

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.

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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

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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.

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■ Acknowledgements

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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*.

