

PUTTING AN END TO AUTHORIZER SHOPPING

WHY AUTHORIZING MATTERS

Good charter school policy must be part of the solution to address our public education system's greatest problem: too many children lack access to a transformative education. Getting authorizing policy right is critical because good authorizing has the power to transform the lives of not just a few children, but millions.

When done well, authorizing is a catalyst for charter school quality and growth. Unfortunately, the quality of charter laws and authorizing institutions varies across the country, leading to uneven charter availability and quality.

NACSA's policy resources provide information that helps stakeholders understand common authorizing issues and increase the number of high-quality schools available to their students.

THE ISSUE IN BRIEF

Originally written by Daniela Doyle of Public Impact in 2014; updated by NACSA in 2019.

The public charter school movement is premised on the exchange of increased autonomy for increased accountability. Individual schools are given more flexibility in their actions, and then must meet agreed-upon benchmarks of quality. If a school fails to fulfill the terms of its charter or achieve its stated goals, it can be closed.

However, charter schools that are identified for closure do not always shut their doors. Even as charter school authorizers have become more adept at evaluating school performance and enforcing accountability, some schools have tried to avoid closure altogether.

One way that schools evade closure is through authorizer shopping: when a struggling school transfers to a new authorizer to avoid accountability. Experience shows that authorizer shopping is a threat to a state's overall charter school quality if even one authorizer is willing and able to accept failing schools.

NACSA RECOMMENDS

To prevent authorizer shopping, the National Association of Charter School Authorizers (NACSA) recommends that states focus on enacting policies that hold both schools and authorizers accountable to high standards. States should enact policies that:

- regulate the transfer of charter schools from one authorizer to another;
- prevent charter schools that are closed by one authorizer from securing a new authorizer;

- strengthen the authorizing laws that hold authorizers accountable for their actions. This starts with clearly defined standards and expectations for authorizers and includes regular authorizer reporting, evaluation, and, when necessary, sanctioning of failing authorizers.

These policy changes can be bolstered by collaboration among authorizers and increased public transparency. Authorizers should complement state policy directives by sharing information on schools and operators among themselves to ensure that school quality drives decision making. In addition, research, policy, and advocacy organizations should publicly share data that will identify and illustrate problems when they exist; these organizations should also explicitly call on authorizers to account for their actions.

THE PROBLEM OF AUTHORIZER SHOPPING

Authorizer shopping occurs when a low-performing charter school attempts to transfer to a new authorizer to avoid accountability measures—usually school closure.

Depending on the jurisdiction, a school can change authorizers in one of two ways:

1. A school can let its current contract expire or be formally non-renewed or revoked and pursue a successive new school contract with a new authorizer. In this scenario, the failed charter school's existing contract is terminated, but a new charter contract from the new authorizer enables the school to remain open.
2. A school can transfer to a new authorizer during its charter term. This happens as it becomes clear, through regular school-level performance reports or other authorizer action, that the school will likely fail to uphold the terms of its charter, and its authorizer will revoke or not renew its contract. The new authorizer assumes responsibility for the school during the remainder of its charter term and is responsible for the subsequent renewal, which will likely be granted, despite evidence of failed performance.

WHY IT HAPPENS

Why would an authorizer choose to receive and sponsor a low-performing charter school?

1. **The absence of clear expectations for authorizers:** While NACSA's *Principles & Standards for Quality Charter School Authorizing* outlines the attributes of a high-quality authorizer, state policy too often provides little guidance on this topic. This leaves authorizers to set widely varying standards for their schools and their own actions.
2. **Financial incentives to authorize more schools:** For some authorizers, keeping and adding schools to their portfolios offers financial benefits that outweigh school performance considerations.

- **Providing services:** Evidence suggests that a small number of organizations enter authorizing to make money. In these instances, the authorizer can generate large sums of money, not through authorizing activities, but by selling services to the schools it authorizes.
 - **Operating at scale:** Authorizers often receive little state funding to operate, and therefore fund their operating expenses by charging charter schools a fee, often between one and three percent of the school’s per-pupil funding. Consequently, the authorizer must sponsor some minimum number of schools to keep even one dedicated staff person on payroll. Particularly in the absence of authorizer accountability, some authorizers may choose to expand their portfolio size to meet the goal of financial solvency, even at the expense of school quality.
3. **Lack of communication and collaboration among authorizers:** In many states, authorizers do not communicate regularly with one another. They have no mechanism for sharing information about a school that is shopping for a new authorizer and no system for addressing and assessing school transfers.

FACTORS IN STATE LAW ENABLE AUTHORIZER SHOPPING

Misguided motivations may encourage authorizer shopping, but components of state laws make it possible.

Legislative loopholes: In some states, loopholes in the charter law allow schools that are non-renewed to make small changes and re-open as “new” schools. For example, in Ohio, several schools reopened after closure without making substantial changes. Changes in Ohio law now make this more difficult, but ultimately, the authorizer always has the responsibility to determine if a school is in fact “new” or not.

Unrestricted transfers: When charter schools were created, few state laws contemplated the possibility of a school transferring between authorizers. By default, this often leads to a permissive transferring environment where individual authorizers are left to create their own disparate practices as the need arises. One easy fix for authorizer shopping would be to prohibit schools from transferring authorizers altogether. However, there are limited, valid reasons—unrelated to non-renewal or revocation—for a charter school to seek a new authorizer. For example, when an authorizing entity decides to close its authorizing office, as was the result of 2009 legislation in Minnesota, those “orphaned” schools needed to find a new authorizer. Schools may also seek to transfer to a district authorizer that can offer a subsidized facility.

Growth in the number of authorizers: Finally, as the number of authorizers in some states grows, the potential for a low-performing charter school to find another sponsor has also increased. The existence of multiple authorizers supports quality growth, because it allows for a check on the possibility that a lone authorizer would become hostile to charters or develop undesirable behaviors over time. However, the presence of more authorizers also creates more opportunity for a low-performing school to authorizer shop, especially if it is in

the authorizer’s interest. In the absence of clear expectations or accountability for authorizers, the growth in the number of authorizers can allow for more low-quality authorizers to enter the market. A smaller authorizer overseeing just one or two schools is much more likely to allow a low-performing school to join its portfolio, compared to a larger, more established (and often more thoughtful) authorizer.

PREVENTING AUTHORIZER SHOPPING WITH STATE POLICY

No single policy is likely to curb authorizer shopping entirely. Rather, a combination of legislative actions governing authorizers and charter schools is needed. It is often much easier to implement these policies in states establishing new charter laws, before authorizer shopping becomes an issue, than after the fact.

Start with State Policy

Policies that aim to tackle authorizing shopping directly and those that strengthen authorizing more generally are both crucial parts of the solution.

In states considering the addition of new authorizers, these policies should be established in the same legislation that creates these new authorizers, to stop authorizer shopping before it ever starts. In addition, new laws should address any potential loopholes in the state’s existing charter laws, such as clearly defining what constitutes a “new” school and restricting the amount of money that authorizers can receive for services rendered.

1. Explicitly regulate school transfer and closed schools. Several states’ laws explicitly block authorizer shopping. These concepts can be applied to states where authorizer shopping is occurring as well as states where authorizing shopping could arise with the creation of additional authorizers. These laws:
 - Limit the conditions for transferring authorizers. States can require a third-party approval for transfer (such as from the Department of Education) or prohibit or impose conditions on the transfer of chronically low-performing schools. For example, Minnesota law requires that both the incoming and outgoing authorizers must grant approval, or the transfer cannot take place.
 - Make closure the default action for chronically low-performing schools. Default closure laws ensure that chronically low-performing charter schools are closed, absent extenuating circumstances identified by their authorizer. In addition, laws should ensure that schools closed for performance remain closed and prohibit authorizers from authorizing schools that have been closed.
 - Identify an entity to handle exceptions. Extenuating circumstances can arise and state policy should identify which entity can determine if a legitimate exception needs to be made. For example, Indiana law requires any non-renewed school to submit a proposal to the state

board describing how it will address its deficiencies. A new authorizer can sponsor the school only if the state board approves the proposal.

2. Set and support minimum performance standards for authorizers while practicing authorizer accountability. Good authorizing policies can also address many of the misguided motivations for authorizer shopping described earlier. The following policies prevent shopping by setting a minimum floor for authorizing actions and establish basic authorizer accountability:
 - Adopt standards for charter school authorizing, such as NACSA's *Principles & Standards for Quality Charter School Authorizing*, to create universal expectations for authorizer practices.
 - Evaluate authorizers on how well they meet those expectations for authorizer practice.
 - Require authorizers to publicly report on the academic, fiscal, and operational health of schools in their portfolios.
 - Set clear expectations for how and when the state will hold authorizers accountable for both the performance of schools in their portfolios and for authorizer actions.
 - Empower the state to act if an authorizer fails to meet those expectations for portfolio or authorizer performance, including sanctions on or closing the authorizer, if need be.
 - Fund authorizers in a way that minimizes incentives to approve or renew low-performing schools. For example, Florida, Minnesota, New Hampshire, and Utah utilize performance-based funding for the virtual charter schools in their states. By requiring evidence that the schools have made progress before paying schools in full, the policies help prevent the growth and expansion of any virtual schools that aren't meeting the needs of students.

ADDITIONAL WAYS TO HELP PREVENT AUTHORIZER SHOPPING

Complement Policies with Industry Collaboration

These legislative options work best when authorizers complement those efforts through cooperation and collaboration.

In Indiana, the three largest authorizers meet regularly to discuss shared challenges and brainstorm possible solutions. In addition, when any authorizer denies a charter application or non-renews a school, it shares data and discuss its decision. As a result, authorizer shopping among these large authorizers has been significantly reduced.

Of course, willing authorizers can self-regulate through authorizer cooperation and communication, but it is often authorizers outside of these groups that will accept a low-performing school into its portfolio. That is why

state policies must create and enforce uniform policies against authorizer shopping.

Reinforce Policies with Public Transparency

Other local stakeholders, such as research, policy, and advocacy organizations, can also play a meaningful role in curbing authorizer shopping by using data to identify and illustrate problems that might otherwise fly under the radar. For example, the California Charter School Association (CCSA) issues an annual “Public Call for Non-Renewal” of charter schools that have not met CCSA’s minimum performance standard. California, historically, has not struggled with authorizer shopping due to its authorizing structure. However, if those laws were to change, this public call for non-renewal would likely help prevent authorizer shopping by making it clear which schools were trying to avoid accountability.

CONCLUSION

As authorizers bolster their accountability measures, some schools will turn to authorizer shopping to avoid closure. Well-designed policies and appropriate authorizer oversight by the state, the authorizing sector, and the public can address the causes and effects of authorizer shopping.

Several states with a history of authorizer shopping are already implementing many of these new policies, as well as finding ways to foster authorizer collaboration and public transparency.

States that experience authorizing shopping and/or are considering the addition of new authorizers should implement policies and practices to prevent authorizer shopping and ensure failing schools remain closed.

For more information on authorizer shopping and authorizing practices, visit the National Association of Charter School Authorizers: www.qualitycharters.org.

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