

CHARTER SCHOOL GOVERNANCE: A STATE-LEVEL ANALYSIS OF POLICIES

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ABSTRACT

Across the nation, 43 state/district legislatures have approved charter school laws and over half of these states require (n=13) or permit

(n=10) nonprofits in the state to qualify for charters. The laws, however, focus almost exclusively on the establishment and government oversight of the charters, largely ignoring governance issues. This paper provides an in-depth analysis of the charter school laws and their governance provisions. We find that only eight states require training while nine have no mention of the governance function in their laws. We conclude that more training and support for charter school governance should be included in public policies.

The establishment of government authorized charter schools began in 1991 with the first charter school legislation passed in Minnesota. The charter school movement began as a way to promote the creation of alternative, free educational options for children. Charter schools are public schools, which receive public funding but operate, at least partially, outside of the traditional public education bureaucracy. Charter schools continue to grow and evolve. In the past three years, three states have added charter school laws – Maine, Washington and Mississippi. Currently, charter school legislation exists in forty-two states and the District of Columbia. The eight states that do not have charter school laws are Alabama, Kentucky, Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia.

Legislation establishes three key players in the creation and maintenance of charter schools: the organizers, the authorizers, and the public. Organizers of charter schools contract with a state-approved authorizer to establish a school. In thirteen of the forty-three states/districts with charter school legislation, the organizing entity must be a nonprofit corporation. An additional ten states permit nonprofits to be chartered. Henig et al. (2005) find significant differences in the operational behaviors of mission-based charter schools and market-oriented charter schools. Regardless of the corporate form of the organizing entity, charter schools remain accountable to the general public.

Difficulties in authorizers' oversight abound. For example, it is problematic that Utah does not maintain a list of charter school board members of the 52 charter schools. The state charter school board would not be able to support these board members directly because they are unable to contact them.

The premise behind the charter school movement is that charter schools are given greater autonomy relative to traditional public schools (Finnigan, 2007). Charter schools use their autonomy to promote stakeholder involvement, improve flexibility of service (Zimmer and Buddin, 2007) and

meet niche needs within a community. A key feature of charter school theory is that those closest to the school (parents, teachers) will be best able to meet the needs of the students (Kolderie, 1990) and will also be able to demand accountability (McCabe and Vinzant, 1999). Charter schools are also a way of introducing a market alternative to the public school environment. Advocates claim that individual schools will compete for students by offering innovations (Sullins and Miron, 2005), unique pedagogies and distinctive organizational structures to better meet student needs and appeal to parents (Carpenter and Medina, 2011; Levin and Belfield, 2003). Poorly performing charter schools or those with bland pedagogical themes will be forced out by schools with more innovative curricula or by schools which are more responsive to the wants and desires of parents (Nathan, 1997; Lacireno-Paquet and Holyoke, 2007).

BENEFITS OF THE NONPROFIT GOVERNANCE MODEL FOR CHARTER SCHOOLS

Most states' charter laws require that a nonprofit board performs the governance function and thus acts as the primary mechanism for a school's accountability (Vergari, 2000). One reason for this provision in charter legislation is to ensure that legal liability for the actions

of the organization is clearly specified (Rorrer, Hausman and Groth, 2006). Under state nonprofit corporation laws, boards of directors are jointly and severally liable for the organization. The board acts as the voice of the public. Through participative decision-making, members provide policy guidance and program oversight for the nonprofit charter school. As nonprofit directors, board members have a fiduciary responsibility to represent the interests of the public in upholding the mission of the organization through their decisions.

Governance expectations are set primarily through nonprofit law and the oversight guidelines of the chartering body. Legislatures have chosen this model for all nonprofits because it provides dual accountability. First, through their fiduciary duties, nonprofit board members are legally bound to represent the interests of the general public when making decisions for the corporation. The rationale for this requirement is often linked to the indirect public subsidies nonprofit organizations receive from federal, state, and local governments. Schools are providing services to the general public (long-term) so they must consider how to be accountable to meeting the needs of society by preparing future citizens and also because taxpayers are footing a lot of the overall bill (Loveless and Jasin, 1998). Nonprofit corporations are exempt from state and federal corporate income taxes and often exempt from local

property taxes. In addition, charitable nonprofits granted an exemption under section 501(c) 3 of the Internal Revenue Code (USAC Title 26) are also able to offer donors a deduction for their contributions. Public charities are granted this exempt status based on a mission that explains how they will serve the public good. Because public monies help nonprofits to exist, they “owe” the public the duty of following their mission.

In fulfilling their fiduciary duty, board members are also expected to provide oversight and track whether the mission-based goals have been met and if sound financial practices were followed. The board is the self-regulating mechanism to ensure that the mission of the organization is the guiding principle upon which decisions are made. When board members are committed, well trained, and executing their board roles effectively, this self-regulating mechanism provides for organizational accountability. Best practices in the nonprofit sector suggest that organizations are most efficient and effective when directors work in partnership with staff leaders to set the policies that guide strategic and fiscal operations (Herman and Renz, 2000; Herman and Heimovics, 2005).

The opposite is also true. Cornforth (2004) suggests that when board member participation levels are low and lay board members are not prepared to execute their duties, the board’s ability to oversee

management's actions is limited. Further, Brody (2002) argues that this classical model of nonprofit accountability, if it is to work properly, "requires an investment in time and training" (p. 478). The board of directors may be reporting to the Internal Revenue Service, the chartering body and the state's department of education, but achieving accountability relies primarily on good governance practices. Good governance requires a strong and independent board that follows conflict-of-interest policies, has strong financial policies and controls, and has active board committees (Brody, 2002).

Hill and Lake (2006) assert that the internal governance structure, rather than creating an avenue for executing autonomy in a flexible way, actually is cumbersome and curtails the ability of the principal to lead the school. Hill and Lake (2006) ignore, however, the benefits of participative decision-making and including stakeholders in this process. They also discount the additional bureaucratic systems that would be needed if the nonprofit board governance model for charter schools was abandoned. The benefits of this structure reach well beyond the liability issues, but they are not always well understood.

Certainly a number of common governance challenges remain. According to Spear, Cornforth and Aiken (2009) these include recruiting skilled members, accountability to many

stakeholders, maintaining appropriate oversight of management while managing the board, management interdependencies, and balancing social and financial goals. Governing boards that are well trained on their various roles are better able to navigate these challenges. Further, research finds that boards of public sector spin-off social enterprises are especially challenged by managing the multiple stakeholders of the organizations (Spear, Cornforth & Aiken, 2009). Board members who have spent their careers in public organizations, for example teachers, may honestly assume that their responsibility as a board member is to represent their stakeholder group as they fulfill their board member roles and not understand that they are instead expected to act in the best interests of the organization as a whole (Spear, Cornforth & Aiken, 2009, p. 268).

STAKEHOLDER PARTICIPATION ON BOARDS

Since traditional public school governance systems are based on top-down regulations to control the behavior of schools, the nonprofit board governance model is not well understood in the public school environment. In the broadest terms, governance is the system and authority established to provide for the exercise of accountability and control (Michalski, Miller and Stevens, 2001). Corporate governance has been defined as, "the

design of institutions that induce management to internalize the welfare of stakeholders,” (Tirole, 2001, p. 4). This governance structure helps overcome the principal-agent problem by allowing the principals (stakeholders) to have direct control over the agents (management). For nonprofit corporations, the role of the board has long been understood to have two primary roles: (1) setting a vision for the organization through establishing a mission and strategic plans and (2) providing periodic oversight of management’s progress toward the vision.

To succeed and achieve positive community impact, nonprofits must be grounded in their communities (Smith and Lipsky, 1997). This is achieved through the nonprofit board governance structure. Members of the public voluntarily serve on the board and bring the voice of the public directly to the decision-making processes guiding the behavior of the organization. By bringing a variety of stakeholders into the decision-making process, the organization is better able to meet the needs of its constituents. Further, when stakeholders feel they have a voice at the table they are more likely to accept and support the outcomes from that process.

In a school without a community-based board, the direct involvement of stakeholders removes their voice from the leadership of the school. Although participative decision-making models are

known to be time-consuming and cumbersome, they can also lead to superior outcomes. This nonprofit board governance model promotes stakeholder involvement and deliberative decisions, and therefore seems optimal for charter schools.

BOARD STRUCTURE AND COMPOSITION

The structure and practices of the board will vary according to the mission, the stage of development, and the organizational structure (Axelrod, 2005). The model is most successful when the board is composed of a variety of stakeholders who each have relevant perspectives, experiences and skills. When boards are composed in this way and receive ongoing support in their development, they will become more effective (Herman and Heimovics, 2004). Board roles are often only defined in the bylaws or policy manual of the organization, but board performance expectations are rarely defined in these documents. The four roles most often ascribed to boards are: (1) establish mission and ensure adherence, (2) develop and oversee resource generation and conservation, (3) oversee management and ensure performance assessment, and (4) serve as liaison between the organization and other stakeholders (Axelrod, 2005).

Boards that self-evaluate and purposefully consider how to improve are

the most successful boards (Herman and Heimovics, 2004; Brudney and Nobbie, 2002). Boards need to consider their own strengths and weaknesses and seek out training and new members to help fill their gaps in knowledge and skills. The areas of expertise needed by many charter schools include: financial management and program oversight, leadership, strategic planning, managing personnel, knowledge of liability issues, fund raising, and managing growth. In the formation stage, the board will also need knowledge on forming internal policies, writing school and board bylaws, and creating an organizational structure. A review of nonprofit best practices clearly shows that self-regulation through internal governance is best but will only work if boards are attentive to good governance practices (Nonprofit Sector Panel Report, 2005).

The founders of a charter school, however, are not necessarily well versed in how to set up an effective governance structure for an entity, which is a combination of a public school and a nonprofit. Leaders of charter schools may not consider the school as a part of the nonprofit sector; they are unlikely to seek support for developing the nonprofit structure, such as the board. To function appropriately and maximize the benefits of autonomy, charter schools need support. To understand how much support they receive in the area of governance, we analyze the governance

training that charter schools receive via public policy.

LACK OF PUBLIC POLICY GOVERNANCE SUPPORT

What is often missing from the authorizers / school interactions is proactive board training. Brody (2002) suggests, "Certain reforms would have a salutary effect on nonprofit operations and reputations. To improve financial practices and internal governance, the nonprofit sector could benefit from adopting standards and best practices offering training to individual charities. Progress made voluntarily could forestall unwise tighter legislation and regulation," (p. 491). Our analysis of policies shows that some authorizers are providing this type of support to charter school boards most often focusing on educational and fiscal outcomes. In other states, authorizers expect schools to meet accountability goals without assistance. Still other states have authorizers that provide only basic technical assistance regarding the chartering law. Many authorizers understandably want to steer away from dictates to these chartered organizations which are founded on the principle of autonomy. However, without requiring some form of training in board development, as schools move from start-up to a governing board, problems will become inherent within the school system.

DATA AND METHODS

This exploratory analysis was based on content analysis of 42 laws for state (and the District of Columbia) charter school provisions. We wanted to understand if and in what ways the legislation of various states supported the crucial governance function of the charter schools in the state. Unfortunately triangulation of this information is not possible since the laws themselves are the only one source of information. Therefore, we took additional steps to verify the results of the content analysis performed.

We began by gathering the text of the charter school laws in .pdf form using Westlaw or Lexis-Nexis, searching for all 50 states, Puerto Rico, and the District of Columbia. If no laws were obtained, then the states' departments of education or area public charter school boards were searched or contacted for laws pertaining to charter schools using the Google.com search engine. Forty-two states and the District of Columbia were found to have laws pertaining to the establishment of charter schools. Once identified, the laws were saved in searchable .html or .pdf files.

Content analysis focused on identifying all provisions of the laws that dealt with governance of charter schools. Specifically, each of the state charter laws were reviewed for provisions regarding nonprofit status requirements,

definitions of charter schools and boards of directors, provisions related to board composition and policies, and training of board members.

The first coder, a trained graduate student, initially completed the review of the state laws for board governance provisions. The first coder used specific keywords and searched for key provisions within the laws related to charter school board members. The keywords used were govern*, board govern*, train*, guid*, educat.* When one of the keywords were found within the document, the sentence or the paragraph containing the word was read for relevance.

To expand and verify the initial coder's findings, the data set was split and each author coded one-half of the state charter laws. These additional content analyses were more in-depth than the initial coding. We reviewed state laws to ensure that all states with charter school legislation had been included. In addition, a more thorough qualitative approach was taken to review the text of the charter school laws. We reviewed the text of all state laws to understand the context of the laws in those states. We also repeated the coding process used by the first coder to obtain an inter-coder reliability score. The coding process, followed by the additional coders, was to use the same search terms and a review of the sentences/paragraphs containing the terms. Inter-rater reliability was

examined and the agreement level between coders was 98 % (Grayson & Rust, 2001).

RESULTS

Several state laws are so similar they appear to have been authored by the same person or group. The level of attention to board governance in the charter school law varies widely across states. Not all state laws define or mention a governing body in charge of the governance of a charter school. Some

states like Alaska and Indiana do not specify a governing organization (see Table One). Multiple terms are used to describe the governing body of a charter school. These terms include board of directors, board of trustees, governing body, governing agency, governing board, governing council, local school board, governing or management board, or advisory committee. States that provide definitions at the beginning of the legislation typically have clearly defined terms for the charter school's board.

TABLE 1: SUMMARY ANALYSIS OF GOVERNANCE PROVISIONS IN STATE CHARTER SCHOOL LAWS

Table One: Summary Analysis of Governance Provisions in State Charter School Laws			
Board Elements Included in Law	Number of States & Specific States		Detailed Provisions
Board Structure	6	MN, HI, NM, SC	General structural issues
		CT, HI	Conflict of interest
Board Composition	2	CT, NV	Composition elements prescribed
Technical Assistance	2	OH	General
		NV	Provide information about moneys available
Board Training	12	HI, LA, MS	On-going training required
		OK, UT	Training for establishing a board
		HI, LA, FL, MN, NM, SC, TX	Training for roles and responsibilities of Board including fiduciary duty, financial oversight, board duties.
		LA, OK, NJ	Training completed specifically by only DOE
		MN	Cannot be on board if not trained
		SC	Gives a time limit by which they must do the training
		SC, TX, NM	School laws and legal concepts pertaining to public schools
		NV, NM, OH, SC	By DOE developed or approved
Other Good Governance Provisions	4	MN, NV, TX, SC	General, accountability to public funds, policy development, community relations, personnel issues.

STRUCTURE

In the area of board structure all states require that the governance structure of the school be explained in the charter contract between the school founders and the authorizers. When organizers apply to authorizers for a charter, the organizer is required to describe the governance structure. The specifics of the governance structure vary by authorizer and state. In most states, governance structure limits are the only imposed governance requirements.

One problem is that the board structure at the time of founding may not be adequate to meet the governance needs of a functional, operational charter school board.

For example, a charter authorizer may only require a minimum of three board members but that would not be adequate later as the school is established and grows. Persons writing charters must also have the foresight to understand the developmental changes, which will be necessary as the organization matures. It is essential that both charter applicants and charter authorizers understand the governance options and best practices. Additionally, it is important for authorizers to know how to distinguish an effective governance structure from a weak one. Unfortunately this is not always the case. This was illustrated in the 2005 Colorado Department of Education charter school report.

Colorado authorizers were not aware of best practices and were not following these guidelines. In some cases, the authorizers were actually asking charters to sign contracts with clear violations of best practices by, for example, including only board members with clear conflicts of interest.

COMPOSITION

Charter school board members can be stakeholders from within the schools. Although there are some state law restrictions (e.g. Connecticut, see Table One) on who may govern a charter, oftentimes parents, teachers, and administrators act as board members. In both Colorado and Utah, studies found that parents are over-represented on charter school boards. In Colorado, 16% of charter schools were composed exclusively of parents (http://www.cde.state.co.us/cdechart/download/Final_Study_2005.pdf). As one Utah charter administrator explained, “I think that it is really nice to have a broad representation from parents/guardians, educational institutions, and business community involvement” (Rorrer, Hausman, and Groth, 2006, p. 60). In the same study, both administrators and board members wanted more professional development in several areas including school law, finance, organizational structure, and accountability requirements and felt they were needed before the school opened and should be

on-going thereafter (Rorrer, Hausmann, and Groth, 2006).

TECHNICAL ASSISTANCE AND ON-GOING TRAINING

In the area of training, state legislation may require that training be offered for boards while some states set out specific requirements for training. Some states have developed more thoughtful, extensive plans for the development of charter school boards and for the authorizers. A few states have begun to increase the level of attention on board training. For example, the Louisiana State Board of Elementary and Secondary Education now requires that charter school boards submit a plan for nonprofit board training, and the expertise of trainers is examined before the school is allowed to open. Seven states require board governance training (see Table One). The states, which include charter school governance training, are: Hawaii, Minnesota, Florida, Nevada, New Mexico, Ohio, and Texas. Some states including Vermont, Colorado and Utah have regulations within the state's department of education, which require board governance training at least when the charter is first received (e.g. UT, see Table One). These are not mandated by state law. The Ohio Department of Education must provide some training to charter authorizers, operating boards and

school applicants; unfortunately, the charter school board members are not required to attend.

Prior to opening a charter school in Utah, those who wish to create a school must attend training on topics including charter school board requirements, financial and data management requirements and legal requirements. After the school begins operations, the state board of education must invite charter school boards to financial training sessions. There is not a requirement for school boards to attend this post-startup. This doesn't provide the training needed for broad-based board development and may be a liability risk. As one charter school board member stated,

I mean, it really is a liability issue, too, for the state. If you have a board that doesn't understand how these things work in a board setting, there's some liability there with a lawsuit (Rorrer, Hausman, and Groth, 2006, p.88).

Charter school board members in Texas are required to attend 12 hours of training in the areas of school law, school finance, health and safety, public fund accountability, public accountability, open meetings and public records. Subsequent years of board service require six additional hours of training annually. Charter authorizer boards are also

required by Texas law to complete this training.

Minnesota—the state with the first charter law—has the most developed oversight provisions for charter school organizers relative to any other state. The state legislature has done so by setting specific requirements for authorizers. To receive funding the authorizer and charter must also attend state-provided training. Minnesota state law requires that board members receive training in financial management (Office of the Legislative Auditor, State of Minnesota (2003); Lake, 2006).

Training is not required or supported for charter schools in 76% of the states/district (see Table one). States like Arizona, Illinois, and Georgia do not have any training or specific governance provisions in their charter school laws. New Hampshire DOE Charter School Program Review (2007) states that it provides no oversight or assistance to current charter schools or charter school applicants. In Michigan, universities, which authorize charters, have begun to provide technical assistance to staff and boards. In many states charter school associations are the only source from which boards receive information on good governance practices.

ADDITIONAL GOOD GOVERNANCE PROVISIONS

In Connecticut the charter school law prohibits any conflicts of interest for board members. In addition, the law proscribes some elements of the composition of the board, requiring the presence of teachers, parents of students enrolled in the school, and a representative of the regional board of education. Despite these specific provisions for the governing board, Connecticut does not require any board training for members of charter school governing boards.

DISCUSSION

DiMaggio and Anheier (1990) suggest that the differences in firm behavior between non-profit and for-profit corporations are often minimal and what is more influential is the level of government regulation and other environmental factors. Therefore, regardless of corporate form, we expect that in states with regulatory systems supporting good nonprofit governance practices—Minnesota, Nevada, New Mexico, South Carolina, Texas and Florida—charter schools will benefit from these supports. Traditional public schools are held accountable through regulations intended to enforce compliance while charter schools are held accountable largely through transparency (Manno, Finn, and

Vanourek, 2000). Unfortunately, in the vast majority of states with charter schools, the bureaucratic systems in public education have not developed processes and expertise that appropriately oversee and support the governance of charter schools. Authorizers assess charter school viability based on fiscal procedures, a detailed business plan, meeting goals and curricular emphasis. Authorizers unfortunately disregard the internal governance function that supports planning and monitoring of the financial, organizational, and curricular systems. Most authorizers also remain unfocused on providing technical supports for charter school governance.

Charter school accountability is very complex because it includes both bureaucratic and market elements. Therefore, providing training and support for charter school boards to better understand their governance

responsibilities is vital. First, charter school boards should acknowledge their similarity to other nonprofit boards and avail themselves of the knowledge and resources for nonprofit boards. Second, authorizers should offer training and support during start-up and on an on-going basis during the operational stages. On-going support is also crucial as board member turnover occurs and as the school matures. Charter school authorizers should develop policies that support the governance functions of charter school boards that will support the autonomy of the school while increasing its ability to respond to accountability demands. These regulatory changes will support the development and maintenance of a strong community-based alternative education model that legislators supported when they chose to authorize the establishment of charter schools within their states.

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