



National Association of Charter School Authorizers
Testimony on Policy Recommendations
New Mexico Legislative Education Study Committee
August 17, 2016

Chairman Roch, Vice-Chairman Sapien, members of the New Mexico Legislative Education Study Committee (LESC), thank you for the opportunity to address you today about policy recommendations based upon my organization's authorizer evaluation of the New Mexico Public Education Commission (PEC).¹ My name is John Hedstrom and I am the Vice President of Policy & Advocacy for the National Association of Charter School Authorizers (NACSA). I am accompanied by my colleague, Katie Piehl, Director of Authorizer Development at NACSA, who served as the lead evaluator of the PEC evaluation.

At the outset, I would like to thank the PEC, a NACSA member since 2008, for inviting us² to conduct a formative authorizer evaluation, which has been submitted for the record. NACSA's relationship with the PEC dates back to 2006 when we supported its strategic planning process and again in 2010 during an earlier authorizer evaluation. The current evaluation focused on the review of the PEC's authorizing practices compared against NACSA's nationally recognized *Principles & Standards for Quality Charter School Authorizing* (Principles & Standards).³ In addition, and at the PEC's request, NACSA focused on progress the commission has made since the last evaluation conducted in 2010.

The vast majority of our work—including the 2006 initial planning, the 2010 evaluation and the current evaluation—has been supported through grants and other funding that NACSA has secured on the PEC's behalf. We are eager to continue our relationship and are already working to identify resources we can draw on to support the PEC in implementing some or all of the report's recommendations. In the end, we all share a common goal – providing the highest quality public education for New Mexico's children.

NACSA's Experience in Conducting Formative Authorizer Evaluations

NACSA has conducted more than 70 evaluations of authorizers responsible for more than half the charter schools in the country at no cost to those authorizers – our efforts are federally funded. All evaluations are formative – identifying practical guidance on strengths and priorities for improvement. We have a process that has been developed and refined steadily over seven years of organizational experience evaluating authorizers.⁴ The

¹ See Attachment XX, *NACSA Authorizer Evaluation Report of the New Mexico Public Education Commission*, July 19, 2016 (hearing materials submitted to LESL on Friday, August 12, 2016).

² See Hearing Transcript from January 15, 2016 NM-PEC meeting, pp. 52-53 (hearing materials submitted to LESL on Friday, August 12, 2016).

³ See *NACSA Principles & Standards for Quality Charter School Authorizing* (hearing materials submitted to LESL on Friday, August 12, 2016).

⁴ For more information on our formative evaluation process, please see *NACSA Authorizer Evaluations* (hearing materials submitted to LESL on Friday, August 12, 2016).



formative evaluation process includes an in-depth document review, surveys, a two-day on-site visit, and an opportunity for the authorizer to review and comment on the draft evaluation prior to finalization. We develop the site visit schedule in collaboration with the authorizer, seek to make the best and most efficient use of the time while minimizing the burden and disruption to the board, the staff and the schools that are part of the evaluation.

NACSA is a practicing organization. We have had an ongoing relationship with approximately 45 percent of evaluated authorizers to help with the subsequent work to implement recommendations, most often without cost to the authorizer. In addition to our evaluations, we have managed the evaluation of nearly 500 charter applications for authorizers from Georgia to Washington State to Louisiana to Hawaii and managed charter renewal processes, conducted independent due diligence on the performance of dozens of charter management organizations.

The findings and recommendations represent our professional judgment based on national best practices. Ultimately, it is the authorizer's decision on whether to, and how to, use the recommendations.

NACSA's Policy Foundation

For the past five years, NACSA's state advocacy efforts have focused on eight distinct policies⁵ based upon our three main pillars:

1. Accessibility—providing high quality charter schools that protect student and public interest
2. Accountability—maintaining high standards of quality and oversight for schools and authorizers
3. Autonomy—protecting charter school flexibility and innovation

Appropriately, the same three main pillars provide the foundation for our policies as well as our Principles & Standards, which inform good authorizing practice. Together, these eight policies, which are not new ideas, ensure a legal framework for every state to:

- set high standards for all charter schools;
- approve only good new charter schools;
- monitor the performance of all charter schools;
- empower successful schools to remain open and possibly grow; and
- close charter schools that persistently fail.⁶

Our policy approach comes from NACSA's real-world experience as a professional membership organization of the agencies that approve, monitor, renew, and sometimes close charter schools. NACSA staff has worked in virtually every state and major city with

⁵ See *On The Road to Better Accessibility, Autonomy & Accountability: State Policy Analysis 2015*, p. 5 (hearing materials submitted to LESC on Friday, August 12, 2016).

⁶ *Ibid.* (hearing materials submitted to LESC on Friday, August 12, 2016).



charter schools and our experience discovered that most of the state laws and policies governing charter school accessibility, autonomy, and accountability need to be improved.

For the past two years, with a third publication pending this December, NACSA has issued an annual State Policy Analysis Report (SPA Report). This publication analyzes the current policy reality of each chartering state, not the whole story of a state charter school law and sector, nor authorizers' day-to-day practices. Within the publication, we make specific policy recommendations for each state based upon our analysis.

Since 2012, we have met with success across the country—21 states (Washington, DC included) have made changes in accordance with our policies, 3 states that did not have charter laws now do (Washington, Alabama, Mississippi), 5 states that were in the lowest category of states (10 or less points) are now over the 20-point threshold (Georgia, Tennessee, Delaware, Oklahoma, and South Carolina) and 2 states (Nevada and Texas) were in the middle category and are now near or at the top of the rankings. For the past two years, NACSA's SPA Report has ranked New Mexico's policies around the middle of the pack—ranking 21st in 2015, scoring 15 of a possible 33 points.

Importantly, we recognize that policies are only one part of the puzzle—what people do with them through implementation and the development of practices matters, too.

Implementation does not exist in a vacuum. It is done within an administrative and political landscape by people and institutions that might not always get it right the first time. Beyond the policy framework, lawmakers, stakeholders, and authorizers must ensure that the policies are implemented properly to provide quality charter schools to families and avert perverse incentives that undermine the system. Over time, a successful charter school system requires a combination of smart policy, committed people, and strong practice.

Specific New Mexico Policy Recommendations

As of the 2014-2015 school year, there are 6,700 charter schools serving 2.9 million children in this country, including 97 schools and approximately 25,000 children in New Mexico.⁷ Our report made policy recommendations specific to New Mexico including:

1. *Assess the joint authorizing relationship between the Public Education Commission and the State Superintendent to determine if changes in statute could clarify and differentiate their respective roles in authorizing charter schools.*
2. *Institute a strong renewal standard.* Empower authorizers to close schools that fail to achieve the performance goals in their charter contract.
3. *Create a default closure provision, making closure the expected outcome for failing charter schools.* Together, a strong renewal standard and a default closure

⁷ See National Alliance for Public Charter Schools *Estimated Number of Public Charter*

Schools & Students, 2014-2015 (http://www.publiccharters.org/wp-content/uploads/2015/02/open_closed_FINAL.pdf).



mechanism should have a long-term positive impact on the quality of the state's charter school sector.⁸

These three recommendations represent the critical core of NACSA's accountability policies and receive double weight in NACSA's SPA Report scoring rubric. As the charter school sector remains relatively new in its 25 years—in New Mexico, only 7 years—our policy approach constantly evolves as we better understand how best to foster a high quality charter sector. Accountability stands out as critical.

Recommendation #1 – Authorizer Structure

This recommendation is specific to the PEC/PED dynamic, not the other authorizers in the state. In general, NACSA supports policy that produces at least two high-quality authorizers in every jurisdiction. Having more than one authorizer provides a fail-safe for high-quality charter schools and typically helps establish expectations for all authorizers and provide models of strong practice that others can follow.

New Mexico, in our SPA Report scoring rubric, receives a full six points as the law allows local education agencies (LEAs) and the PEC to authorize charter schools. However, as the Authorizer Evaluation Report finds, the implementation of strong authorizing practices is significantly impeded by the PEC/PED structural dynamic. As the PEC is a quasi-independent body that officially serves in an advisory capacity to the New Mexico Secretary of Education, its decisions are subject to reversal by the Secretary. At the same time, the PEC relies on staff from the State Department of Education for some functions. This arrangement creates organizational conflict. New Mexico is not alone in this dual entity organizational quagmire, we have seen similar problems in Arkansas, where charter school quality suffers.

Therefore, as specifically related to the charter schools authorized under the PEC/PED structure, NACSA recommends the legislature abandon the dual entity structure and allow one entity to serve as the authorizing body. In our opinion, even clearly delineated duties and responsibilities in law between the PEC and PED would not solve the problem. Over time, clearly delineated lines tend to become blurred resulting in the same organizational conflict identified by the Authorizer Evaluation Report.

It is important to note that the evaluation recognized the collective commitment of the PEC and PED to high quality education, regardless of type. Our recommendation is to provide an efficient framework that provides access, accountability and autonomy. Should the legislature decide the single entity should be the PED, NACSA would point to legislative language in Massachusetts and New Jersey⁹ as strong structural examples. Massachusetts' charter school system, widely considered one of the best in the country, also implemented strong authorizing practices. Should the legislature decide to create an independent charter

⁸ See *On The Road to Better Accessibility, Autonomy & Accountability: State Policy Analysis 2015*, pp. 91-92 (hearing materials submitted to LESC on Friday, August 12, 2016).

⁹ See attached Exhibit A.



board/commission, Georgia, Washington, DC and Washington State provide excellent examples of strong legislative language establishing ICBs.

Recommendation #2 – Renewal Standards

The Authorizer Evaluation Report clearly lays out issues and concerns related to New Mexico’s charter school renewal policy and practice.¹⁰ NACSA supports policy requiring strong renewal standards, which allows authorizers to hold schools accountable if they fail to achieve the outcomes in their charter contract at the end of their charter term. Success should be defined by the achievement of a goal, not merely the opposite of failure or promises of plans for future improvement.

The strong renewal standard allows authorizers to enforce accountability and close failing charter schools when necessary. It shifts the burden of proof from the authorizer to a failing school—making renewal something that is earned by schools when they demonstrate success. In practice, statutory language around “reasonable progress” has led some courts and appellate bodies to keep demonstrably failing schools open because the school argued that state law required the authorizer to keep them open if they could provide any evidence of “progress.” New Mexico’s law contains a similar standard—“substantial progress.” For strong policy language, NACSA recommends South Carolina and New Hampshire.¹¹

This policy change would remove language from charter laws that makes it difficult to close failing schools. Authorizers can put in place many strong performance management tools, but need clearly delineated authority to successfully close a failing school at renewal.

Recommendation #3 – Default Closure

NACSA supports policy requiring the state to establish a threshold of minimally acceptable academic, financial and organizational performance for charter schools. No one, including NACSA, likes to close schools. However, schools performing below threshold at the time of renewal, or that remain below this level for a certain period of time, should face closure as the default—or expected—consequence.¹² The charter bargain depends on this heightened accountability.

Default closure provisions address the “worst-of-the-worst” schools. Schools can still be subject to closure for failure to meet the performance expectations established by authorizers and agreed to in their charter contracts, but at a minimum, closure is expected when schools fall below a state’s default closure threshold. In essence, there can be no ultimate charter school accountability if state law allows the worst-of-the-worst schools to continue operating.

¹⁰ See *NACSA Authorizer Evaluation Report of the New Mexico Public Education Commission*, July 19, 2016, pp. 23-26 (hearing materials submitted to LESC on Friday, August 12, 2016).

¹¹ See *attached* Exhibit B.

¹² In some situations, the authorizer or state may decide to keep a school open based on special circumstances, such as an alternative school serving a specific high-risk population, known as alternative education campuses (AECs). A default closure mechanism should allow these exceptions.



Texas provides the most recent example of a state enacting strong, explicit, consistent standards for charter school authorizing and for charter school performance, buoyed with additional authorizer authority to enforce them.¹³ States with strong default closure laws include South Carolina, Texas and Tennessee.¹⁴

For example, from 1995, when Texas first enacted its charter law, until the passage of 2013 legislation, 27 charter schools were non-renewed or had their charters revoked. Since the passage of that legislation, 20 low-performing charter schools have been closed by the Texas Education Agency using the default closure provisions.¹⁵

Just last week, Education Next released a report that studied the impact of 29 high school closures affecting over 20,000 students between 2003 and 2009 and found that those closures had a positive impact on rising ninth graders.¹⁶

If we had to tie all three recommendations together, Nevada serves as a good example of a state taking action to strengthen its authorizing structure and allow committed people to vastly improve its authorizing practices—highlighted in the 2015 SPA Report.¹⁷ Over three consecutive legislative sessions, Nevada dramatically changed the course of its charter school program. Since the changes were enacted, the quality of schools has jumped dramatically as nearly half of the schools authorized by the Authority have received a five-star rating, the highest possible in the state.¹⁸ In addition, between 2011 and 2015, the number of students served by four- and five-star charter schools statewide grew 147%.¹⁹

At NACSA, we believe all children deserve a quality public education. We want to work with decision makers to ensure a policy environment to make that more likely, not less likely. As the charter school sector continues to evolve and push into new realms of policies and experiences, NACSA is committed to the continual examination of our policy approach and analysis. Our policies are supported by the best evidence available to support authorizers, charter schools, and, most importantly, strong student outcomes.

¹³ See *On The Road to Better Accessibility, Autonomy & Accountability: State Policy Analysis 2015*, pp. 25-26 (hearing materials submitted to LESC on Friday, August 12, 2016).

¹⁴ See attached Exhibit C.

¹⁵ See *On The Road to Better Accessibility, Autonomy & Accountability: State Policy Analysis 2015*, pp. 25-26 (hearing materials submitted to LESC on Friday, August 12, 2016).

¹⁶ See Education Next, *School Closures in New York City*, Fall 2016, Vol. 16, No. 4. (<http://educationnext.org/school-closures-in-new-york-city-did-students-do-better>). The study found that for students already enrolled in a school that was later closed, the phase-out process did not have a systematic impact, positive or negative, on their attendance or academic performance.

¹⁷ See *On The Road to Better Accessibility, Autonomy & Accountability: State Policy Analysis 2015*, pp. 23-24 (hearing materials submitted to LESC on Friday, August 12, 2016).

¹⁸ *On The Road to Better Accessibility, Autonomy & Accountability: State Policy Analysis 2015*, pp. 23-24 (hearing materials submitted to LESC on Friday, August 12, 2016).

¹⁹ See *On The Road to Better Accessibility, Autonomy & Accountability: State Policy Analysis 2015*, pp. 23-24 (hearing materials submitted to LESC on Friday, August 12, 2016).



Thank you for your time and the opportunity to address the LESC today. We are happy to take questions at the appropriate time.



Exhibit A

Legislative Language

Single Structure Authorizing Entity

State Education Agency (SEA)

Massachusetts: *(c) A commonwealth charter school shall be a public school, operated under a charter granted by the board, which operates independently of a school committee and is managed by a board of trustees. The board of trustees of a commonwealth charter school, upon receiving a charter from the board, shall be deemed to be public agents authorized by the commonwealth to supervise and control the charter school.*

New Jersey: *c. An application to establish a charter school shall be submitted to the commissioner and the local board of education or State district superintendent, in the case of a school district under full State intervention, in the school year preceding the school year in which the charter school will be established. Notice of the filing of the application shall be sent immediately by the commissioner to the members of the State Legislature, school superintendents, and mayors and governing bodies of all legislative districts, school districts, or municipalities in which there are students who will be eligible for enrollment in the charter school. The board of education or State district superintendent shall review the application and forward a recommendation to the commissioner within 60 days of receipt of the application. The commissioner shall have final authority to grant or reject a charter application.*

Independent Charter Boards/Commissions (ICBs)

Georgia: *(a) The State Charter Schools Commission is established as a state-level authorizing entity working in collaboration with the Department of Education under the authority of the State Board of Education. Start-up funds necessary to establish and operate the commission may be received by the State Board of Education in addition to such other funds as may be appropriated by the General Assembly. The department shall assist in securing federal and other institutional grant funds to establish the commission.*

(b) The commission shall be appointed by the State Board of Education and shall be composed of a total of seven members and made up of three appointees recommended by the Governor, two appointees recommended by the President of the Senate, and two appointees recommended by the Speaker of the House of Representatives. The Governor, the President of the Senate, and the Speaker of the House of Representatives shall each recommend a list of no fewer than two nominees for each appointment to the commission. The appointments shall be made as soon as feasible but no later than the first regular meeting of the State Board of Education in February, 2013. Each member shall serve a term of two years; provided, however, that, for the purpose of providing staggered terms, of the initial appointments, three members shall be appointed to one-year terms and four members shall be appointed to two-year terms as determined by the State Board of



Education. Thereafter, each appointee shall serve a two-year term unless the State Board of Education, after review and upon recommendation by the initial recommending authority, extends the appointment. If a vacancy occurs on the commission, it shall be filled by the State Board of Education from a recommendation by the appropriate authority according to the procedure set forth in this subsection. The members of the commission shall annually vote to appoint a chairperson and a vice chairperson from among its membership. Each member of the commission shall hold a bachelor's degree or higher, and the commission should include a group of diverse individuals representative of Georgia's school population, to the extent possible, with respect to race, sex, and geography who have experience in finance, administration, law, and education.

Washington, DC: (1) *In general.* – There is established within the District of Columbia Government a Public Charter School Board (in this section referred to as the "Board").

(2) *Membership.* – The Board shall consist of 7 members, appointed by the Mayor, with the advice and consent of the Council. Members shall be selected so that knowledge of each of the following areas is represented on the Board:

(A) *Research about and experience in student learning, quality teaching, and evaluation of and accountability in successful schools;*

(B) *The operation of a financially sound enterprise, including leadership and management techniques, as well as the budgeting and accounting skills critical to the startup of a successful enterprise;*

(C) *The educational, social, and economic development needs of the District of Columbia; and*

(D) *The needs and interests of students and parents in the District of Columbia, as well as methods of involving parents and other members of the community in individual schools.*

(3) *Vacancies.* – Where a vacancy occurs in the membership of the Board for reasons other than the expiration of the term of a member, the Mayor shall appoint, with the advice and consent of the Council, an individual to serve in the vacant position, taking into consideration the criteria described in paragraph (2) of this subsection. Any member appointed to fill a vacancy occurring prior to the expiration of the term of a predecessor shall be appointed only for the remainder of the term.

Washington State: (1) *The Washington state charter school commission is established as an independent state agency whose mission is to authorize high quality charter public schools throughout the state, especially schools that are designed to expand opportunities for at-risk students, and to ensure the highest standards of accountability and oversight for these schools.*

(2) *The commission shall, through its management, supervision, and enforcement of the charter contracts and pursuant to applicable law, administer the charter schools it in the same manner as a school district board of directors administers other schools.*



(3)(a) The commission shall consist of:

(i) Nine appointed members

(ii) The superintendent of public instruction or the superintendent's designee; and

(iii) The chair of the state board of education or the chair's designee.

(b) Appointments to the commission shall be as follows: Three members shall be appointed by the governor; three members shall be appointed by the senate, with two members appointed by the leader of the largest caucus of the senate and one member appointed by the leader of the minority caucus of the senate; and three members shall be appointed by the house of representatives, with two members appointed by the speaker of the house of representatives and one member appointed by the leader of the minority caucus of the house of representatives. The appointing authorities shall assure diversity among commission members, including representation from various geographic areas of the state and shall assure that at least one member is the parent of a Washington public school student.

(4) Members appointed to the commission shall collectively possess strong experience and expertise in public and nonprofit governance; management and finance; public school leadership, assessment, curriculum, and instruction; and public education law. All appointed members shall have demonstrated an understanding of and commitment to charter schooling as a strategy for strengthening public education.

(5) Appointed members shall serve four-year, staggered terms. The initial appointments from each of the appointing authorities must consist of one member appointed to a one-year term, one member appointed to a two-year term, and one member appointed to a three-year term, all of whom thereafter may be reappointed for a four-year term. No appointed member may serve more than two consecutive terms. Initial 30 appointments must be made by July 1, 2016.

(6) Whenever a vacancy on the commission exists among its appointed membership, the original appointing authority must appoint a member for the remaining portion of the term within no more than thirty days.

(7) Commission members shall serve without compensation but may be reimbursed for travel expenses as authorized in RCW43.03.050 and 43.03.060.



Exhibit B

Legislative Language Renewal Standards

South Carolina- *A charter must be revoked or not renewed by the sponsor if it determines that the charter school: (1) committed a material violation of the conditions, standards, performance expectations, or procedures provided for in the charter application or charter school contract, or both; (2) failed to meet the academic performance standards and expectations as defined in the charter application or charter school contract, or both; (3) failed to maintain its books and records according to generally accepted accounting principles or failed to create an appropriate system of internal control, or both; or (4) violated any provision of law from which the charter school was not specifically exempted.*

New Hampshire- *By the end of its final contract year, the chartered public school shall meet or exceed the objective academic test results or standards and goals as set forth in its application. If the school does not meet these results or standards and goals, it shall not be eligible for renewal of its charter.*



Exhibit C

Legislative Language Default Closure

South Carolina- *Any charter school shall automatically and permanently close at the conclusion of the school year in which the school first becomes subject to automatic closure for receiving the lowest performance level rating as defined by the federal accountability system for three consecutive years beginning with student achievement data from the 2013-2014 school year. The determination of closure is considered final. Automatic closure shall not apply to any charter school serving fifty percent or more students with disabilities or any charter school designated as an Alternative Education Campus (AEC) by its sponsor as outlined in Section 59-40-111.*

Texas- *The commissioner shall revoke the charter of an open-enrollment charter school if: (1)the charter holder has been assigned an unacceptable performance rating under Subchapter C, Chapter 39, for the three preceding school years; (2)the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance lower than satisfactory for the three preceding school years; or (3)the charter holder has been assigned any combination of the ratings described.*

Tennessee: *(a) (1) A charter agreement shall be revoked or denied renewal by the final chartering authority if the department of education identifies the charter school as a priority school, as defined by the state's accountability system pursuant to § 49-1-602. The revocation shall take effect immediately following the close of the school year after the school is identified as a priority school.*