

Building Systems to Evaluate and Sanction Failing Authorizers

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THE ISSUE IN BRIEF

Authorizers need to be held to high standards of performance and accountability to ensure they are appropriately overseeing their schools. By following national best practices in charter school authorizing, a state can create and implement an accountability system for its authorizers, leading to better oversight of the charter school sector.

NACSA RECOMMENDS

The National Association of Charter School Authorizers (NACSA) recommends that states:

- Build an accountability system for authorizers;
- Include mechanisms for evaluating and sanctioning failing authorizers;
- Define administrative powers and acknowledge the need for clear timelines;
- Use stakeholder input;
- Align policy with national best practices; and
- Define what happens when schools and authorizers are closed.

A related policy brief in this series, “[NACSA Policy Recommendation: Endorse and Apply Authorizer Standards](#),” outlines key elements of similar state policies in other states, and “[NACSA Model Legislation](#)” provides legislative language that policymakers can use to craft legislation.

Case Study: Minnesota

Overview

As the nation's pioneering charter state, passing the first charter school legislation in the country, Minnesota has often had to blaze the trail in uncharted territory. In 2009, after concerns were raised about charter school quality and accountability for authorizers (originally known as sponsors), the Minnesota legislature passed legislation that clarified authorizers' responsibilities and gave the Minnesota Department of Education (MDE) the power to evaluate and sanction failing authorizers.

How does the law work? In brief, the legislation requires that all authorizers (both existing and prospective) apply to and be approved by MDE. Authorizers must submit to review by MDE every five years, and MDE has the authority to sanction and shut down authorizers that do not meet requirements specified in their performance contracts. In addition to the review, the state provides qualitative annual feedback on authorizer performance and compliance.

Since the implementation of the law in 2009, the number of authorizers in Minnesota has declined from 55 before the law was passed to 26 currently. Authorizers were granted additional resources to do their jobs more effectively—they can now charge higher administrative fees—and in turn, they are held to a much higher accountability standard.



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"I understand that authorizers in other states likely have differing relationships with their Departments of Education. In Minnesota, we have a very charter quality-minded department that has been open to authorizer feedback. I believe they want the right thing for authorizers and charter schools. Ultimately, this will strengthen the sector."

—Molly McGraw-Healy,
Director of Charter School
Authorizing, St. Thomas
University

How the Legislation Came About—Key Levers for Change

Prior to the passage of Minnesota Statute 124 D.10, few authorizers in Minnesota were providing oversight in a relatively robust manner. "Sponsors," as they were first known, often resembled partners more than authorizers that provide oversight. The lack of resources available to authorizers and the dual oversight for charter schools by both authorizers and the Minnesota Department of Education contributed to the informal dynamic between sponsors and charter schools.

Shared responsibility across agencies for oversight may have been less problematic than the lack of available resources for authorizers. Unless authorizers committed their own organizational resources, they lacked the resources to develop the capacity necessary for oversight and were not in a position to develop and implement strong practices. Consequently, many authorizing practices that we now consider common were not in place.

By 2007, the lack of oversight for charter schools, in conjunction with negative publicity about the performance of some charters, led the Office of the Legislative Auditor to undertake a systematic evaluation of charter schools.

The Legislative Auditor's Charter School Evaluation Report, published in June 2008, recommended effective public oversight as key to good charter schools in Minnesota. Written by a highly respected public entity, the report helped galvanize support for change from both sides of the aisle.

NACSA was instrumental in assisting the legislative workgroup with the development of the new law. A key provision of the law was the formal adoption of a set of authorizer standards that mirrored NACSA's *Principles & Standards*. Charter school advocates worked with traditional public school supporters to help pass the legislation in 2009.

To ensure that authorizers had the resources they needed to provide additional oversight, supporters of the bill included a provision that established a uniform fee structure (with new percentage caps phased in over time) to enable authorizers to charge the significantly higher fees required to develop and implement effective authorizing practices. The boost helped to assuage charter advocates' concerns about increased regulation and oversight by the state.

The Minnesota Department of Education did not transition to their current role without struggle. MDE was dealing with a tight budget, making it difficult to develop its own capacity. NACSA provided technical assistance and an implementation grant to support MDE through its startup phase. MDE capacity remains a challenge. It took two years for the Department to approve the applications of the 26 authorizers it currently has in the state. It then took almost two more years to develop the system for subsequent authorizer evaluations, and it will be a few more before all of the authorizers will undergo their first review under this new system.

Cindy Murphy, the leader of the MDE office overseeing charter schools and authorizers, reflects, "This endeavor is the primary state initiative for our office. Thankfully, we were able to support this work through the NACSA grant. We would not have been able to develop a system with as much depth, rigor, and clarity had we not received support from NACSA."

"I think that over the next two to three years authorizers will continue to evolve their practices. Now that there are national and statewide expectations about how to do the work, we are developing a deeper understanding about the roles and responsibilities of the authorizers. The change in the law has changed the discourse among authorizers."

— David Greenberg,
Charter School Division Lead
Coordinator, Audubon Center
of the North Woods

How the Minnesota Law Works

First, the legislation clarified the roles of MDE and authorizers: MDE is no longer an authorizer. Now, interested entities must apply to and be approved by MDE to serve as an authorizer. To be approved, authorizers must meet rigorous criteria based on NACSA's *Principles & Standards*, which Minnesota Statute 124 D.10 and the MDE application process outline.

First, following the organization of NACSA's *Principles & Standards for Quality Charter School Authorizing*, the legislation requires the office of the Commissioner of MDE to review each authorizer's:

- capacity and infrastructure;
- application criteria and process;
- contracting processes;
- ongoing oversight and evaluation processes;
- renewal criteria and processes.

Second, authorizers must also submit to a systematic evaluation and review by MDE every five years. The review process empowers MDE to assess authorizers' performance, specify what needs correcting, apply corrective action, and if the commissioner deems appropriate, terminate the contract between an authorizer and the charter school board of directors the authorizer chartered. In addition, MDE publishes a snapshot of each authorizer's portfolio performance. The authorizer annual snapshot provides the data that MDE uses to provide qualitative feedback to its authorizers.

The law also allows MDE to act at any time to take "corrective action" against an authorizer, including sanctioning or terminating an authorizer's ability to charter a school for:

- (1) failing to demonstrate the criteria under which the commissioner approved the authorizer;
- (2) violating a term of the chartering contract between the authorizer and the charter school board of directors;
- (3) unsatisfactory performance as an approved authorizer; or
- (4) any cause shown that provides the commissioner a legally sufficient reason to take corrective action against an authorizer."

Third, the law also allows for the creation of single-purpose authorizers—entities whose sole purpose is to authorize and oversee charter schools.

Finally, to help authorizers meet more stringent requirements, the legislation also includes a provision that creates a uniform fee structure and increases the fee formula for authorizing. Beth Topoluk, the leader of the charter office at the nonprofit authorizer Friends of Education, observed that the uniform fee structure was "absolutely critical to charter authorizers in Minnesota to increase capacity in oversight."

Impact of the Legislation

The most visible impact of the legislation is that there are now far fewer charter authorizers in Minnesota. According to the Minnesota Department of Education's Charter Center, since the law was passed in 2009, 29 former authorizers either chose not to apply or were not approved. Minnesota's authorizer landscape now has four types of authorizers: single purpose authorizers (4), school districts (5), higher education institutions (7), and charitable nonprofit organizations (10), for a total of 26 approved authorizers serving more than 45,000 students.

“Our system is designed to promote authorizer excellence in order to increase the number of high-quality charter schools in Minnesota.”

– **Cindy Murphy,**
Charter Center Director,
Minnesota Department of
Education

Former authorizers that decided not to reapply did so for several reasons. Some did not have the staff capacity or expertise required by the new standards. There were quite a few authorizers that decided not to apply because they simply did not want to be in the authorizing business anymore—16 of those 29 former authorizers were school districts.

Those authorizers who applied and were successful received additional resources to carry out their new responsibilities. For some authorizers, the resources made a big difference in terms of what they were able to do. As Molly McGraw-Healy noted, “I think the new fee structure was a critical part of improving authorizer practice. For many authorizers, when the relationship changed from a partnership to oversight, the authorizer fee acted as an incentive to move forward despite the much more rigorous and time-consuming requirements. The additional resources allowed organizations to sustainably build their capacity and hire appropriate personnel to do the work.”

The legislation also clarified and strengthened authorizers’ responsibilities. Before the law passed, virtually any eligible organization (MDE, a nonprofit organization, school district or higher education institution) could serve as an authorizer. There were no clear expectations for accountability, evaluation, or performance. Moreover, there was confusion about the role of MDE versus that of other authorizers. An ongoing priority for MDE is to provide “mutual clarity between authorizers and MDE regarding expectations of excellence and oversight.”

There is now a clear focus on quality—for both authorizers and charters. MDE has adopted the motto “Lens of Continuous Improvement” that describes the Department’s philosophy of authorizer evaluation. In Minnesota, there has been a distinct shift from the historical “sponsor” relationship of compliance monitoring to a mature authorizer relationship of oversight, evaluation, engagement, and support in building authorizer capacity.

Since 2009, the application process itself has shifted the authorizers’ roles, ensuring that they meet much higher review and oversight standards. The current Application RFP has high performance expectations aligned with Minnesota Statute and NACSA’s Principles & Standards. A rigorous process on the front end ensures that emerging authorizers will have the capacity and infrastructure to fulfill their role as authorizer.

The annual report acts as an important data source to inform authorizer evaluation. The three main components of the annual authorizer report are:

- a summary of the authorizer’s activity;
- a summary of academic performance across its portfolio of schools;
- individual charter school profiles that include academic, operational, and financial performance that are aligned with continuous improvement measures in performance rubrics.

Essentially, the goal of MDE’s authorizer evaluation system is to foster a culture of practice among authorizers that focuses on continued development and refinement of authorizer practice and assists in high-stakes decision making.

Finally, as a result of the winnowing process, the now-smaller authorizer community works together more closely. Molly McGraw-Healy reflected, “I feel like in the last two years we have finally gotten some real momentum. Currently, there is an informal group we call ‘MACSA’ (Minnesota Association of Charter School Authorizers) that meets monthly to share practices and conduct professional development, and help each other navigate in a constantly changing environment. The authorizers that regularly attend these meetings represent around 90% of charter schools in the state.”

Considerations for Policymakers in Other States

The Minnesota law and its impact contain several lessons for policymakers and advocates in other states.

- **Administration matters.** Though the legislature defined issues that MDE must address in developing application criteria for authorizers, it left the timing and the administration of the application process up to MDE to define. The consequence of this has been authorizer approval based on different versions of the authorizer application, with various levels of rigor. In order to address this issue, MDE has made it a priority to support authorizers across the field in bolstering capacity for oversight.
- **Stakeholder input is also critical.** Initially, MDE didn't involve authorizers in the development of its original RFP, and since then the department has made it a priority to engage stakeholders in meaningful ways to develop the system. As David Greenberg put it, "Minnesota Department of Education did an excellent job of seeking input from stakeholders, particularly authorizers, as it developed the authorizer evaluation system."
- **Align the legislation with national best practices.** Cindy Murphy states simply, "Don't reinvent the wheel." Policymakers can look to the Minnesota example, as well as NACSA's *Principles & Standards for Quality Charter School Authorizing*, to develop approval processes and quality standards.
- **It's important to define what happens to schools when their authorizers are closed.** The Minnesota law is unclear about what happens to schools if their authorizers are sanctioned or closed. As one authorizer remarked, "This could continue to be an issue if some authorizers decide not to continue after evaluations come back. Who will...take on their schools? I think that current authorizers will likely take on most of those schools. If authorizers don't take on a given school, then it might be an indication that the school should close."

Policymakers in other states, however, might be more explicit about what happens to a school whose authorizers are no longer in the business of authorizing charter schools. For example, policymakers could articulate a default course of action, so that schools, students, and families know what to expect. Without this default, state departments may be reluctant to shut down larger authorizers.