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Purpose: Introduce charter school authorizer accountability plans and requirements

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Expected Outcome: Understand the potential requirements and effects of charter school authorizer accountability schemes

Efforts to Strengthen Charter School Authorizer Accountability and Oversight of Charter Schools

Background

Generally, most discussions of charter school accountability focus on the accountability of schools and their governing bodies. Increasingly, however, states are addressing the need to hold charter school authorizers equally accountable for their own part in the chartering process. Authorizers act as gatekeepers, ostensibly permitting only prospective charter schools that show potential for success to open, and as oversight bodies, reviewing charter school performance during the term of a charter and deciding whether a school's charter should be renewed. Decision-makers about charter schools' authorization, operations, and renewal, authorizers should be held responsible for their decisions, yet in many states, there are minimal to no legal measures holding authorizers accountable to the public in these matters.

According to the Legislative Finance Committee's (LFC) 2016 report, *Public Education Department, Performance, Cost, and Governance of Selected Charter Schools*, charter schools across New Mexico, like charter schools nationally, generally tend to perform on par with traditional public schools, showing little difference in student achievement, although the report notes locally chartered charter schools perform consistently below both state-chartered charter schools and local school district schools. Proficiency scores in reading for all students at all three kinds of public schools were at or slightly below 40 percent. Math proficiency scores for all students were slightly below 40 percent. Relative performance was similar for economically disadvantaged students, students with disabilities, and English learners at all three varieties of public schools; reading performance, for example, was either slightly above or slightly below 30 percent.

Charter School Authorizer Standards and Practices

Both the National Association of Charter School Authorizers (NACSA) and the National Alliance for Public Charter Schools (NAPCS) recommend adoption of both NAPCS' model charter school law, and NACSA's recommended standards for charter school authorizers, noting several guiding principles for authorizer accountability.

NAPCS' model law can be found [here](#). NACSA's standard and principles can be found [here](#). According to NACSA, as of 2016, 18 states have incorporated national professional standards of quality authorizing that meet or exceed NACSA's recommended standards and principles, including New Mexico. Another four states include authorizing standards and practices in their law, though they are inconsistent with NACSA recommendations.

Authorizer Application Process

The organizations recommend states begin with a rigorous application and approval process for all bodies wanting to become or remain charter school authorizers, although legislatively or constitutionally created state charter school authorizers, such as New Mexico's Public Education Commission (PEC), and local school districts would be exempt from these application requirements. As part of this application process, prospective authorizers, aside from legislatively created authorizers, should clearly demonstrate interest in overseeing potential charter schools. Currently, no such process exists in New Mexico.

In addition to PEC, any local school district may authorize charter schools, and they must consider any application they receive, regardless of their desire to oversee charter schools. Yet while local school district authorizers would not be required to submit an application, there should be a parallel process of registration for local

Section 22-8B-17.1 NMSA 1978 requires the Charter Schools Division (CSD) to issue a report on the state's charter schools by December 1 annually. The report is to include a comparison of the performance of charter school students with comparable students in traditional public schools, as well as an assessment of funding sufficiency, and suggested changes to state law or policy to strengthen charter schools in the state. PED has not issued the report since 2013.

A seemingly logical choice for an authorizer oversight body in New Mexico would be PED, specifically CSD. However, while CSD might oversee local school district authorizers, it may be problematic for CSD to do the same for the PEC. That relationship is already ripe for conflicts of interest, particularly where the Secretary of Public Education might overrule PEC's authorizing decisions upon appeal. Currently, CSD acts as staff for PEC, and is in the difficult position of recommending chartering decisions to PEC that may be overturned on appeal by the Secretary, who is ultimately in charge of CSD. Significant statutory changes to the relative duties of CSD and PEC would be required before it could effectively act as an authorizing oversight body at the state level, free from conflicts of interest.

school districts to affirm their interest to the state in becoming an authorizer. While not as rigorous as the application process for other entities wishing to authorize charter schools, the requirement to at least register may eliminate those local school boards that are not prepared to undertake the additional responsibilities of authorizing and overseeing charter schools in their school districts. Without registration, local school districts would not be able to authorize charter schools.

Annual Charter School Authorizer Reports

All authorizers, including state charter school commissions, should submit an annual report that summarizes authorizing activities and the performance of the schools they oversee, as measured against state assessments and the authorizer's own performance frameworks. This recommendation promotes transparency in authorizing practices, facilitates informed oversight of authorizers, protecting the public interest in charter schools and public education in general, and ensures authorizers also preserve charter school autonomy.

Review of Charter School Authorizers

There must be a regular review process of charter school authorizers, informed by the annual reporting noted above, by a state-level oversight body that monitors and evaluates the performance of every authorizer in the state. This review process should include examination of how authorizers meet standards and practices, an evaluation of each authorizer's charter schools' performance, and review of each authorizer's record of important decisions, such as renewal, revocation, and authorization decisions. This recommendation presupposes the existence of such an oversight body, the particulars of which necessarily will

vary among jurisdictions, and may require substantial legislative and regulatory work to achieve.

Sanctions for Poorly Performing Charter School Authorizers

That review process, in turn, should include mechanisms that allow the authorizer oversight body to sanction or, in particularly egregious situations, terminate poorly performing charter school authorizers. This policy must include a process that defines what happens when an authorizer is terminated or closes of its own volition. It should provide for the transfer of a terminated authorizer's charter school to another authorizer with the capacity to oversee the additional schools. Likewise the policy should address what is to happen when no other authorizer is willing to take on schools overseen by a terminated authorizer, including consideration of transferring them to the state-level authorizer.

Charter School Authorizer Shopping

The prospect of transfer between authorizers raises issues of "authorizer shopping," where a charter school may attempt to move between authorizers to find one that offers better charter terms, or is more likely to overlook some performance issues. Adoption of state-level standards and practices of charter school authorizers will promote consistency among authorizers throughout a state, helping to discourage this practice by removing much of the reason to move to a new authorizer. In New Mexico, where the only permissible authorizers are the PEC and local school districts, this recommendation may be limited. Locally chartered charter schools have no choice but to transfer to the PEC to be authorized as a state-chartered charter school if their local school district were to be terminated as an authorizer. A local school district could not take up a terminated school district's charter schools, because local school districts may only authorize charter schools within their own school district.

In October 2017, PEC considered revoking the charter of Dził Dít'ooí School of Empowerment, Action and Perseverance (DEAP), located in Navajo, New Mexico, upon CSD's recommendation, due to financial management and procurement code concerns, as well as having lacked a licensed head administrator and business manager. PEC, however, ultimately voted to renew the school's charter for five years with conditions. PEC considered the possible revocation over two hearings, and on both occasions there was a significant community presence with vocal support of the school, including supporters' assertions that performance at other schools in the area was worse than that of DEAP, so that students would be better served by DEAP, despite CSD's reservations. DEAP scored a C on its 2016 report card, and a B for 2017. Proficiency scores for math fell slightly over that period, from 11 percent to 10 percent of students performing at or above grade level. Proficiency scores in reading, however, rose over that same period from 5 percent to 10 percent of students reading at or above grade level.

Charter School Closure and Charter Revocation

Possibly the most difficult decision faced by an authorizer is whether to close a poorly performing charter school. Under a system of high-quality authorizer accountability, that decision may be less difficult. The potential for sanctions or terminations for low-performing authorizers should reduce the likelihood that charter school authorizers will overlook or be more lenient with performance issues for their charter schools to avoid closing popular charter schools, or charter schools located in areas with little available school choice.

According to *Why Good Authorizers Should Close Bad Schools* (James A. Peyser and Maura Marino, 2010), there are four main reasons charter schools that should be closed remain open:

1. The absence of clear or meaningful performance criteria.
2. The absence of a strong body of evidence gathered over the charter term.

In 2017, PEC denied renewal to Taos International School and New Mexico Connections Academy for poor academic performance, with Taos International School also cited for poor financial oversight. Both schools appealed their denial decisions to the secretary-designate of PED, who upheld PEC's decision. Both schools continued to pursue their appeals in district court, and upon the schools' motions, the court granted them stays of their schools' closure, pending the outcome of their appeals. In the case of Taos International School, the judge noted that the appeal would be rendered moot if a stay were not granted, as the school would already be closed, with students and faculty finding other schools and employment. It is unclear if the judge made a similar finding regarding the appeal for New Mexico Connections Academy.

3. The absence of better alternatives in the area.
4. Community and political support for a failing school.

The presence of a high-quality authorizer accountability system should help mitigate the first two reasons, as performance criteria and evidence-gathering should be included in the accountability system. The other two reasons, however, are not so easily addressed, as they have to do with relative and subjective measures rather than objective criteria, and are therefore more difficult to administrate.

Closing a low-performing charter school sometimes means displaced students and families may have to enroll in another poor-performing charter school or school district school. Further, even poorly performing schools will sometimes have substantial support from its students, students' families, and the surrounding community. The decision to close a charter school under these circumstances can be difficult for an authorizer to contemplate. Closing a school with strong family and community support is counter to the goal of parental school choice, and resisting community and political will can be daunting when there is little support to close a popular school that is poorly performing.

There are a number of policy arguments in favor of closing even popular low-performing schools over community objections. A primary responsibility of charter school authorizers is to guard students and families from schools that fail to meet standards and students' needs. Charter schools and their authorizers must demonstrate that charter schools are meeting the same minimum performance standards as other public schools. Holding all charter schools accountable, regardless of popularity or community support, lends impetus to broader school reform by holding schools accountable for performance, and closing poorly performing ones. This increased rigor creates opportunity for better schools to replace the low-performing ones, raising the bar for an authorizer's portfolio of schools, and charter schools throughout the state. Further, because charter schools are publicly funded, they must be held accountable as stewards of tax dollars, and show both good fiscal and organizational management. All public institutions should be held to the same fiscal and governance standards. It must be noted, however, that the adoption of uniform standards for authorizers will necessarily reduce somewhat the discretion authorizers may exercise when making their decisions.

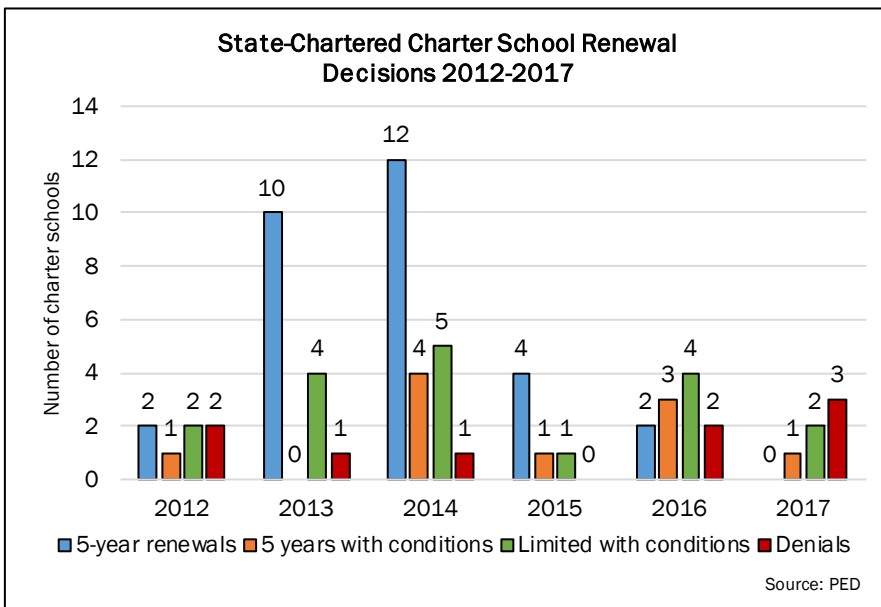
Charter School Administration in New Mexico

State-Chartered Charter Schools

The PEC remains the largest charter school authorizer in New Mexico, and has recently revised a number of its policies and procedures, including their charter contract template and academic and organizational performance frameworks. The new academic performance framework is more detailed than the previous version, requiring student growth and proficiency measures for disaggregated student subgroups to better address performance gaps, as well as criteria and guidance for proposed school-specific goals that improve the clarity, reliability, and rigor of those



goals. The organizational framework addresses how well schools meet the requirements of state and federal law, with measures for governing body performance, financial management, and school environment and policies. Both frameworks, as well as the new financial framework still in development, should better inform renewal decisions with greater uniformity among different schools. The new frameworks will only be incorporated into state-chartered charter school contracts upon their renewal or if a school requests an amendment to



incorporate the new frameworks into their existing contracts; this means that it could be five years before all PEC-authorized charter schools are subject to the new performance framework and up to five years after that before PEC will begin making renewal decisions based on the new frameworks.

In 2017, PEC granted three charter school applicants renewal and denied three renewal. New Mexico Connections Academy, Taos International School, and Anthony Charter School, were all denied based on poor academic performance. Additionally, PEC’s denial of Taos International School’s renewal request cited poor financial oversight, including oversight of audit findings. Anthony Charter School’s denial also cited poor governance practices, including failure to comply with annual training and reporting requirements. Generally, the number of renewals granted by PEC for full five-year terms without conditions has declined over the last five years, while the number of denials and renewals with conditions has increased.

FY18 Charter School Authorizers

Authorizer	Number of Charter Schools
Public Education Commission	56
Albuquerque Public Schools	25
Taos Municipal Schools	3
Carlsbad Municipal Schools	2
Aztec Municipal Schools	1
Cimarron Municipal Schools	1
Deming Public Schools	1
Farmington Municipal Schools	1
Gallup-McKinley County Schools	1
Jemez Mountain Public Schools	1
Jemez Valley Public Schools	1
Roswell Independent Schools	1
Santa Fe Public Schools	1
Socorro Consolidated Schools	1
West Las Vegas Public Schools	1
Total	97

Source: PED

Locally Chartered Charter Schools – Albuquerque Public Schools

Albuquerque Public Schools (APS) is New Mexico’s second largest charter school authorizer, overseeing 25 charter schools in FY18. APS currently is in the process of updating its charter school authorization and oversight processes, including contracts, performance frameworks, annual reports, amendment processes, new charter application and rubrics, performance management, monitoring, and intervention and revocation policies. The APS Charter School Office notes it follows national best practices according to NACSA,

In June 2018, APS decided not to renew La Resolana Leadership Academy. APS found several violations of state and federal law related to special education practices. Deficiencies included lack of data reporting, the special education coordinator's lack of certification, and issues with individualized education plans related to personalized accounts of progress and needs and goals for each student receiving services. La Resolana's school grade for 2017 was a D. Proficiency scores for reading fell from 33 percent proficient in 2016 to 18 percent proficient in 2017, with math scores falling slightly, from 6 percent proficient in 2016 to 5 percent proficient in 2017.

and affirms that authorizers are responsible for the performance of their portfolios of charter schools.

According to the APS Charter Schools Strategic Plan, most of these updates are scheduled to be completed between the fall of 2018 and the spring of 2019. Work on performance frameworks will include the establishment of new targets for all performance framework indicators, and revision of the financial performance framework to comprehensively assess financial viability rather than merely financial operations. The academic performance framework revision will incorporate measures applicable to all charter schools, including indicators of student subgroup performance, student growth, achievement gaps, and postsecondary success. APS also intends to develop new guidelines for mission-specific indicators to ensure they are reliable, valid, and rigorous. New renewal criteria,

aligned with the academic performance framework, will serve as the primary basis for accountability decisions.

A review of available APS charter school proficiency rates for FY18 shows a range of scores. For English language arts, scores range from 3 percent proficient to 48 percent proficient, with most falling between 23 percent proficient and 38 percent proficient. Math scores show proficiency rates from 0 percent proficient to 32 percent proficient, with most falling between 13 percent proficient and 22 percent proficient.

Recent Legislation

There have been several legislative attempts in recent years to address the chartering of charter schools, none of which passed. During the 2017 regular legislative session, three pertinent bills were introduced. House Bill 46 proposed a moratorium on the opening of any new charter schools from June 2017 through January 2020. House Bill 273 would have established expedited renewal and closure provisions for charter schools, based on student academic growth, and also would have removed enrollment limits for high-performing charter schools. House Bill 417 proposed to transfer all functions, records, contracts, and assets related to the PEC's authorizing of charter schools to the PED, making CSD the chartering authority for state-chartered charter schools. Finally, during the 2018 legislative session, Senate Bill 214 would have required a charter school that won an appeal from a local school districts decision to deny their charter renewal to become a state-chartered charter school under the PEC, rather than compel the local school district to authorize a school it does not choose to authorize.

Conclusion

New Mexico, like many states, needs better authorizer practices to help ensure the authorization of high quality charter schools and support of low-performing charter schools. Data and reports from PED indicate charter schools, in general, are not outperforming traditional schools. By holding charter school authorizers accountable for the performance and operations of charter schools in their portfolios, they should be less likely to authorize or renew poorly performing schools, and less reluctant to

close them if performance fails to improve. Holding all charter school authorizers to the same rigorous standards may both increase charter school performance and encourage better uniformity in charter school authorizers' chartering, renewal, and revocation decisions.