizers. In 2012–13, NACSA collected surveys from 192 authorizers. Acknowledging the
concern that some applicants to create charter schools may seek to transfer their applications to less-demanding authorizers, NACSA found that the authorizers it surveyed reported only 27 applicants for charters had transferred their applications from another authorizer. NACSA noted that some of those transfers were mandated by state regulations. However, NACSA also noted that it may have undercounted actual transfers because many authorizers did not respond to its survey.³

If an application is approved, authorizers monitor the charter school to determine whether it is meeting the goals laid out in its charter. After a certain number of years, the authorizer reviews the school and decides whether its charter should be renewed. NACSA recommends that initial charter contracts come up for renewal after five years. However, NACSA estimates that only about 32 percent of charter school authorizers followed their recommendation to grant a five-year contract term.⁴

If the charter is not renewed, the school is closed. In some states, schools can appeal if their charter is not renewed or if it is revoked before their normal review period ends.

Who are charter school authorizers?

Just as charter schools vary in many ways, so do authorizers. Most authorizers are local school districts that also oversee traditional public schools, but some are universities, nonprofit agencies or government agencies. According to NACSA, about half of authorizers oversee only a single school. But eight authorizers oversee more than 100 schools each.⁵

Most authorizers are local school districts

Number of charter school authorizers by authorizer type, 2012-13:

![Diagram showing the number of charter school authorizers by type.]

### About half of authorizers oversee one charter school

Number of authorizers that oversee the following numbers of charter schools, 2012-13:

<table>
<thead>
<tr>
<th>Number of Schools</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 or more schools</td>
<td>8</td>
</tr>
<tr>
<td>10 to 99 schools</td>
<td>96</td>
</tr>
<tr>
<td>Six to Nine schools</td>
<td>49</td>
</tr>
<tr>
<td>Three to Five schools</td>
<td>165</td>
</tr>
<tr>
<td>Two schools</td>
<td>169</td>
</tr>
<tr>
<td>One school</td>
<td>527</td>
</tr>
</tbody>
</table>


Note: 31 authorizers either oversaw no charter schools or were one of several authorizers overseeing a single school.

The work of authorizing takes time, personnel and therefore money. NACSA’s survey found that authorizers’ funds come from a variety of sources.

- 53 percent of authorizers receive fees that are deducted from charter schools’ revenues.
- 33 percent receive funding as an appropriation from their state.
- 20 percent are funded as part of the regular operating budget of their parent organization.
- 15 percent receive grants from foundations.
- 11 percent receive state or federal grants.¹

These numbers do not sum to 100 percent because authorizers often have multiple funding streams. Authorizers have an average staff of 3.3 full-time equivalent employees dedicated to charter school authorization.⁹

### How many charter schools do authorizers approve and close?

NACSA estimated that authorizers approved about one-third of all charter school applications in both 2012–13 and 2011–12. Nonprofit organizations have the highest rate of approval, at 55.3 percent. Higher education institutions and state education agencies have the lowest rates of approval, at 20.3 percent and 20.8 percent respectively.¹⁰

When an authorizer approves a charter school, they approve it only for a specified number of years. After that point, the authorizer decides whether to renew the school’s charter or close it. The charter school closure rate was 3.3 percent in 2012-13, and averaged 3.02 percent from 2008 to 2013, based on NACSA’s annual surveys of authorizers.¹¹ The National Alliance for Public Charter Schools (NAPCS) similarly found that about 3.4 percent of charter schools have been closed by authorizers annually from 2005 to 2013, based on data it compiles from each state’s department of education.¹² NAPCS is a nonprofit that describes itself as “committed to advancing the quality, growth, and sustainability of charter schools.”
The annual closure rate for traditional public schools is lower than the closure rate for charter schools. The closure rate for all traditional public schools was about 1.8 percent in 2010–11, the most recent year for which data are available, according to our calculations of data from the U.S. Department of Education.\(^\text{13}\)

According to NACSA’s survey, of the charter schools that authorizers closed, about half were closed at the end of their initial charter period. The other half of closures occurred in the middle of the charters’ operating periods.\(^\text{14}\)

Authorizers close charter schools for a variety of reasons. They may determine that a school has not enrolled enough students or that students are not doing well enough on standardized tests. They may decide that a charter school does not have enough money to continue operating or may find evidence of financial mismanagement.\(^\text{15}\) A report from the nonprofit Progressive Policy Institute notes that financial issues, mismanagement and poor academic performance are often intertwined, so it is difficult to make neat distinctions among those different reasons for closures.\(^\text{16}\)

Research on how charter school closures affect students is limited. But as with other types of school closures, when charter schools close, parents must find new schools for their children. A peer-reviewed case study of a charter school closure in Florida described the instability that the closure caused for teachers and staff, who had to find new jobs after that school closed.\(^\text{17}\)

**Why are some states’ charter laws more flexible than others?**

Some states have revised and changed their laws over the years. The non-partisan Education Commission of the States has a database of state charter policies that shows how much state laws vary on a range of issues, including funding and authorizing procedures.\(^\text{18}\)

Over time, some states have given charter schools more flexibility—for example, by allowing them to open schools with a greater variety of curricula. A group of university-based and think tank researchers tried to figure out why some states’ charter laws are more or less flexible than others.\(^\text{19}\) Analyzing data from 1991 to 2006, they developed a statistical model showing that states with more teachers who were members of the National Education Association—a union representing teachers and school staff—and states with more Democrats in their legislatures tended to have less flexible charter laws. However, low high school graduation rates and low SAT scores were unrelated to how states designed and implemented charter school laws.\(^\text{20}\) An academic study of the spread of charter schools from district to district in Florida similarly found that growth in charter schools was driven more by political dynamics than by any measurable educational needs among students.\(^\text{21}\)

Perhaps surprisingly, three political scientists using data from 1991 to 2002 found that more charter schools were likely to open as state charter accountability rules became stricter. However, they also found that states that had made their application and authorization processes more flexible tended to have more charter schools.\(^\text{22}\) We do not know whether those associations between number of charter schools and accountability and application rules have persisted in the years since 2002.
Is there evidence that growth in charter schools leads to closures of traditional public schools?

Closure and consolidation of traditional public schools have often been justified as a way to reduce costs and improve teaching and learning. Critics have for many years expressed concern that charter schools, vouchers and other choice programs threaten traditional public schools. Most states that allow charter schools also allow traditional public schools to be converted into charters. Some charter advocates have argued that failing urban traditional public schools should be replaced with charters. Under President Obama’s 2009 Race to the Top initiative, states and districts are encouraged to consider having charter schools take charge of the staff and leadership in traditional public schools that are deemed to be underperforming. But as of 2013, no systematic empirical research done by means of observation or experimentation has looked at the closing and opening of public schools within a single district, let alone found a causal relationship between closing traditional public schools and opening charters.

However, closing traditional public schools can become occasions to create new schools of various types, including charter schools. After Hurricane Katrina closed New Orleans schools in 2005, many traditional public schools were closed permanently. Many charter schools subsequently opened, and several of those were located in refurbished buildings that had formerly housed traditional public schools. From 1996 to 2010, the Chicago Public Schools district closed 44 schools that it deemed to be performing poorly. During the 2000s, 86 new public schools opened in Chicago, including a mix of charters, magnet schools and traditional public schools. Some of those new schools opened in buildings that had previously housed traditional public schools. Qualitative research in Chicago in 2012 found that community organizers were wary of neighborhood schools being replaced with charter schools, which they believed would pull the best students away from traditional public schools. In 2013, the Chicago Public Schools district closed another 50 traditional public schools, citing a decline in enrollment. These closures sparked protests, particularly when the Chicago Public Schools district subsequently invited proposals to create new charter schools.
Notes


18 Karanxha, “When the “Dream” Turns into a Nightmare,” (2013). http://eag.sagepub.com/content/early/2013/03/14/0013161X12471832


