

Authorizing Matters

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Issue Brief

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The Terms of the Deal: A Quality Charter School Contract Defined

Introduction

Man, an animal that makes bargains.¹

A contract is about commitment and responsibility. It is about the commitment that two or more parties make and the responsibility to deliver on those commitments. When school developers and authorizers turn a charter application into a contract, the relationship transforms: it shifts from aspiration to expectation and from theory to practice. The charter application contains the aspirations and theories of what the school can be. The contract defines the practical expectations for what, in fact, the school will become.

The contract is the embodiment of the autonomy-for-accountability bargain and the commitments of both parties. The authorizer commits to entrusting public dollars and public school students to the independent governing board of the school. It also commits to giving the governing board more flexibility in how it operates the school than is afforded traditional public schools. In return, the school's governing board commits to handling the funds responsibly, complying with its legal obligations, and educating the students well.

NACSA's *Principles and Standards for Quality Authorizing* state that a quality authorizer "negotiates contracts with charter schools that clearly articulate the rights and responsibilities of each party regarding school autonomy, expected outcomes, measures for evaluating success or failure, performance consequences and other material terms."

The contract is what makes school-based autonomy and accountability real and thus is critical for making

the charter school concept work. This Issue Brief² presents the legal framework in which the contract operates, the categories that the material terms should cover, and limitations on the scope. The purpose is to provide the reader with an overview of how to develop a quality charter school contract.

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External Authority

Justice requires that to lawfully constituted authority there be given that respect and obedience which is its due.³

Contracts do not exist in a vacuum. Authorizers and schools operate under the shadow of laws and regulations. Charter schools operate within a multi-layered legal framework that typically includes federal law, state law, local codes and school board policies.

At the same time, charter schools are often intended to be exempt from many laws and regulations that constrain the operation of traditional public schools. It is important for the parties to understand and be able to determine which external rules apply and which do not. For that reason, the contract should recognize and identify the external authorities that are relevant to the school's operation.

Federal Law. Charter schools are not exempt from federal education- and civil rights-related law including No Child Left Behind (NCLB), the Individuals with Disabilities Education Act (IDEA), FERPA (education records privacy), Title VI (civil rights), Title IX (sexual harassment), and ADA (disabilities). The contract should, at a minimum, identify federal laws to which the school is subject. To the extent that the state has developed specific requirements related to the implementation of NCLB, those should be included in the contract.

State Law and Regulation. In contrast to the uniform application of federal law, the applicability of state law and regulation to charter schools varies widely. In some states such as Arizona, charter schools have an automatic waiver from many state laws and regulations that constrain the decision-making authority of traditional public schools. In other states, such as Colorado, charter schools may receive waivers based on a satisfactory explanation of the

reason. In still others, schools are presumed to be subject to all relevant education laws unless the charter law specifically provides otherwise.

Whatever the availability of waivers, the following are among the categories of state law and regulation that typically apply to all charter schools:

- Health, safety and welfare
- Civil rights
- State testing and accountability
- Open government (public records and meetings)

The contract should explicitly identify the state law and regulations with which the school is expected to comply.

Authorizer Requirements. Particularly in the case of school district authorizers, it is sometimes within the authorizer's discretion to determine which, if any, of its policies and procedures will apply to charter schools. For example, it may be up to the authorizer to decide whether protocols and procedures for reporting performance information that apply to traditional public schools will also apply to charter schools. The contract should identify which authorizer policies and procedures are applicable.

The contract should explicitly identify the state law and regulations with which the school is expected to comply.

The *Authorizing Matters* Issue Briefs are a publication of the National Association of Charter School Authorizers, a professional resource for authorizers and public education officials working to achieve quality through new public schools. NACSA broadly disseminates each Issue Brief in print and electronic forms. Additional printed copies are available by request.

Your comments, questions and suggestions about this brief or the series are welcome.

Charter Application. The charter application is not the same as the contract. The application contains a blueprint for the school as conceived by the founding group; however, not every part of the application need be part of the contract. Only those pieces that are integral to the school's identification or operation, such as the school's mission, location, educational philosophy and program, should be incorporated. In general, components of the application that are material to the school's operation and form the basis on which the authorizer will hold the school accountable should be incorporated into the contract. The topic of materiality is discussed in more detail, below.

Material Terms

A lean agreement is better than a fat lawsuit.

The contract should present the material terms (see “*What is a Material Term?*” below) in an organized way that is coherent and easy to reference. In its work with authorizers like the Recovery School District in Louisiana and the Florida Schools of Excellence Commission, NACSA has used the following categories for material terms.

Recitals. This introductory section should reiterate the purposes of the charter school law, the authority of the authorizer and the school to enter into an agreement, and the circumstances under which the contract is being entered (such as the date and status of the application approval). Typically, the recitals are presented as a series of “Whereas ...” statements.

Establishment of the School. This section should define the circumstances of the school’s existence, including affirming legal status of the school, authority of the signatories, and restrictions or requirements that apply to the school’s governing body. The authorizer should be contracting not with an individual or group of individuals but with an entity that is legally defined and established consistent with the state’s charter school law. In most states this entity must be a not-for-profit corporation.

The section on Establishment of the School should also identify the school’s location.

Operation of the School. This section typically begins with the school’s approved mission statement, either by stating it or by reference to the approved application. It should also address governance issues such as the requirement that the governing board adopt legally valid bylaws; operate consistent with those bylaws; and hold open meetings consistent with statutory transparent governance requirements.

The application should serve as a constant reference for the school’s operational requirements. The application will often have addressed issues such as the grade ranges and number of students, student recruitment and enrollment

practices, the school calendar, student discipline, handling of student records, and various assurances related to how the school will operate. In most cases, the contract can reference relevant parts of the approved application or applicable law. However, even where a topic has been addressed in the application, the contract term may require more specificity. For example, the application will likely specify a target enrollment number, but the contract should also address the degree of variation from that number (either above or below) that will be treated as material compliance. Similarly, the typical application will present a discipline plan that ultimately needs to be translated into a formal policy. The policy is what should be incorporated into the contract. In this way, the approved application serves as a constant touchstone for the contract without being assumed to have fixed the exact terms of that agreement.

School Financial Matters. Schools are entitled to clarity around the funding process and amounts, particularly when the funding flows through the authorizer. The School Financial Matters section should document the funding process and calculation from enrollment reporting to the funding formulas, to the schedule for funding transfers.

Schools should know the authorizer’s expectations with respect to financial management and records. To this end, the section on School Financial Matters should address annual audit requirements, reporting requirements, asset ownership, and asset disposition in the event of school closure.

Personnel. Charter schools usually have a great degree of autonomy over personnel matters. A standard personnel provision expresses the charter school’s election to have “at will” employment. Other Personnel provisions address background check requirements and restrictions for school employees, certification requirements for teachers and para-professionals consistent with the No Child Left Behind Act, and a requirement for the adoption of employment policies. On the whole, the school’s broad authority to han-

WHAT IS A MATERIAL TERM?

“Materiality” is one of those rare legal concepts whose legal meaning is both straightforward and has remained generally consistent with common usage. Something is material if it is relevant and significant to the outcome. For example, a material witness is someone who has information relevant and significant to determining the guilt or innocence of the defendant. For charter schools and authorizers, the relevant outcome is a renewal decision. So consideration of whether a charter contract term is material hinges first and foremost on whether it would be relevant and significant to the authorizer in making a renewal decision.

dle personnel matters means that the Personnel section should be relatively brief.

Charter Term, Renewal and Revocation. The charter school contract should state the length of the charter term. This section should also provide guidance regarding the basis on which the authorizer will make a renewal decision, the circumstances that may warrant revocation, and authority for the dissolution of assets in the event of school closure.

Operation of the Contract. There are typically a number of standard provisions that clarify how the contract itself will operate. These include indemnification, notice, waiver, severability, assignment, dispute resolution, amendment, and merger (entirety of the agreement). Most of these are generic legal terms for which legal counsel can provide standard language. However, the definition of and procedure for contract amendment and dispute resolution require authorizer input and judgment.

For amendments, the standard typically requires amendment for material changes to the contract. Some authorizers have an annual contract review process so that contract amendments can be made on a regular schedule rather than piecemeal. With respect to dispute resolution, the authorizer and the school should have an understanding and agreement on a procedure for resolving disputes. The procedure will vary depending on the nature of the authorizer. For example, a school district will likely have a different procedure than a not-for-profit or an independent authorizing agency.

Authorizer Policies. In many ways the heart of the contract is the policies and practices that should be included as exhibits. The policies and practices should document the authorizer's expectations from pre-opening through renewal decisionmaking. They should provide a road map for the school of the authorizer's expectations and of what the consequences may be for failure to meet those expectations.

Following are policies that the authorizer should establish and incorporate into the contract:

School Evaluation Framework: presents the performance standards that will provide the basis for renewal decisions based on state, federal and charter requirements.

Pre-opening Procedures: sets expectations for the start-up process and helps schools understand what steps are needed to be prepared to open in an organized, effective fashion.

There are typically a number of standard provisions that clarify how the contract itself will operate.

Financial and Attendance Reporting: establishes clear timeline and content expectations for financial and attendance reporting.

Scope of Independent Audit: defines the appropriate scope of an independent charter school audit.

Comprehensive Educational Services Contract Requirements: establishes a contract review checklist designed to ensure that both the charter board and the authorizer retain authority to fulfill their legal rights and responsibilities under the charter and applicable law.

School Intervention Protocol: documents the circumstances and process by which the authorizer may intervene when the school is not fulfilling its contractual obligations.

Renewal Decision Making Protocol: Documents the process by which the authorizer will make charter renewal decisions.

School Closure Protocol: documents procedures for orderly, structured closure of a school following a nonrenewal or revocations decision.

The Balancing Act, Part I: Means and Ends

When you're committed to something, you accept no excuses, only results.⁵

In developing a charter contract, it is important to distinguish between means and ends. Means are about *how* things get done. They address process. Ends are about *what* the school ultimately accomplishes. They are about results.

The following table briefly illustrates the distinction between means and ends in the context of the charter school contract:

PERFORMANCE CATEGORY	MEANS	-->	ENDS
Educational Performance	Curriculum implementation; daily schedule; quality of instruction	-->	Student outcomes
Financial Performance	Financial management systems	-->	Financial position (reserve); audit results
Organizational Performance	Student recruiting; fundraising	-->	Enrollment; facility quality

It is central to the charter idea that schools be judged not on how they operate but on what they achieve. Charters are intended to have a great deal of autonomy and flexibility when it comes to the means: the educational and operational processes. The inherent tension is that most efforts to ensure educational equity and fairness, such as civil rights laws or the Individuals with Disabilities Education Act (IDEA), focus on procedure. Therefore, the charter contract must substantially regulate the area where charters are intended to have the most autonomy.

The focus on process or means is necessary not only because the contract is about legal compliance but also because the authorizer has a responsibility to ensure that schools are treated consistently and fairly. The authorizer must establish consistent expectations for compliance with the IDEA's procedural requirements. The authorizer must establish consistent expectations for organizational performance, such as compliance with health and safety requirements and fulfillment of the board's duty to operate as a publicly accountable entity. And the authorizer must establish common procedures to ensure that schools are treated fairly with respect to their receipt and management of public funds.

Although most requirements are designed to promote consistency and fairness, authorizers should remain cognizant that every additional compliance requirement demands

time and resources from the school and the authorizer that might otherwise be focused on educational achievement. Each additional requirement places an additional burden on both the school and the authorizer for compliance, oversight and enforcement. Each additional requirement also constrains the school's flexibility and autonomy. As such, requirements intended to prevent failure also risk impeding success. Therefore, the authorizer should weigh the benefit of any new regulations against the potential cost.

The following questions may be helpful for conducting the cost benefit analysis of a new procedural requirement:

- Is the procedure legally required for charter schools?
- If so, is there authority to grant a waiver?
- If not legally required or if a waiver is possible, is the reason for imposing the requirement compelling?
- What is the additional burden on the school for compliance?
- What is the additional burden on the authorizer for oversight and enforcement?
- Does the need for the requirement outweigh the burden on the school and the authorizer for implementation?

Authorizers should conduct this type of analysis before imposing terms that, both individually and cumulatively, constrain the means by which a school operates.

The Balancing Act Part II: Knowing When to Stop

The rest is a mere matter of detail, to be settled with judgment, discretion, and caution.

At what point does the contract have sufficient detail that the rest can be "settled with judgment, discretion, and caution"? An experienced attorney will tell you that the contract should aim to anticipate and address any foreseeable circumstance that might arise between the parties. That approach is a thorough one. However, in its thoroughness, it contradicts a basic premise of charter schools – that the

school must have flexibility to determine how best to achieve the outcomes for which it will be held accountable.

Perhaps a good test of whether a term warrants inclusion is whether a change to that term would be material (See "What is a Material Term?" on page 3). Typically, material changes to a contract require amendment. For example, the

physical location of the school is clearly material because the adequacy of the facility and the school's compliance with health and safety requirements are relevant and significant for a renewal decision. If a school changes its location, the contract should be amended to reflect the change. However, the decision to move the sixth grade math class to a different room almost certainly is not material. Similarly, most people would agree that the decision to eliminate the technology focus at a Science and Technology

school would constitute a material change to the educational program but that the decision to hold science class in the morning versus after lunch would not. If a change to the contract term would be considered material – that is, if it would be relevant and significant to the renewal decision – then it should be included in the contract. If a change would not be material, then the term might well be unnecessary in the first place.

Closing

True mastery can be gained by letting things go their own way.⁷

A sound contract gives the parties what they need to go their own way. It documents what the school and the authorizer are required to do and what the school is required to achieve. It simplifies the job of oversight,

enabling the authorizer to focus on holding the school accountable for doing what the contract requires. By defining expectations clearly, the authorizer gives the school the autonomy to be responsible for its own success.

FAQs

What is the difference between a “charter,” a “contract,” an “operating agreement,” and a “performance agreement”?

Though it depends on the authorizer and the law, the answer is often that the difference is semantic. If the authorizer uses a document to memorialize the agreement with the school then it doesn't matter whether the name for that document is “charter,” “contract,” “operating agreement,” or something else; as long as two parties have agreed to the terms and signed the document, it should be considered a binding agreement regardless of the name. Sometimes state law determines which term should be used. For example, Colorado law provides that an approved application be developed into a “contract.” In other states, common practice in the charter school community has generated a term of art. In California, for example, the agreement that succeeds and supplements an approved petition (application) has, through common practice, come to be almost uniformly labeled a Memorandum of Understanding. Regardless of the label, a signed agreement between the school and the authorizer that sets out the rights and responsibilities of each party should be treated as binding.

Although the terms are generally interchangeable, you should refer to the law and to the particular authorizer to be certain. A few authorizers distinguish specific parts of the agreement. For example, at State University of New York's Charter Schools Institute, one section of the contract with schools is a performance agreement that focus specifically on the expectations for charter renewal.

How much of the law should be referenced or included in the contract?

As with many aspects of the contract, balancing and judgment is required in deciding how much of applicable law should be specifically referenced or included. On the one hand, the goal is to make the contract a complete documentation of the parties' rights and responsibilities. On the other hand, the contract should be manageable and of practical use. If the contract fails to mention applicable law, it is clearly incomplete. If it explicitly identifies and discusses every applicable law and regulation, it will quickly become unwieldy.

Helpful guidance in managing this balance lies in the “materiality” analysis discussed above. Strictly speaking, all applicable laws are material because violation of the law can be a basis for non-renewal (or even revocation) of the charter. However, some laws are more material than others. The laws that are most directly relevant and significant should receive explicit treatment in the contract, especially if their application to charter schools is not uniform. For example, IDEA, NCLB and the state's accountability system are directly relevant and significant for evaluating educational performance, but there is legitimate variation between states and sometimes even individual authorizers or schools regarding implementation. The contract should not only reference but also discuss explicitly how those laws translate to expectations for the school's operation and performance.

For other laws, the obligation to comply may be similarly significant but the performance expectations may be more commonly and consistently understood. For example, most charter school laws require that a school conduct an annual independent audit. There are well-established professional standards for how to conduct an independent audit of a not-for-profit organization, and there are professional performance standards for the results. In that case, it may be sufficient for the contract simply to state the legal requirement that the school have an annual independent audit conducted by a certified accountant and state the performance expectation that there not be any significant findings.⁸

At the other extreme, there are laws and regulations whose materiality is more a matter of cumulative effect than of individual compliance. For example, charter schools are subject to myriad building codes and regulations. Violation of any one of those codes is, technically, a violation of the law and, therefore, grounds for nonrenewal or revocation. However, short of serious health or safety violations, it is difficult to imagine non-compliance with a single building code having comparable weight in a renewal decision to violation of the IDEA or state accountability requirements. A general contractual reference to compliance with “all applicable law” should be sufficient to incorporate any and all legal requirements that are likely to become significant only in the event of cumulative non-compliance.

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What is the status of the charter application once the contract is signed?

It is helpful for the contract to address the status of the approved application. Some contracts incorporate the application by reference. The benefit of this approach is a clear indication of the charter's status. The limitation is that the application typically contains much content and a level of detail that is not ultimately relevant to the contract. Ideally, a contract will incorporate only the parts of the application that are relevant to how the authorizer will ultimately evaluate the school.

What is the best way to handle contract amendment?

Contract amendment should be approached cautiously. It can be a time consuming and administratively burdensome process, especially for an authorizer that operates within a larger bureaucracy like a school district. In addition, frequent revision undermines the parties' ability to rely on the expectations that were established at the beginning of the charter term.

Yet changed circumstances sometimes make amendment necessary. One way to minimize the administrative burden is to give authorizer staff the authority to approve changes pending ratification by the governing board. Another is to establish an annual process for reviewing and amending contracts so that the contract can be reopened and amended, if necessary, at one time rather than piecemeal throughout the year.

What happens when something is not clear in the contract and the parties are in disagreement?

The contract should establish a dispute resolution procedure. As with other terms related to implementation of the contract, the dispute resolution procedure can generally be a standard term that is the same for all schools. A standard approach to dispute resolution helps to ensure legal compliance as well as consistency and fairness in how the authorizer interacts with its schools.

Should authorizers have one standard contract template for all its schools or negotiate separate contracts with individual schools?

An authorizer that has already chartered or expects to charter more than a few schools should have a contract template from which to negotiate individual agreements. New authorizers often negotiate separate contracts with each school; however, that approach tends quickly to become impractical. Many if not most contract terms, including those related to legal compliance and state performance standards, are imposed by external authorities and are, therefore, non-negotiable. A contract template will help the parties clarify which terms are negotiable and will help the authorizer generate clear consistent agreements with each school.

ENDNOTES

- 1 Adam Smith
- 2 This Issue Brief expands on content presented by William Haft and Paul O'Neill at NACSA's 2008 Annual Conference and provides the basis for NACSA's webinar on "The Rules of the Road: Developing Sound Performance Contracts."
- 3 Pope Pius XI.
- 4 German Proverb
- 5 Art Turock
- 6 John Griffin Carlisle
- 7 Tao te Ching
- 8 Notwithstanding professional standards, authorizers in some states have found enough inconsistency in accounting practices that they have developed policies establishing minimum requirements for the conduct of an independent audit. It is always important for an authorizer to exercise independent professional judgment based on experience with and understanding of the charter school sector.

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Charter School Contracts

The **National Association of Charter School Authorizers (NACSA)** is the trusted resource and innovative leader working with educators and public officials to increase the number of high-quality charter schools in cities and states across the nation. NACSA provides training, consulting, and policy guidance to authorizers and education leaders interested in increasing the number of high-quality schools and improving student outcomes. Visit us at www.qualitycharters.org.

POLICY GUIDE

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About NACSA’s Policy Guide Series

The growth and quality of a charter school sector is largely dependent on state policies that define approval, monitoring and renewal structures, criteria and processes. NACSA’s Policy Guide series is intended to support state legislatures in developing policy environments that promote quality authorizing and high-quality charter schools. Additional copies of this Guide are available upon request.

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A charter school is a multi-year, multi-million-dollar operation in which the public authorizes a third-party to operate a public school in exchange for meeting defined, objective, measurable performance outcomes. A legally binding contract between the two parties – the charter school and its authorizer – defines the rights and responsibilities of each party and is essential for achieving the intended expectations of the relationship.

■ Background on Charter School Contracts

The charter school concept was first introduced in 1991 when the Minnesota Legislature passed the nation's first charter school law. As of this writing in 2009, 40 states and the District of Columbia have charter school legislation. While the specific characteristics and nuances of these laws vary from state to state, almost every state law explicitly or implicitly requires a charter school to enter into a contract

with its authorizer. The contract defines and protects the charter school's autonomy over key operational decisions while specifying anticipated performance outcomes. This agreement is the linchpin of the charter school concept, as it establishes and protects the rights and responsibilities of each party. A quality contract is essential to fully realizing the potential of charter schooling.

■ Key Considerations for Policymakers on Charter School Contracts

What is a "charter school contract?"

A charter school contract is the legally binding agreement executed by a charter school and its authorizing agency. This agreement stipulates the terms and conditions by which the school will operate and defines the rights and responsibilities of each party, including performance expectations and conditions for renewal. A charter school contract serves as both an administrative and performance agreement.

It is important to note that a charter school contract is not simply an approved charter school application. A charter school application is a proposed plan, prepared by one party, for the establishment and operation of a new school. By contrast, a charter contract is an agreement entered into by two parties that specifies each party's rights and responsibilities.

The contract negotiations between a charter school and its authorizer should commence immediately after a charter school application has been approved. Indeed, many authorizing agencies make approval contingent upon the subsequent execution of a con-

tract. Given its importance, a charter school should not be allowed to begin operation without an executed contract.

With which entity does an authorizer enter into a contract?

Governing authority is one of the key autonomies afforded to charter schools. State charter school law establishes that an independent governing board is ultimately legally responsible to the public for the school's operations. It is this governing body that "holds the charter;" therefore, state charter school law should require that a charter school contract be executed between an authorizer and a charter school's governing body.

What are the essential provisions of a quality charter school contract?

The key to determining what should be included in a contract is a question of materiality – a definition grounded in legal practice rather than in policy. Something is material if it is relevant and significant

to the outcome.¹ In the chartering context, a provision is material if it is significant to charter school renewal. Material provisions that should be included in a contract fall into a number of broad categories,² which states should require as a minimum foundation for charter school contracts:

- **Recitals** – affirming the legal authority of the authorizer and charter school to enter into a contract and the circumstances under which the contract is being entered.
- **Establishment of the School** – articulating the conditions of the school’s existence such as legal status and requirements of the governing body.
- **Operation of the School** – setting forth key operational terms ranging from the school’s mission and student enrollment to the educational program, school calendar, and student discipline.
- **School Financial Matters** – defining the key funding processes and provisions, and the financial responsibilities of each party.
- **Personnel** – describing the status and requirements of the school’s employees.
- **Charter Term, Renewal and Revocation** – stating the length of the charter term and conditions for renewal and revocation.
- **Operation of the Contract** – describing how the contract will be upheld and enforced, addressing procedures ranging from contract amendment to dispute resolution.
- **Authorizer Policies** – presenting, often through exhibits, the authorizer’s policies, practices, and expectations for the charter school from pre-opening through the renewal decision. This section should include the authorizer’s evaluation framework and clear, measurable performance standards and expectations for the charter school. In many ways, these policies and expectations might be considered the heart of the contract.

As a matter of practice, many of the terms and provisions in a charter contract will be consistent or similar

for all schools that an authorizer oversees. However, there may be specific terms that the authorizer negotiates with a given charter school due to that school’s particular design or circumstances. For example, a high school serving dropouts will have different expected outcomes from an elementary school. In order to systematize their practices, authorizers typically develop a contract template that contains the “boilerplate” language applicable to any school they authorize, while negotiating any school-specific terms with individual schools.

How long should the term of a charter school contract be?

The ability to operate a charter school is a privilege, not a right. A contract should be awarded for a limited, renewable term. Prior to the expiration of the term, the authorizer evaluates the school’s performance against the contract’s expectations and determines whether the contract should be renewed or not (see NACSA Policy Guides on Performance Accountability and Contract Renewal).

In setting the initial charter contract term limit, it is important to consider the life cycle of a new charter school. Many charter schools start with just one grade level, taking several years to expand to full enrollment. In addition, most start-up charter schools face one to two years of start-up challenges that may impact school performance. An initial charter contract should account for these factors by extending the term beyond this period of start-up and early growth.

Furthermore, the high-stakes nature of renewal decisions calls for the authorizer to gather and analyze a rich body of multidimensional data over the entire charter contract term. States should provide for an initial charter term that will produce significant data before a renewal decision is required, to enable the authorizer to assess trends in the school’s performance beyond the start-up years.

Most states set an initial charter contract term at five years, which allows a school to progress beyond the initial start-up phase and produce a sufficient

The central purpose of a well-developed, comprehensive charter school contract is to clarify and codify for both parties how the authorizer-school relationship should function and what outcomes the school should achieve.

performance record and body of data needed for sound high-stakes renewal decisions. At the same time, states should empower authorizers to revoke a school's contract prior to the end of the contract term in cases of extreme underperformance, misfeasance, or malfeasance that imperils students or public funds.

Some states allow authorizers to grant longer charter contract terms (e.g., up to 15 years) to schools after they have achieved renewal of their initial contracts. Years ago, these longer terms helped these more mature charter schools obtain affordable facilities financing. The charter school facility finance market has now matured to the extent that such long term charter contracts are no longer necessary to achieve financing. Thus, states with such policies should consider reverting to more traditional 5-year charter contracts or should ensure that authorizers are empowered to take appropriate action if school performance lags in the middle of a longer post-renewal term.

Should the terms of a contract be amendable?

The central purpose of a well-developed, comprehensive charter school contract is to clarify and codify for both parties how the authorizer-school relationship should function and what outcomes the school should achieve. Both parties should thoughtfully and carefully consider these matters before executing the contract. Frequent revision of the contract undermines the parties' ability to rely on these established expectations.³ And as noted above, a quality contract gives the school significant day-to-day autonomy to make changes in its operation as it learns lessons, without seeking a contract amendment each time it wants to correct its course.

Still, circumstances may arise that warrant an amendment to the contract. Either party to the contract must be able to propose an amendment to the contract. The other party must be free to accept, decline or modify the proposed amendment. If a state's law requires an initial charter to be reviewed, approved or certified by a higher authority (such as the state education agency), the amendment to a charter contract should also be handled in the same manner.

How are contracts enforced?

A contract has little value unless both parties actively uphold and enforce the terms it embodies. For authorizers, this enforcement requires measuring school performance against the contract terms to drive renewal decisions.

To do so, states should empower and require authorizers to diligently monitor and evaluate each school's performance throughout its charter contract term. Ongoing monitoring and evaluation may take place through a range of activities including reporting requirements, site visits or school inspections, and an annual financial audit.⁴ In cases where performance lags expectations, states should empower authorizers to exercise appropriate interventions, or in extreme cases, to revoke the school's charter contract.

A contract also gives the charter school a vehicle for defining, preserving and protecting its rights. The existence of a contract itself is often sufficient to protect those rights. On occasion, however, a school might seek to appeal to a higher authority, such as a state board of education or the courts, to protect its rights, using the contract as the basis for doing so.

■ Recommendations and Best Practices for State Policy on Charter School Contracts

To lay a foundation for sound, fair and transparent charter school contracting processes, NACSA recommends that states enact policies that reflect the following best practices:

- **Require charter schools and authorizers to execute a formal, legally binding contract prior to operation.** The contract should define the rights and responsibilities of each party, including specifying the school performance outcomes expected for charter contract renewal.
- **Establish the material terms to be included in a contract, while giving authorizers flexibility to structure the details.** State policy should require charter school contracts to include standard provisions applicable to any charter school. It should also allow authorizers and charter schools to negotiate school-specific terms as appropriate. While providing a basic framework for charter contracts, states should grant authorizers flexibility to structure their charter contracts as they see fit, so long as they a) meet the state's basic requirements; b) generally include only terms and provisions relevant and significant to the outcome of charter contract renewal or revocation; and c) are consistent with the state's charter school law.
- **Set a minimum and maximum term limit for initial and renewal contracts.** The duration for an initial contract should provide adequate time for a new charter school to move beyond the initial start-up phase and for authorizers to gather a rich body of multidimensional data on a school's performance that will inform a renewal decision. NACSA recommends an initial term of five years. States should consider allowing authorizers to execute longer renewal contract terms for charter schools with a strong record of performance, provided that authorizers retain the power to take corrective measures if warranted by school underperformance, including revocation in extreme cases.
- **Empower authorizers to enforce charter school contracts, through the authority to revoke or not renew a contract based on performance against the contract's specified terms.** States should empower and require authorizers to engage in diligent oversight over the charter contract term. Such oversight may include a range of monitoring and evaluation activities to assess and analyze school performance against the terms of the contract. Likewise, states should empower authorizers to take appropriate corrective action where needed, or in extreme cases of underperformance or wrongdoing, revoke a contract. State policy should direct authorizers to grant renewal only to schools that have met the terms of their contracts.

■ Resources and Further Analysis

Haft, W. (February 2009). "The Terms of the Deal: A Quality Charter School Contract Defined" (NACSA Issue Brief #18). National Association of Charter School Authorizers.

Lin, M. (September 2009). "Charter School Performance Accountability" (NACSA Policy Guide), National Association of Charter School Authorizers.

O'Neill, P. (September 2009). "Charter School Contract Renewal" (NACSA Policy Guide), National Association of Charter School Authorizers.

National Alliance for Public Charter Schools (June 2009). *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*.

National Association of Charter School Authorizers (2007). *Principles and Standards for Quality Charter School Authorizing: Performance Contracting*.

■ Acknowledgements

This NACSA Policy Guide was authored by **Rebecca Cass**, NACSA's former Policy Director. The Policy Guide series was edited by **Bryan C. Hassel**, Co-Director of Public Impact and **Margaret Lin**, an independent consultant and the first executive director of NACSA.

¹ See Haft, W., "The Terms of the Deal: A Quality Charter School Contract Defined," at 3.

² See National Alliance for Public Charter Schools, *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, for model contract provisions for a state charter school law.

³ See Haft, W., "The Terms of the Deal: A Quality Charter School Contract Defined," at 7.

⁴ See National Association of Charter School Authorizers, *Principles and Standards for Quality Charter School Authorizing: Ongoing Oversight and Evaluation*.



Charter School Performance Accountability

The **National Association of Charter School Authorizers (NACSA)** is the trusted resource and innovative leader working with educators and public officials to increase the number of high-quality charter schools in cities and states across the nation. NACSA provides training, consulting, and policy guidance to authorizers and education leaders interested in increasing the number of high-quality schools and improving student outcomes. Visit us at www.qualitycharters.org.

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About NACSA's Policy Guide Series

The growth and quality of a charter school sector is largely dependent on state policies that define approval, monitoring and renewal structures, criteria and processes. NACSA's Policy Guide series is intended to support state legislatures in developing policy environments that promote quality authorizing and high-quality charter schools. Additional copies of this Guide are available upon request.

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Charter School Performance Accountability: The Heart of the Matter

Charter schools are public schools that operate under performance contracts with an authorizing agency. These schools receive operating autonomy in exchange for meeting clear, objective, and measurable performance outcomes. Schools that fail to meet these defined outcomes should lose their authorization to operate.

■ Background on Charter School Performance Accountability

Charter schools emerged in the early 1990s as a strategy for improving student learning and increasing quality educational options, often for underserved students and communities. The charter school idea centers on the promise of increased autonomy for accountability for results. Thus, the charter movement has helped to lead the charge – and has provided valuable models and lessons – for greater accountability in public education.

Across the country, however, the record of charter schools is mixed. Eighteen years into this reform movement, the charter school sector is performing well in some states, while falling short of expectations in others.¹ At the same time, the impact of state policy on the quality of a state's charter sector is increasingly recognized. To strengthen the quality of charter schools, states should provide a clear foundation, structure and guidance for authorizers to hold charter schools accountable for their performance.

Performance accountability for charter schools means accountability for both academic and operational performance, focusing on objective outcomes rather than inputs. It includes, but goes beyond, legal and regulatory compliance. In a well-designed statewide accountability system for charter schools, the state establishes minimum standards and essential elements to guide charter school evaluation generally, while enabling authorizers to develop the details of the contract in conjunction with the schools they oversee.

Two key pillars are required for a strong statewide structure for charter school accountability:

1) **A clear contract**, executed before the school begins operating, that sets forth a) the essential academic and operational performance standards and expectations the school must meet in order to earn the right to continue operating, and b) the types of data that will inform the authorizer's judgment.

To strengthen the quality of charter schools, states should provide a clear foundation, structure and guidance for authorizers to hold charter schools accountable for their performance.

2) **A strong body of evidence** built upon sound, multidimensional data specified in the contract and collected, analyzed, and reported at least annually by the authorizer over the term of the school's contract.

Operational accountability for charter schools includes both financial management and legal compliance. State charter school laws should (and most do) explicitly state that financial mismanagement or material violation of applicable laws is grounds for revoking or not renewing a contract. These domains are generally straightforward for authorizers to assess through objective means such as regular financial audits and compliance audits.

In contrast, academic accountability is often inadequately addressed in state charter school laws, and thus thornier for authorizers to enforce.² Policymakers can improve state law and policy to help authorizers make educational judgments that are grounded in sound data, firmly defensible, and less vulnerable to endless debate and controversy.

■ Key Considerations for Policymakers in Structuring Sound Performance Accountability for Charter Schools

What charter school performance standards and requirements should state law include?

To provide clear guidance to help authorizers make sound, solidly defensible judgments on educational performance, states should:

- Make clear that charter schools are subject to the same academic standards and expectations as all public schools in the state;
- Require charter school contracts and evaluations to center on objective, measurable, and multi-dimensional data focused on **performance outcomes** – not inputs or subjective data;
- Define minimum academic and operational performance elements as a basic framework for charter school accountability; and
- Allow authorizers, in developing performance expectations with charter schools, to augment state standards and expectations with additional rigor-

ous, valid, and reliable measures and metrics.

States should require charter school accountability to be built around a performance plan, that is codified in the school's contract with its authorizer, that clearly sets forth the academic and operational performance **indicators, measures, metrics, and targets** (see box) that guide authorizer evaluations of every charter school. States should establish the required elements of the plan, while giving authorizers latitude to develop the specifics of plan. State law and policy should ensure that charter contracts and authorizer-developed accountability requirements are appropriately focused on performance and consistent with the intent of the charter school law and national best practices for charter school accountability. Equally important, state law and policy should ensure that charter contracts and accountability requirements are not an avenue for “regulatory creep” that hinders charter school autonomy.

Charter School Performance Plan Elements: Key Terms³

The performance elements recommended in this section are drawn from a *Framework for Academic Quality* developed by a national Consensus Panel under NACSA's co-leadership. This framework is built around (from the most general to the most specific):

Indicators >> Measures >> Metrics >> Targets

Indicators. Indicators represent general dimensions of academic quality or achievement, such as *“Postsecondary Readiness and Success.”*

Measures. Measures are general instruments or means to assess performance in each area defined by an indicator. Measures require the application of specific metrics or calculation methods (see below). For example, a measure of postsecondary readiness is *high school completion*.

Metrics. Metrics specify a quantification, calculation method, or formula for a given measure. For example, the typical high school completion metric is a *graduation rate*, such as *“the percentage of ninth-graders graduating in four years.”*

Targets. Taking metrics a step further, targets are specific, quantifiable objectives that set expectations or define what will constitute success on particular measures within a certain period of time. For example, a graduation-rate target might be *“90% of ninth-graders graduating within four years.”* Likewise, state-mandated performance levels are common targets.

States should require charter school contracts⁴ to include a performance plan that includes, at

a minimum, a core set of indicators and related measures, metrics, and targets (see box).⁵

Charter School Performance Plan: Essential Elements

- Student achievement levels based on state content and performance standards
- Student academic growth over time
- Achievement gaps between major student subgroups in both student achievement levels and academic growth
- Attendance
- Recurrent enrollment from year to year
- Postsecondary readiness (for high schools)
- Financial performance and sustainability
- Compliance with all applicable laws, regulations, and the terms of the charter contract

Why is it important to measure student academic growth?

The school performance indicator that most state accountability systems rely on – an aggregate student achievement level or “status” for a particular grade in a particular year – is a “snapshot” that reveals nothing about how much schools improve (or fail to improve) student learning over time, given students’ individual starting points. Rigorously measuring student academic growth over time is necessary to reveal what schools are accomplishing or not accomplishing with their students, and often provides a dramatically different picture of school performance. It may reveal, for example, that a school that would be judged as “low-performing” on status alone is actually accelerating student learning far faster than any other school in the district. Conversely, it can show that a school always praised as “high-performing” is simply maintaining students at the same level, rather than challenging and helping them achieve more each year.

For this reason, sound growth measures and data are essential components of a strong performance accountability system for charter schools. Measuring growth requires appropriate assessments and methodologically sound data analysis, and states

should ensure that a sound model is used to measure student academic growth in all public schools, including charter schools.⁶ This model should include requiring a rigorous and consistent methodology to measure the **rate** of individual student growth toward state content and performance standards – to ensure that students are making not only some progress, but enough progress to reach standards within a certain number of years.

Should the state require the closure of charter schools that chronically fall short of minimum performance expectations set for all public schools?

States should require charter schools to meet the same minimum performance expectations as district schools, and charter schools that persistently fail to meet minimum state-defined thresholds for student achievement and academic growth should be closed. Authorizers’ decisions to renew, not renew, or revoke a charter should be based on a school’s actual performance to date on a set of clearly defined performance measures and operational criteria. Such decisions should be based on what has happened, not on what might happen in the future.

Should there be different standards for different kinds of charter schools?

By design, charter schools across a state will likely have diverse missions and serve diverse student populations. Such diversity underscores the importance of the state's responsibility to provide for a common system of accountability – ensuring that all schools meet certain minimum expectations and prepare students for their next step, whether it is middle school, high school, or a variety of postsecondary options. A well-designed school performance plan captures improvements in student learning for all types of students and the minimum performance plan elements recommended above are applicable to any charter school, regardless of its mission or particular population.

Many charter schools target students who are marginalized or underserved in mainstream district schools – such as students with disabilities, English learners, students at risk of dropping out, or court-involved youth. These schools were granted charters specifically because they promised to successfully improve outcomes for these students. The above performance plan's attention to student academic growth as well as other indicators makes it highly applicable and meaningful for the many special populations served by charter schools. State policy should recognize that charter schools serving non-mainstream populations should be **no less accountable** for student outcomes.

What general responsibilities and requirements should states set for monitoring and evaluating charter school performance?

■ Recommendations and Best Practices for State Policy on Performance Accountability

To establish clear, consistent performance accountability for charter schools across a state, NACSA recommends the following best practices for state policymakers. For specific recommended statutory language on these matters, see A New Model Law for Supporting the Growth of High-Quality Public Charter Schools, Article VII, Section 1.⁷

State law should explicitly require authorizers to monitor the performance and legal compliance of the charter schools they oversee, and empower authorizers to conduct oversight as needed to execute their responsibilities. States should empower authorizers to conduct appropriate inquiries and investigations, so long as those activities are consistent with the intent of the charter school law, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools. Likewise, to provide for consistent, quality evaluation of charter schools across a state, states should:

- Ensure that all authorizers have access to student-level assessment data. Student-level data, as opposed to simply school-level data, is essential to the performance plan and quality analyses recommended here.
- Ensure that all authorizers have access to data needed to compare their charter schools' performance to other relevant public schools in the state.
- Establish authorizer responsibility for collecting, analyzing, and reporting performance data from state or authorizer-required external assessments for the charter schools that they oversee. Authorizers should not rely, for example, on school self-reporting of unverified data or on school calculations of student academic growth (which are unlikely to meet the methodological requirements established by the state). Authorizer responsibility for these critical tasks is necessary to ensure data accuracy as well as consistent, rigorous methodology of data analysis across schools.

- **Require a clear performance plan, codified in the contract between a charter school and authorizer, to be executed prior to any charter school opening.** The performance plan and contract should specify the body of multidimensional data, to be collected and analyzed over the charter term, on which a school will be judged. States

By design, charter schools across a state will likely have diverse missions and serve diverse student populations. Such diversity underscores the importance of the state's responsibility to provide for a common system of accountability – ensuring that all schools meet certain minimum expectations and prepare students for their next step.

should require charter school contracts to focus on objective performance outcomes and include measures, metrics and targets for all the essential Charter School Performance Plan indicators presented above, at a minimum (see box on p. 3).

- **Define minimum standards and requirements for academic and operational performance for all charter schools, while leaving latitude for authorizers to set specific expectations in conjunction with schools.** State law should make clear that charter schools are subject to the same academic standards and performance expectations as all public schools in the state. States should make charter schools subject to closure for chronic failure to meet state-defined minimum thresholds for student achievement and growth.
- **Set basic standards for data analysis used to evaluate charter schools.** States should require longitudinal and disaggregated analysis of all student performance data using consistent, rigorous methodology for all charter schools statewide, including measurement of the adequacy of student growth toward state content and performance standards.
- **Guard against “regulatory creep.”** State law and policy should work to ensure that charter school contracts and authorizer-developed accountability requirements are appropriately focused on performance outcomes and consistent with the intent of the charter school law – rather than a vehicle for unnecessary reporting and compliance burdens.

- **Empower authorizers to conduct oversight activities that enable them to hold charter schools accountable for performance.** State law should explicitly grant authorizers the authority to conduct oversight activities that enable authorizers to fulfill their statutory responsibilities, provided that such oversight activities are consistent with the intent of the charter school law, adhere to the terms of the charter contract, and do not unduly inhibit the autonomy granted to charter schools. To enable quality evaluation of charter schools statewide, states should also provide for:

- 1) Universal authorizer access to student-level assessment data for the schools they oversee, as well as to data needed to compare their schools' performance to other relevant public schools in the state.
- 2) Authorizer responsibility for collecting, analyzing and reporting all data from state or authorizer-required external assessments.

■ Resources and Further Analysis

Building Charter School Quality Initiative (2008). *A Framework for Academic Quality: A Report from the National Consensus Panel on Charter School Academic Quality*. http://www.bcsq.org/consensus_panel.html
<http://www.qualitycharters.org>

Cass, R. (September 2009). "Charter School Contracts," NACSA Policy Guide, National Association of Charter School Authorizers. <http://www.qualitycharters.org/publications>

CREDO at Stanford University (2009). *Multiple Choice: Charter School Performance in 16 States*. <http://credo.stanford.edu/>

Ernst, J. and Wenning, R. (July 2009). "Leave No Charter Behind: An Authorizer's Guide to the Use of Growth Data," NACSA Issue Brief #19. National Association of Charter School Authorizers. <http://www.qualitycharters.org/publications>

Haft, W. (February 2009). "The Terms of the Deal: A Quality Charter School Contract Defined," NACSA Issue Brief #18. National Association of Charter School Authorizers. <http://www.qualitycharters.org/publications>

National Alliance for Public Charter Schools (June 2009). *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, Article VII (1). <http://www.publiccharters.org/ModelLaw>

National Association of Charter School Authorizers (2007). *Principles and Standards for Quality Charter School Authorizing*. <http://www.qualitycharters.org/publications>

National Association of Charter School Authorizers (2009). *Testimony of Greg Richmond to the U.S. House Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies*. <http://www.qualitycharters.org/policy>

Palmer, L. B., Terrell, M. G., Hassel, B., and Svahn, C. P. (2006). *Turning the Corner to Quality: Policy Guidelines for Strengthening Ohio's Charter Schools*. Thomas B. Fordham Institute, National Association of Charter School Authorizers, and National Alliance for Public Charter Schools. http://www.edexcellence.net/detail/news.cfm?news_id=362&id=130

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This NACSA Policy Guide was authored by **Margaret Lin**, an independent consultant and the first executive director of NACSA. The Policy Guide series was edited by **Bryan C. Hassel**, Co-Director of Public Impact and **Margaret Lin**.

¹ See, e.g., *Multiple Choice: Charter School Performance in 16 States*, CREDO at Stanford University (2009).

² A high proportion of charter school closure decisions are explicitly based on reasons other than academic performance. A national study shows that two-thirds of mid-term charter revocations have occurred for reasons other than academic performance. Gau, R., *Trends in Charter Authorizing*, Thomas B. Fordham Institute (2006), at 10.

³ Adapted from *A Framework for Academic Quality*, at 7.

⁴ This framework does not reflect all the contents of a charter contract; rather, these are only minimum recommended elements pertaining to academic and operational performance. For fuller guidance on structuring charter school contracts, see Cass, R., "The Terms of the Deal: Charter School Contracts," NACSA Policy Guide, National Association of Charter School Authorizers (September 2009) and Haft, W., "The Terms of the Deal: A Quality Charter School Contract Defined," NACSA Issue Brief No. 18 (February 2009).

⁵ These elements are adapted from performance frameworks recommended in *A Framework for Academic Quality* (2008) and *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, National Alliance for Public Charter Schools, Article VII, Section 1 (2009), at 40-41.

⁶ For a fuller practical introduction to growth measures and why rigorously measuring student academic growth is critical to valid school evaluation, see Ernst, J. and Wenning, R., "Leave No Charter Behind: An Authorizer's Guide to the Use of Growth Data," NACSA Issue Brief No. 19 (July 2009).

⁷ *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, Article VII, Section 1.