



IMPROVING OVERSIGHT OF MICHIGAN CHARTER SCHOOLS AND THEIR AUTHORIZERS

This paper accompanies a longer paper, *Improving Oversight of Michigan Charter Schools and Their Authorizers*. That paper is available at <https://crcmich.org/publications/improving-oversight-of-michigan-charter-schools-and-their-authorizers>

Key Takeaways

1. All schools are judged on performance, but charter schools replace the democratic accountability historically used for traditional school districts with market accountability. The idea is that successful schools will thrive and drive innovation in education and unsuccessful schools will close; however, strong oversight is needed to ensure the productive use of public resources and the well-being of children.
2. Responsibility for charter school oversight in Michigan has been largely delegated to the entities that authorize the schools, 87 percent of which are universities and community colleges. Neither the state superintendent nor other state officials have significant oversight powers over authorizers and the important responsibilities entrusted to them, creating a disconnect with the public and reducing accountability.
3. Enhanced oversight of the authorizers is key to good oversight of charter schools. Several steps could be taken to strengthen oversight of the authorizers: the state superintendent could adopt administrative rules that set out requirements for the authorizers and provide better oversight, the legislature could enact statutes that define oversight expectations and responsibilities, and the legislature could make charter school authorizing a privilege that must be earned and maintained.

Summary

The Citizens Research Council of Michigan embarked on this research at the request of the Levin Center at Wayne Law with the goal of examining public oversight of Michigan charter schools and their authorizers and found that it is very difficult to determine the level of oversight that currently exists due, in part, to multiple issues associated with the system created to authorize these types of public schools. We can conclude, however, that while authorizers of charter schools are currently providing some degree of oversight, the degree and quality of oversight is unknown and not available to the public, because oversight of the authorizers is lacking. This is a problem since charter schools are providing public education services with tax dollars.

Oversight is an integral part of governance that has come to be overlooked in many ways. In broad terms, oversight refers to:

- Holding administrators and officials accountable for their actions
- Ensuring sound stewardship of public resources (both monetary and the public trust)
- Ensuring adherence to objectives and procedural standards established by law, regulation, or other means
- Avoidance of harm (in this case both the potential harm of receiving a substandard education and the potential harm that might come from unsafe buildings, bullying, or other physical harm)

OVERCOMING BARRIERS FOR THE UNDEREMPLOYED

As it relates to delegation of the responsibility of education and the enactment of laws for the execution of that responsibility, oversight should provide assurances that a quality education is being provided, that public money is being used prudently and effectively, and that children are not put in harm's way in the environments used to provide educational services.

Inherent in oversight is accountability, which can take many forms. Democratic accountability helps to provide public oversight of traditional public schools, but is generally lacking with charter schools. Instead, charter schools rely on market accountability, but it alone is not sufficient to provide quality charter schools and it does not provide public oversight. Legal accountability, or compliance-based regulation (also referred to as "checkbox" oversight), is present for all public schools, but its focus on inputs rather than outputs can provide the façade of accountability while hindering true oversight. In addition to compliance-based regulation, charter schools must meet standards set by their authorizing bodies. The lack of public accountability in place for most of those authorizing bodies (i.e., universities) means the public cannot easily know about the rigor of their oversight activities. Without public accountability, the value of the oversight is minimal.

Beyond the existence of these different types of accountability in the charter sector, true oversight

requires formal processes to hold schools and authorizers accountable coupled with a proper mix of incentives and sanctions. It also requires transparency, timeliness, and efficiency to be effective.

A number of oversight mechanisms are used to monitor charter schools, but it is difficult to know the rigor with which the authorizers are engaging in oversight activities because Michigan's law does not explicitly state how authorizers should hold schools accountable and does not include many oversight mechanisms for the authorizers themselves. It is not clear how active each authorizer is in helping the schools' boards of directors and administrators to identify and steer clear of pitfalls. It is not clear to the public how schools are held accountable for their actions short of revoking the charters. It is difficult to know how the authorizers are using funds made available to them; how private management companies use the public dollars they receive; and what protections are in place to keep individuals from enriching themselves with the public funding.

The public is generally not made aware of how authorizers decide to charter a school, coordinate the siting of schools, or decide to renew or revoke a charter. Oversight of public education is necessary; leaving oversight responsibilities to charter authorizers without public oversight of the authorizers and their diligence in monitoring their schools is inadequate.

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Strengthen Oversight of Charter Schools

Charter schools are subjected to oversight from their authorizers, as well as limited oversight from the state government. The state can force the closure of the lowest-performing schools and the state superintendent can “suspend” authorizers that are not engaging in appropriate oversight and monitoring of their schools, but this authority is without clear definitions on its scope and extent. All power given to the Michigan Department of Education (MDE) and state superintendent is without explicit standards or consequences and that limits its effectiveness.

MDE, like many state departments, approaches oversight as an exercise in “checkbox” accountability. Are the statutorily required provisions included in the charter contract? Is the charter board free from influence from the education service provider and representative of the community being served? Did the schools finish the school year with surpluses? What percent of students in the authorizers’ schools rated proficient on the state’s standardized test? However, if regulations are not adhered to or the education provided is below expectations, the state has no real power to take action against schools or their authorizers, leaving the state with hollow oversight powers.

How well authorizers oversee their schools by holding them accountable for meeting legal requirements and performance goals written into their charter contracts depends on the authorizer. It is difficult to speak broadly about the efforts of Michigan’s authorizers to ensure accountability of the schools they charter, because there are so many of them (40) and they represent variety of organizations. Some charter schools may be subject to intense oversight from their authorizers with systems of clear rewards and sanctions, but if oversight activities are not “public,” they fail to fulfill the goal of oversight.

Increased oversight of charter school authorizers by the state government would lead to increased oversight of the schools themselves, as authorizers that are not committed to strengthening and growing successful charter school models through public oversight would not be allowed to charter schools.

Regulations

Accountability and regulation are not the same thing. Accountability mechanisms can consider cognitive and non-cognitive outcomes and can include holistic evaluations that reflect student and parent input. Regulation is more compliance and input-based. Charter schools may be subject to more regulations than traditional public schools (due to requirements placed on charter schools by authorizers in addition to state law), but it is not clear that these additional regulations provide better results. That is not meant to pass judgment on the academic achievements of charter schools relative to their traditional public school counterparts, but rather a commentary on the diffusion of oversight responsibility among multiple actors that may obfuscate public accountability.

The charter school sector in Michigan has not been geared toward innovation, but rather replication. This lack of differentiation and innovation might be attributable to Michigan’s accountability structure, or more likely, its regulatory compliance framework. Allowing charter schools more flexibility around compliance-oriented regulations and associated reporting requirements would allow differentiation in the educational market. Over-regulation stymies innovation and can cause schools to become more risk-adverse, especially under a regulatory regime that emphasizes test scores and checkbox oversight. School accountability mechanisms should focus on outcomes, not inputs.

Regulations can also create barriers to entry for certain charter schools. Smaller, self-managed schools may find it harder to navigate the regulatory environment and succeed, compared to larger network-based schools that have greater capacity and experience to manage compliance-oriented regulations. Over regulation can discourage aspiring schools from applying for a charter in the first place.

While charter schools may be subject to many of the same regulations as traditional schools, they are not subject to the same level of public oversight as traditional schools. The focus of policymakers should

be to address that. Improving oversight will work to make the charter schools better. Public oversight of charter schools does not require that charters comply with all the same regulations as traditional schools, but does require a focus on outcomes and transparency and timeliness in reporting those outcomes.

Education Service Providers

Perhaps the most contentious aspect of charter schools in Michigan is the use of education service providers (ESPs, also referred to as management companies). These are for-profit, private companies and not-for-profit organizations that specialize in some or all aspects of a school. Some ESPs solely provide back office services, others are fully engaged in the classroom provision of education services, including the supply of teachers.

Michigan charter schools rely on ESPs to a greater extent than other states for operation of the schools, staffing the classrooms, and many other aspects.

Inherent in that relationship is a trust that private companies and not-for-profit organizations will efficiently use public resources for their intended purposes. A lack of transparency related to the actions and finances of the ESPs diminishes that trust.

Michigan collects data from traditional school districts and charter schools that purchase services in an amount equal to, or greater than, 50 percent of their general-fund current operating expenditures. This is a very high threshold relative to the significance of the role of these third party vendors and relative to disclosure requirements in many other states. The extent to which charter school operators in Michigan contract with ESPs suggest that greater transparency would be highly beneficial. While the state may wish to minimize the reporting requirements for de minimis amounts spent on ESPs, that protection should be far below the current 50 percent threshold. And reporting requirements should apply to all finances involved in contracts, not only the amounts at specified thresholds.

Strengthen the State's Power over Authorizers

Oversight without the threat of sanctions is just monitoring. In order for the state government to provide meaningful oversight over the charter school authorizers, the autonomy of the universities and community colleges involved in authorizing must be altered.

Improving the practice of existing authorizers is possible, but will require the authorizers to answer to the state for their actions and the performance of the charter schools they have authorized. The current structure of higher education in Michigan provides a great deal of autonomy to universities and community colleges and does not allow for incentives or penalties to encourage compliance. The options before state policymakers then, is to change the structure or to alter how the charter school system works in this structure.

This has been a common exercise among the states. Fourteen states have created independent chartering boards and fourteen states have enacted authorizer oversight or accountability policies in recent years.

Change Who is Able to Authorize Charter Schools

The most drastic option is to change who is able to authorize charter schools. This report documents the inability of the state government to cause meaningful changes to the governance of universities or to affect governance decisions. The report also discusses the best practice of having multiple entities able to authorize charter schools and for local school districts to possess that ability. Some states have vested chartering authority with their state board of education. In Michigan that is complicated by the independence and autonomy the state board enjoys relative to the rest of the executive and legislative branches. Some other states have created an independent state department with the sole responsibility of overseeing authorizers and authorizing schools when others choose not to. The research for this report did not produce evidence that the current authorizers were negligent in their activities. The problem is we simply don't know. This would therefore be a drastic change not necessarily warranted by current circumstances.

Adopt Administrative Rules

The state superintendent of public instruction has the powers to suspend authorizers' ability to open new schools, but Michigan suffers from an absence of administrative rules that would clarify what conditions warrant suspension of this ability, an appeals process, and a means of ending a suspension. Twenty-five years after the law enabling charter schools was enacted, it is time to draft those administrative rules and take action if authorizers have schools that are failing the students enrolled in them.

Reduce Autonomy

It may be necessary to amend the state Constitution for the state to have any real oversight of the university charter school authorizers. The Michigan Constitution creates a system of higher education in which each institution is independent of the others and the whole system is independent of the state (except for the power of the governor to appoint board members to all but three universities). Should MDE attempt to engage in the type of oversight discussed above, that autonomy may cause one or more universities to resist intrusion of their constitutionally-granted autonomy.

Additionally, a governor or legislature down the line may wish to alter the oversight rigor of the state government, only to be met with the reality that MDE is most directly governed by the independently elected state board of education and the superintendent is appointed by that board. This provides democratic accountability and the authority to provide public oversight, but it leaves a weakened chain of command within the structure of state government.

Most of the other states that have increased public oversight of charter authorizers have done so by granting explicit oversight responsibilities (e.g., accreditation, evaluations, reporting requirements, etc.) to state actors like the state board, superintendent, and department of education in state law.

Authorizing as a Privilege, Not a Right

In Michigan, charter school authorizing tends to be viewed more as a right than as a conditional privilege. Outside of the state law prescribing which bodies are

eligible to grant charters, there are no barriers to entry for authorizing. The authority to charter schools is not conditioned on authorizers being able to demonstrate experience, effectiveness, or the capacity to engage in this work. The state does not have systems or policies in place to certify or approve who can authorize schools. There are no minimum standards that must be met. Similarly, with the exception of restrictions placed on authorizers opening new schools in Detroit, authorizers do not need to be accredited to open new schools.

This “by-right” approach to authorizing creates a roadblock to serious accountability. Further, there is no formal and regular evaluation of authorizers once they have begun granting charters. Neither state law nor the coordinated efforts of the authorizers limit which authorizers may charter new schools or the operators of those schools. In many respects the Michigan model diverges from other states where authorizers are required to meet minimum quality thresholds to both begin the work of opening new schools as well as remain in the business of granting charters.

Michigan should emulate the reforms instituted in several other states to make authorizing a privilege to be earned and maintained. Michigan law establishes the types of educational institutions that may authorize charter schools, but that does not mean that they are all capable or have the inclination to perform all tasks involved in authorizing and overseeing charter schools.

Accreditation Requirements for All Authorizers

In Michigan, accreditation is expected only of authorizers that wish to charter schools in Detroit. Accreditation is important because it conveys to customers – people potentially enrolling in schools chartered by that authorizer and the general public – that the entity meets or exceeds general expectations of quality.

In the absence of a state requirement, the Michigan Council of Charter School Authorizers (MCCSA) has adopted oversight and accountability standards under which the authorizers in the group have voluntarily agreed to operate. While creation of the MCCSA and adoption of standards is commendable, the goal is

not to have the overseen policing themselves. It is the state's responsibility to oversee the authorizers and ensure some levels of quality.

Living up to standards should not be voluntary. Furthermore, it is the duty of state policymakers to define expectations. What is good for authorizers of schools in Detroit is good for authorizers for schools throughout the rest of the state. Accreditation should be expected of all charter school authorizers.

Improve Authorizer Oversight Activities

Accountability and oversight of authorizers in Michigan has been lax. Accountability with clear roles for state actors and explicit expectations and sanctions for authorizers is needed. Without transparency, the public will not know about the authorizers and schools that are succeeding or those that are failing.

Statutorily Define Oversight Responsibilities of Authorizers

Most states put authorizer oversight responsibilities in state statute. Michigan's charter school law directs the authorizers to provide oversight of their schools, but the law has left to the authorizers the nature and rigor of those oversight activities. Other than several forms of checkbox accountability, it does not require authorizers to meet any specific standards, either to begin chartering or to remain as an active body.

The activities and responsibilities of authorizers should be clearly spelled out in state law. Recommended provisions of the model law related to authorizer accountability include:

- Registration process for local school boards to affirm their interest in chartering to the state
- Application process for other eligible authorizing entities to affirm their interest in chartering to the state
- Authorizer submission of annual reports, which summarizes the agency's authorizing activities as well as the performance of its school portfolio

Appeals Processes

Another form of accountability that is lacking in Michigan is allowing for appeal of charter decisions to a higher authority. State law in Michigan explicitly states that authorizer decisions are final; the only possible form of "appeal" is that the MDE can force revocation of a charter for consistently low-performing schools. In order to effectively implement the reforms discussed above, there needs to be a process for appealing authorizer decisions.

- Regular review process by authorizer oversight body
- Authorizer oversight body with authority to sanction authorizers, including removal of authorizer right to approve schools

These provisions are intended to 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. Michigan should amend the Revised School Code to clearly define the oversight responsibilities of charter school authorizers.

Define State Government Responsibilities

The state is providing primarily compliance-based regulation (legal accountability) of the charter school authorizers. It is not clear that much can be done to truly strengthen the state's hand in performing this function without some amendments to the charter school law.

Administrative rules should be drafted that would allow the superintendent to use the statutory powers granted to that office to identify the specific criteria that would be used to establish an "at-risk" authorizer list, the minimum performance thresholds of the authorizers' school portfolios, and an appeals process for authorizers to challenge the superintendent's actions. The rules also should provide clarification for conditions or actions that would enable authorizers to end their suspensions.

OVERCOMING BARRIERS FOR THE UNDEREMPLOYED

Beyond this first step, things could get complicated. In many other states, when the state government is not responsible for authorizing charter schools, the state has real power to monitor and oversee the authorizers.

According to the National Association of Charter School Authorizers (NACSA), a state-level accountability system for authorizers should include:

1. Rigorous application, selection, and approval processes for authorizers
2. Annual public reporting on authorizer and public charter school performance and regular state review and evaluation of all authorizers
3. Mechanisms for sanctioning underperforming authorizers and terminating authorizers that fail to meet quality standards and performance expectations.

NACSA recommendations to improve Michigan's law include requiring authorizer evaluations, strengthening authorizer sanctions, instituting a strong renewal standard, and requiring all authorizers to use performance frameworks. Michigan is the only state with multiple non-school district authorizers that does not have an authorizer evaluation explicitly in state policy. A fully developed system of authorizer evaluations would allow for explicit sanctions for underperforming authorizers, including the ability to revoke an authorizer's authority to issue new charters and oversee existing schools. State law and/or administrative rules should clearly spell out the powers of MDE and the state superintendent to oversee the charter school authorizers. The factors for which authorizers will be held accountable and the consequences for failing to live up to expectations should be clearly delineated.

Sunshine Laws

Michigan's sunshine laws do not do enough to create accountability for charter school authorizers. States tend to ask for "bean-counting" reports that show compliance with regulations rather than true transparency on how authorizers monitor schools, ensure school funds are spent appropriately, and spend their own public dollars related to charter authorizing.

Illinois, Indiana, and Minnesota have all amended their charter school laws recently to enhance reporting requirements and transparency. Michigan could adopt some of these practices and require authorizers to submit regular reports to the state on activities related to authorizing and monitoring their schools.

Public Funding Dedicated to Authorizer Oversight

MDE will need enhanced funding if it will be asked to provide greater oversight of charter authorizers. Increased state appropriations would be needed for regular evaluations, site visits, greater reporting on charter authorizers and their portfolios of schools, the implementation of rewards and sanctions, and the staff to complete these functions. This will require the state legislature to appropriate the necessary funds for increased oversight of charter authorizers by the MDE.

Review Finances of Administrative Fees

Michigan's charter school sector has been operating for 25 years with authorizers entitled to withhold up to three percent of the state aid distributed to their charter schools for administration and oversight responsibilities. The lack of transparency or power for the state to audit the authorizers leaves state policymakers and the public unable to evaluate the sufficiency of that funding source.

Independently prepared financial reports should be required of the universities' charter school offices and authorizer-related activities for the other entities. The authorizers should be required to file them with the state and the state should actively review the audits to understand how the administrative fees are used. With a few years of audits on hand, the legislature should revisit the three percent fee to consider whether it needs to be adjusted.

Authorizer Hopping

The abundance of entities authorized to charter schools and the lack of coordination or oversight of the system makes Michigan especially susceptible to authorizer hopping. Authorizers have been aware of this ability and individual actors have worked

hard to enforce internal accountability that improves practice across the spectrum of authorizers. Still, the oversight that does exist is weakened when potentially weak schools can escape stringent accountability and possible closure if they are able to start fresh with new authorizers.

Authorizers accepting switches when the schools otherwise would be subject to revocation of their charters should be considered to be perpetuating failing schools and that action should count against them just as if the schools were authorized by them in the first place.

Conclusion

The argument for changing the charter school oversight system is simple: the costs of failure are too great. The success, or lack thereof, of all our schools, traditional and charter, impact the lives of our children and the economy of our state. The charter school movement expanded the actors involved in public K-12 education to include charter authorizers, new schools, and, in some cases, private education management companies. If we want accountability from these entities that now play an established role in providing a public education, then we need public oversight.

It is clear that charter school authorizers are engaging in some levels of oversight, but the rigor of their actions is less than clear because of the number of entities that can participate as authorizers and the autonomy from direct state oversight granted to the universities that are the most active participants in the charter school sector. Creating thoughtful authorizer oversight requires deliberation and care and will take effort from state policymakers as well as current and future authorizers.

Siting Schools

Without a change in who is authorized to charter schools, the siting of schools in Michigan, especially in Detroit, will continue to appear haphazard and disjointed. The alternative is to diminish the autonomy authorizers have to work with potential school organizers. A rigorous application, selection, and approval processes for authorizers would be a positive change to strengthen oversight. Such a change could include a requirement for coordination and consultation with the host city or township about siting before opening new schools.

The ability to expect proactive oversight out of the Michigan Department of Education and the state actors involved in public education would require a sea change in their approaches to oversight, sufficient state resources to carry out any new oversight responsibilities, and perhaps constitutional and/or statutory changes to current law. It also requires that those actors involved in providing public education through charter schools, whether school operators or authorizers, be committed to oversight. This can be accomplished through state laws explicitly requiring these actors to comply with requirements that will increase public oversight of their activities.

Without public oversight, charter schools may or may not be operating within the confines of state law and successfully educating students, but we have no way of knowing of failure until it is too late and it has irreversibly impacted the children and families involved and the economic well-being of our state.

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