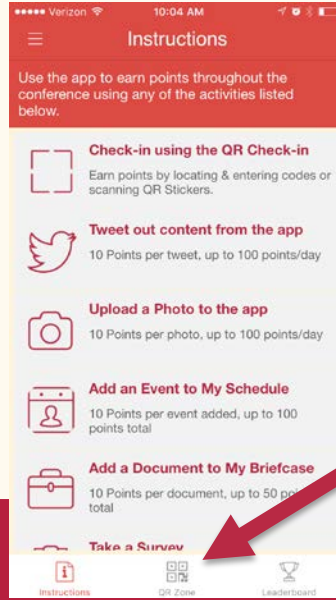
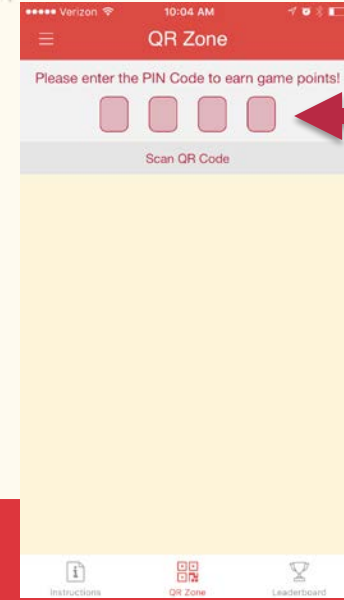


GO TO THE GAME CENTER



CLICK "QR ZONE"



ENTER YOUR SESSION'S PIN

SESSION NAME: Lines in the Sand: How Do Authorizers Toe the Legal Line?

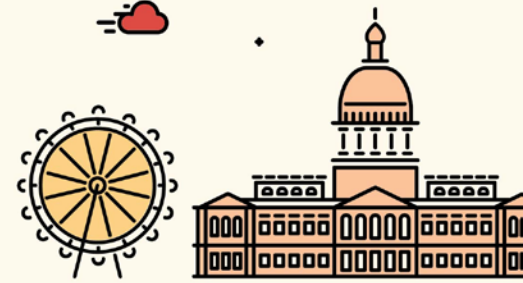
LET YOUR PRESENTERS KNOW YOU'RE HERE, AND EARN POINTS!

SESSION PIN:

5277

LINES IN THE SAND

HOW AUTHORIZERS TOE THE LEGAL LINE



Well, I don't know as I want a lawyer to tell me what I cannot do. I hire him to tell me how to do what I want to do.

- J.P. Morgan



INTRODUCTIONS

- **Jennifer Saba** (moderator), Director of State Policy, NACSA
- **Gail Greely**, Director, CARSNet, Alameda County Office of Education
- **Mindy McNichols**, Assistant School Board Attorney, School Board of Miami-Dade County, Florida
- **Lisa Scruggs**, Partner, Duane Morris LLP



LEARNING OBJECTIVES

Participants should leave this session better equipped to:

1. Understand the landscape of legal action, based on authorizer practice;
2. Assess the mandates and constraints of your own charter law in order to pursue action; and
3. Reflect on your organization's approach to legal interpretation.



FOUR WAYS TO APPROACH YOUR CHARTER LAW

- Strict Constructionist
- Loophole User
- Tightrope Walker
- Wild West Vigilante

GROUP
ACTIVITY!



WHAT'S YOUR STYLE?



GROUP
ACTIVITY!

CASE STUDY #1:

Oversight Fees



CASE STUDY #1: OVERSIGHT FEES

THE CORE ISSUE

How do we support the administrative costs associated with oversight of large, multi-campus, multi-program charter schools?



CASE STUDY #1: OVERSIGHT FEES

What did we do?

- Identified a statutory conflict between fee cap and specific authority for oversight fees of “countywide charters”
- Approached as the **Octopus**, using the leverage of charter approval and renewal
- Statutory Construction: Specific over general; new over old



CASE STUDY #1: OVERSIGHT FEES

What was the outcome?

- As school resources shrank, the school sought a refund of excess “supervisory oversight” fees through a claim against public agencies.
- The charter school was non-renewed and ultimately filed for bankruptcy.
- The bankruptcy trustee pursued claim for excess fees.



CASE STUDY #1: OVERSIGHT FEES

LESSONS LEARNED

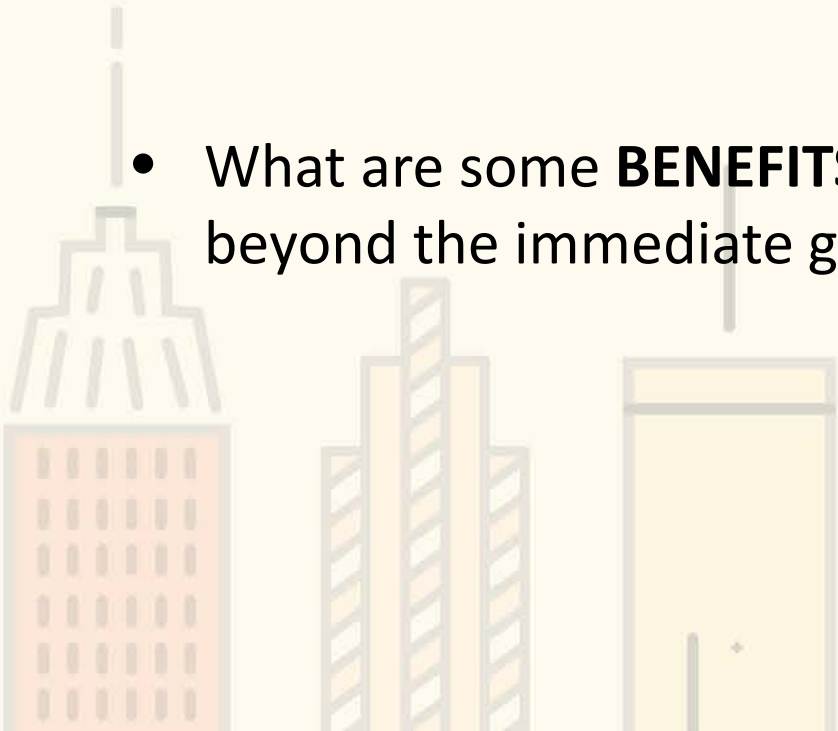
- Desperate people do desperate things.
- There's more than one way a legal “stretch” can snap back and bite you.
- Don't fail to consider undervalued risks.



RISK VERSUS BENEFIT

- What are the **RISKS** of using an ambiguity in charter law? What are the consequences of losing a challenge?
- What are some **BENEFITS** of pushing the envelope, beyond the immediate goal?

GROUP
ACTIVITY!



CASE STUDY #2:

Does $1 = 3$?



CASE STUDY #2: DOES 1 = 3?

THE CORE ISSUE

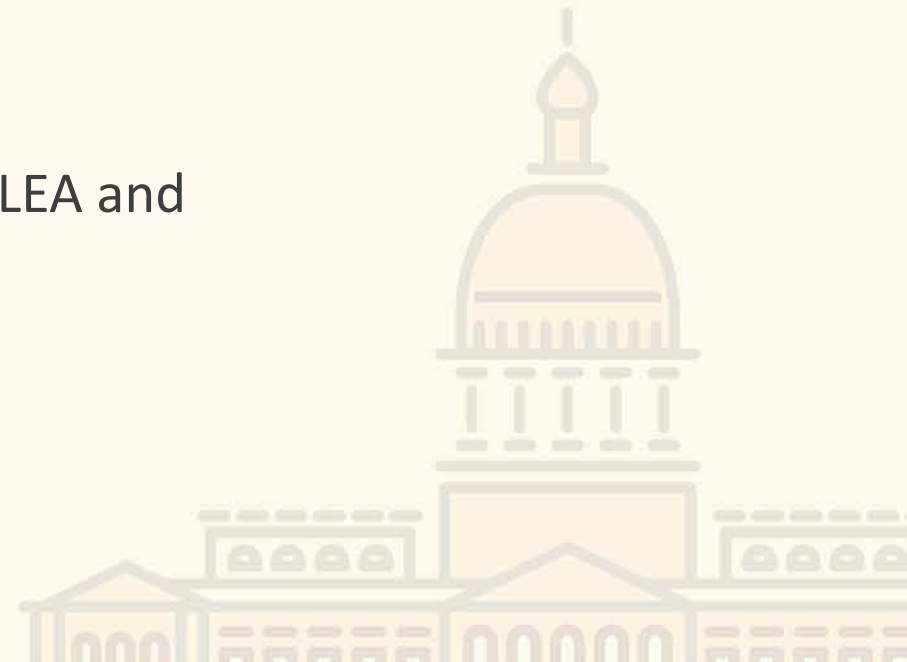
What appeal rights does a single campus of a multi-campus charter school have when it is closed by its authorizer?



CASE STUDY #2: DOES 1 = 3?

Relevant Law:

- Law changed in 2003 to limit schools to one campus per charter
- Existing multi-campus charters (all in Chicago) were grandfathered, and the network is considered a single school
- Two types of charters in Illinois depending on authorizer: LEA and non-LEA



CASE STUDY #2: DOES 1 = 3?

Questions not specifically addressed in law:

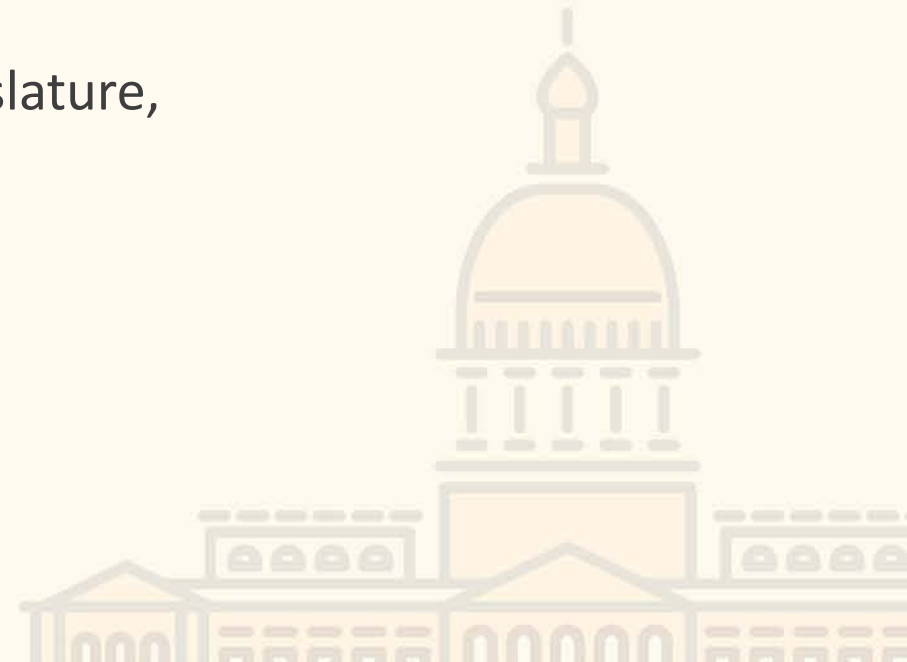
- Is revocation of a single campus possible?
- Does the Illinois State Charter School Commission have jurisdiction to review revocation of a single campus?
- How will any decision impact other aspects of school identity: governance, LEA status, certification?



CASE STUDY #2: DOES 1 = 3?

What did we do?

- Appellate review of single campus revocation, with decision applicable to entire network
- Approached as a reluctant **Wild West Vigilante**:
 - Legal questions not even contemplated by the legislature, let alone addressed in statute
 - No choice but to make a determination



CASE STUDY #2: DOES 1 = 3?

LESSONS LEARNED

- You must acknowledge gaps and silence in the governing law. Ignoring a gap can have just as many consequences as deliberately choosing a course of action.
- Tailor your charter agreement to the facts *and* existing law.
- Consider different approaches to your policy goals: statutory change; regulatory change; contract amendment?



CASE STUDY #3:
Shaping the Charter Portfolio



CASE STUDY #3: SHAPING THE CHARTER PORTFOLIO

THE CORE ISSUE

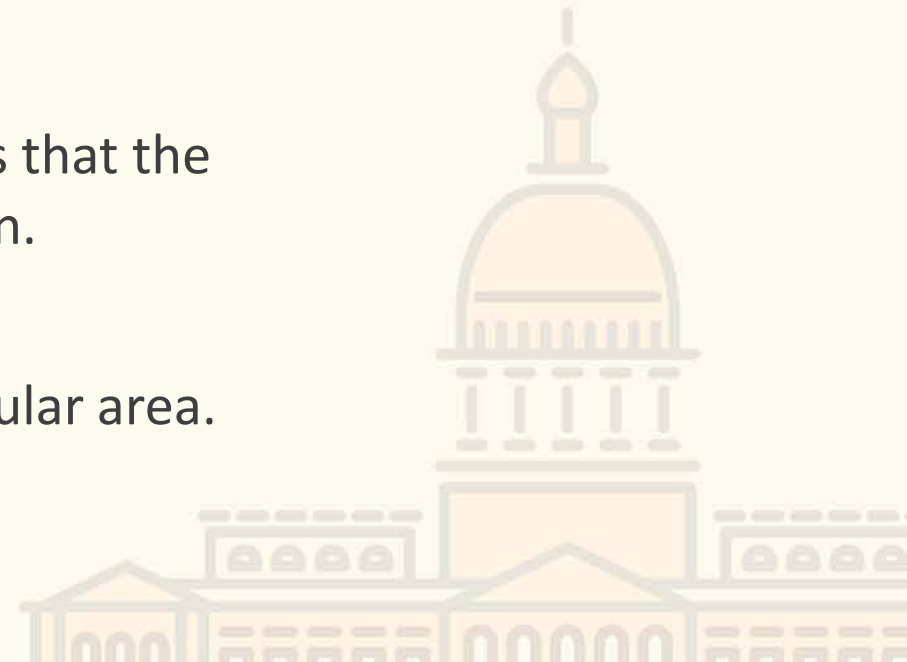
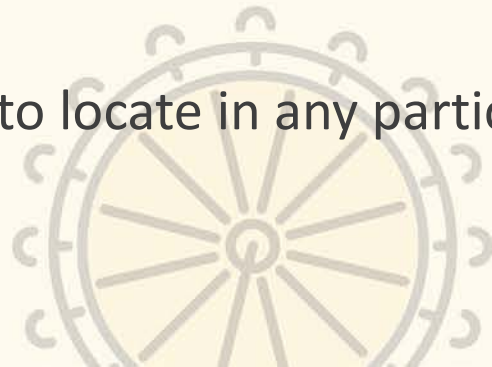
The current geographic distribution of charter schools does not adequately address district and family need and demand.



CASE STUDY #3: SHAPING THE CHARTER PORTFOLIO

Relevant Law:

- Any person or entity can apply to open a charter school.
- Charter schools have flexibility on zoning and building codes.
- A charter proposal cannot be denied solely on the basis that the applicant failed to identify a facility or a specific location.
- Districts cannot direct applicants to locate in any particular area.



CASE STUDY #3: SHAPING THE CHARTER PORTFOLIO

Relevant Law:

- Charter proposals must be tailored to target a designated student population
- School districts may require additional information from a charter applicant beyond the express statutory requirements.



CASE STUDY #3: SHAPING THE CHARTER PORTFOLIO

Relevant Case Law:

A single 2005 case in which the court held that the district's claim of adverse impact on other schools or students was not a sufficient basis to deny an otherwise legally compliant charter proposal in the absence of any empirical evidence



CASE STUDY #3: SHAPING THE CHARTER PORTFOLIO

The million dollar question not specifically addressed in law:

What can the district do to shape a portfolio of schools that addresses geographic need and demand?



GROUPS OF 3 TO 5: WHAT WOULD YOU DO?

- **Discussion Prompts:**
 - What aspects of your charter law *could* you or *do* you use to shape your charter portfolio?
 - What are the risks and benefits of using the law in this way?
- **Report Out:** Ideas, surprises, discoveries from your colleagues



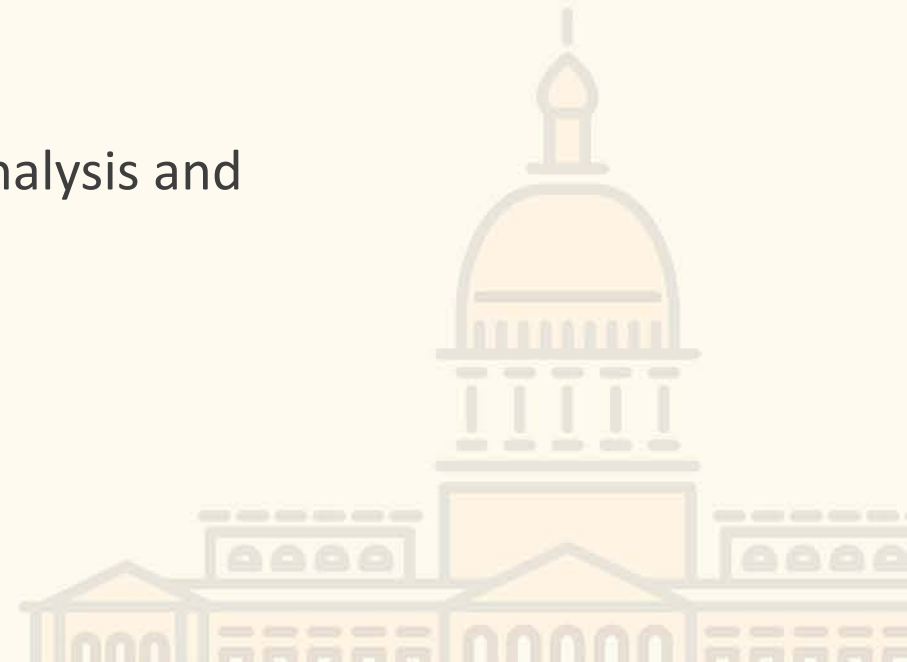
GROUP
ACTIVITY!



CASE STUDY #3: SHAPING THE CHARTER PORTFOLIO

Options:

- Develop an RFP-type process that incorporates a preference for charters locating in certain areas
- Proactively cultivate proposals
- Require that applications include evidence of market analysis and community support
- Enhance relationships with local government agencies



CASE STUDY #3: SHAPING THE CHARTER PORTFOLIO

Risks:

- Court challenge that district has exceeded its authority
- Statutory changes to prohibit these options
- Allegations against district of favoritism or discrimination
- Other?



KEY TAKEAWAYS



Jen - The legislature will not (and cannot) anticipate all of the issues you confront. Think creatively and be willing to advocate for change!

Gail – Think through all consequences when you start AND when opportunities for reconsideration arise. Power can corrupt our thinking!

Mindy – You should anticipate that some of your biggest authorizer decisions may be challenged. The more commonsensical and logical your approach, the easier it will be to defend!

Lisa - Address gaps and silences in the law head on and be thoughtful about means used to satisfy policy goals. Be proactive!

