



# GOVERNANCE IN THE CHARTER SCHOOL SECTOR: TIME FOR A REBOOT

By Adam Emerson

When they first emerged more than two decades ago, charter schools represented an innovation in public school governance and much else. No longer would school districts enjoy the “exclusive franchise” to own and operate public schools, as chartering pioneer and advocate Ted Kolderie explained.<sup>1</sup> Charters wouldn’t gain all of the independence of private schools—they would still report to a publicly accountable body, or authorizer—but they would be largely freed from the micromanagement of school boards, district bureaucracies, and union contracts. Autonomy, in exchange for accountability, would reign supreme.



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Over the course of its twenty-year history, however, American education and its charter school sector have evolved in important ways. Technology is one obvious example, but there are scads more, some that are readily apparent and others that are more subtle. One of the latter is school governance—not a topic that gets a lot of attention but, as it turns out, a crucial one that is overdue for an overhaul (and not just in the charter sector).

The growth of nonprofit charter networks (often called “charter management organizations” or CMOs), the ubiquity of for-profit school-management companies (often called “education management organizations” or EMOs), and the emergence of “virtual” charter schools have all upended the notion that charters would mostly be freestanding “community-based” schools of the “one-off” variety. Yet the public policies and practices that characterize charter governance haven’t kept pace with these real-world changes.

To examine this mismatch more closely and consider how it might be set right, we

interviewed nearly two dozen analysts, authorizers, board members, and practitioners with interest in and knowledge of charter schools. Not one of them felt that the inherited assumptions and regulations about governance in the charter sector are truly well suited to present-day realities. This brief explores several ways that charter governance might be rebooted.

## Charter governance—then and now

When charter schools emerged as a seedling reform in the early 1990s, they inspired and attracted all manner of enthusiasts. Charters evoked a sense of empowerment; teacher cooperatives, parent groups, Boys & Girls Clubs, museums, and day-care centers were among the multitude that could now open and operate their *own* public schools separate from local district control.

The configuration and operation of these schools’ governing bodies, however, received little attention in the charter movement’s

1. Ted Kolderie, “The States Will Have to Withdraw the Exclusive,” Center for Policy Studies, 1990.

formative years. This neglect gave rise to myriad challenges for these mostly small, self-contained schools. Some of these problems were self-inflicted, as inexperienced or transitory board members destabilized fledgling schools or micromanaged their operations (a problem that has long afflicted traditional school districts). But many governance woes were imposed by lawmakers or inflicted by authorizers.

Policymakers, legislators, and the public entities that sponsored charters had neither the creativity nor the capacity to envision and operationalize a truly innovative form of governance for these unconventional public schools. Instead, they did what they knew best: issued rules and regulations. Most assumed that each school would have its own governing board, but many went further. Fourteen states, for instance, required charters to place parents or teachers in governing roles. Some empowered authorizers to place individuals on the boards of schools that they sponsored. Kansas and Virginia allowed local school boards to define charter governance structures in their contracts or dictated that certain “committees” would provide oversight in a manner agreeable to the district. This is akin to creating and fostering small businesses but allowing governmental bodies to appoint their board members.

On the other hand, policymakers under-regulated some aspects of charter governance, often by failing to insist on robust conflict-of-interest policies. As a result, a series of scandals (real or alleged) did serious damage to the image of charter schools in their early days—and, more importantly, put taxpayer dollars at risk.

It’s not unusual—or even reprehensible—for complex new policy regimes to require revision before they can work well. Nor is it the least bit odd for them to need updating. So it is with charter governance. Take the one-board-for-every-school issue. Most of the present energy in the charter movement is around multi-school networks and their ability to replicate successful school designs and viable business models, while delivering strong academic results. Charter management organizations such as Rocketship Education, KIPP, Uncommon Schools,

and Achievement First have doubled their reach in the last three years and are now courted by states and municipalities coast to coast. Of the 5,259 charter schools operating in 2010–11, 1,060 were managed by CMOs, according to the National Alliance for Public Charter Schools (NAPCS). That’s up from 493 CMO-managed schools in 2007–08, an increase of 115 percent.

Virtual charter schools, too, have altered the terrain. NAPCS counted at least 219 such schools at the close of 2010 (a number likely much larger now due to the recent interest among states in providing this option). This accounted for 4.5 percent of all charters nationwide—and substantially larger shares in some states. Last year in Ohio, virtual charters—called eCommunity schools—accounted for at least 10 percent of all charter schools, but the 35,391 students enrolled in eCommunity schools represented 28 percent of all charter students in the Buckeye State. Forty percent of South Carolina’s charter school enrollment is online.<sup>2</sup>

Moreover, profit-making EMOs are providing education and management services to about 50 percent more charter school boards than they did just a few years ago. (In every state except Arizona, the entity that holds the charter from the authorizer must itself be a nonprofit corporation, though such organizations may engage for-profit firms to manage and operate their schools.)

Despite all of these important evolutions in the real world of charter schools, their governance arrangements have not kept pace. This is like moving from horse-and-buggy transportation to automobiles but keeping the cars in stables because we don’t know how to build a garage. What we need are new blueprints.

The charter sector can’t develop and successfully operate the new forms of public education that pioneers such as Kolderie and others envisioned if it maintains the governance models that were born of political compromise two decades ago. But that doesn’t mean charter school networks should simply

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2. “Keeping Pace with K-12 Online Learning: An Annual Review of Policy and Practice,” Evergreen Education Group, 2012.

centralize in ways that resemble the worst characteristics of traditional districts, either.

In other words, new blueprints should retain the founding vision of charter schooling while seeking economies of scale, efficiency, and uniformity to a sector of public education that can claim, at best, a mixed record of academic and organizational effectiveness. Yet localized, one-off (aka “mom and pop”) schools have their merits, too, especially the advantages of community rootedness and local responsiveness—the very qualities that inspired the charter movement in its early years. A proper balance must be struck.

## The challenges today

Let us seek such balance by examining three critical problems in charter school governance:

- Many state laws and/or authorizer policies require a full-fledged governing board for every charter school and make no exceptions for high-performing charter networks looking to replicate at scale. This rule is a major inhibiting factor to their growth.
- Too often, nonprofit and for-profit management organizations—EMOs in particular—control their schools’ governing boards, rather than the other way around. This leads to serious questions about accountability, incentives, and conflicts of interest.
- Many virtual charter schools are authorized by local entities (often individual school districts) yet serve students statewide. And the authorizers reap tremendous financial rewards from sponsoring large virtual schools. This creates a serious disincentive for these entities to focus on quality—and raises myriad questions of accountability (and financial responsibility) for the education of youngsters who, say, live in one district while attending a statewide school authorized by another district.

Let’s take a closer look at each.

### 1. A governing board for every school

Only ten states—among the forty-three with charter laws—explicitly allow charter networks to operate multiple schools under the oversight of a single governing board.<sup>3</sup> Three states (Pennsylvania, Connecticut, and Iowa) explicitly prohibit that practice. Most others are silent on the matter. But as Todd Ziebarth of NAPCS notes, silence regarding multi-school charter contracts can still pose problems for prospective and existing networks. It leaves the decision to individual authorizers, some of which may resist multi-school contracts, claiming that state law gives them the power to do so. Other authorizers have developed policies that effectively prevent multi-school governance, especially for boards that want to oversee schools in multiple jurisdictions within the state. The school board in Orange County (Orlando), Florida, for example, has recently put rules into its charter contracts requiring that a majority of a school’s governing board reside in that county even though students don’t have to.

Representatives from several high-performing charter networks who were interviewed for this analysis said they have been able to achieve success, in part, because they have been able to consolidate governance around multiple schools wherever this is allowed. Some won’t even consider opening schools in jurisdictions where they will face single-school governance, saying it prohibits them from delivering a more effective education uniformly and governing it efficiently. Rocketship Education, for example, didn’t commit to New York until the state repealed its “one school, one board” law.

Of course, public policy shouldn’t make it easier for inferior school models to replicate easily. But neither should states or recalcitrant authorizers impede the expansion of networks that can demonstrate a record of academic achievement and fiscal soundness while growing to scale.

Lawmakers should revamp their statutes to allow

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3. Those states are Arkansas, California, Delaware, Hawaii, Maine, Massachusetts, Minnesota, New York, Texas, and Washington.

existing networks to organize multiple schools under single boards *provided* that those networks meet whatever quality markers are set by their respective states. Florida, for instance, defines a “high-performing charter school system” as one that operates three schools that have, over a three-year period, received at least two grades of “A” on the state’s school report card and no grade below “B.” Ohio schools are “excellent” if they meet at least 94 percent of state performance indicators. In other words, high flexibility for high standards—precisely the grand bargain from which charter schools were supposed to benefit.

### Some models to consider

Providing more leeway to charter networks with regard to governance doesn’t mean that policymakers have to enter unmapped territory. Several existing models offer precedents, though each comes with strengths and weaknesses of its own.

- **Corporate governance:** Some networks, such as Aspire Public Schools, operate under what can fairly be called “corporate” governance. Aspire operates forty charters throughout California and its corporate board, based in Oakland, oversees them all. This allows the network to achieve greater uniformity from school site to school site, even going so far as to choose the leader of each of its California schools from its corporate headquarters. Day-to-day governance and back-office work is executed at the corporate level, not at the school sites.
- **Governing “pods”:** Unlike other CMOs, KIPP has franchised its educational model (and business model) to autonomous schools, many of which have organized into networks of geographically based governing “pods.” Each of these pods oversees a cluster of schools serving a major city or region. This has allowed KIPP to develop a locally based governance structure while still drawing on the vision of the KIPP Foundation and the KIPP brand name. Of course, this structure is dependent on the policy environment; KIPP can’t

expand this way in states like Pennsylvania that demand a unique governing board for every school serving the same grade levels.

- **Big board, little board:** The Alliance for College-Ready Public Schools is a CMO with twenty-two middle and high schools in California that has established a two-tiered system of governance. A twenty-six-member “upper board” at the corporate level sets the policy and strategic direction of the organization. A “lower board” at each school site has five members who are responsible for that particular school’s operations, including staffing, setting the budget, and hearing grievances. The “little board” is also held to account for the school’s performance.

The big board, little board arrangement has benefits that Aspire’s corporate model lacks. It also insulates each school from the legal liability of another school. (In the case of Aspire, a legal problem at one school might affect the entire network.) Additionally, corporate governance risks blurring financial transparency, especially if funds are transferred within a network. Groups such as the National Association of Charter School Authorizers recommend financial transparency and accountability at every school or campus within a charter network. And the Alliance’s individual school-level governing boards are, indeed, held to account for their schools’ spending and performance.

Still, the Alliance’s structure remains too top-down in some important ways. Although each of its schools is separately incorporated, the central office appoints most members of every school governing board and maintains the authority to approve the growth plan for each site. That differs from KIPP, which has relied on “franchises” to expand its business model and extend its school design.<sup>4</sup> Each KIPP charter is launched as a local effort, even though a “franchisee” must conform to the mission and vision of the KIPP Foundation in order to use KIPP’s name and be part of this acclaimed “brand” of high-performing schools. The foundation trains every leader of a KIPP school, and each school pays the foundation 1 percent of its revenues in exchange for the KIPP name and support system.

4. Julie Bennett, “Brand-Name Charters,” *Education Next* 8, no. 3 (Summer 2008).

In these ways, the KIPP model balances uniformity of mission and efficiency, on the one hand, with local empowerment and accountability on the other. This may be especially valuable for charter networks that operate in multiple states.

## 2. EMOs and other service providers that control boards, rather than the other way around

Beyond the war cries from charter critics claiming that for-profit (or even nonprofit) management companies are responsible for the “corporatization” or “privatization” of public education, there are justifiable worries that many EMOs and other education service providers “own” the schools they manage instead of the boards that hired them.

Not surprisingly, people at the helm of some networks and service providers like it just fine that way. Imagine Schools president Dennis Bakke famously wrote that nonprofit boards are needed only to hold a charter and ought to then step aside so the operator can perform its work without interruption.

“Before selecting board members,” he wrote (in a memo to Imagine executives regarding the network’s various boards, which eventually leaked to Midwestern newspapers), “we need to go over the voting process and our expectation that they will go along with Imagine unless the board member is convinced that we are doing something illegal ... [I]f they can’t convince us to change our position, we expect them to vote for our proposal. It is our school, our money and our risk, not theirs.”<sup>5</sup>

We strongly disagree. It’s the board’s school to steer—and the *board’s* job to understand its fiduciary responsibility, to know the difference between oversight and management, and to detect and avoid conflicts of interest. When a company such as Imagine usurps the role of a board out of organizational convenience, it is abdicating the cause of good governance.

That doesn’t mean EMOs are a bad thing. They can be a very good thing. But they must be subordinate to the boards of the schools they operate, not puppeteers determining all the moves. Our policies should explicitly

allow EMOs and other service providers to operate charter schools. The for-profit sector has multiple benefits for charter schools, including venture capital, the capacity for research and development, entrepreneurial energy, and the ability to bring efficiency to nonprofit boards that otherwise lack access to economies of scale. In that sense, antagonists are wrong to assert that profit-making education providers are evil—just as others are wrong to contend that nonprofit CMOs are inherently virtuous.

The problem comes when these providers treat their nonprofit boards and trustees as shells or as captives to the interests of the corporation—a problem that is amplified when ineffectual or disinterested authorizers do little to curb such bad governing practices. Under these worst-case scenarios, no one actually holds the service provider to account. Strong laws and rules demanding greater accountability and transparency, along with vigilant authorizing, can provide effective checks against overbearing providers. Absent these, charter policies must assert the independence of the nonprofit boards that ordinarily hold the actual charter and ultimately answer to the public.

The model laws promulgated by the National Alliance for Public Charter Schools are a good place to start. A performance contract should be in place between the school’s board and its EMO (or other service provider) and that contract should incorporate explicit terms regarding evaluations, oversight, compensation, and conditions for contract renewal and termination. The board must maintain its independence and perhaps explain why it chose this particular service provider. There ought to be, as in Florida, provisions explaining how the governing board will maintain an arm’s-length relationship with the service provider. And there should also be a requirement in the charter application that discloses any conflicts of interest (current or potential) between the board and the EMO.

It’s extremely unusual in today’s charter sector for EMOs to hold school contracts directly. In Arizona, just thirty-two of the 475 charters in the state are held by for-profit companies, a sign that most EMOs are unwilling to launch their own charters without the

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5. “Full text of Imagine Schools memo,” *Fort-Wayne Journal Gazette*, November 2, 2009.

federal seed money that goes *only* to nonprofit boards. But even if federal rules were more flexible, for-profit companies should hold charters only when the requisite conditions for accountability and effective governance in the public interest are in place. Better to treat these firms as vendors that can, under the right contractual relationship, be fired for poor performance.

Consider an unorthodox, but wholly proper, scenario that has arisen in the Windy City. The Chicago International Charter School presently holds the charter for fifteen campuses and contracts out for services from four different school-management companies. It has fired two EMOs for poor performance during the past decade and, in the past year alone, forced its managers to change principals at three campuses that failed to outpace the gains that other public schools in the city posted.<sup>6</sup>

Chicago International developed these governing practices of its own accord, notwithstanding an inadequate Illinois charter law that provides little guidance regarding the relationship between service providers and their boards. Others might do well to follow International's lead.

### 3. Local authorizers, statewide virtual schools

Nowhere do yesterday's governance structures appear more outdated than in the "virtual" charter sector, where nineteenth-century political boundaries often drive the policies that constrain promising twenty-first-century reforms.

Charter schools are the leading providers of full-time virtual education in the United States.<sup>7</sup> By the end of 2010, according to NAPCS data, there were 219 virtual charter schools in the nation and another 142 that offered "blended" learning (a combination of brick-and-mortar and online learning).

Yet many of these virtual charters have no option but to seek permission to open from a local school district, not a statewide charter sponsor. Wisconsin, for instance, had

fourteen virtual charter schools serving nearly 4,000 students throughout the Badger State at the end of 2010. But each of those schools had to seek a local district to sponsor it. (Wisconsin has no statewide authorizer.)

That arrangement ought to change in any state that is serious about online learning. It's ludicrous that students in one district should attend a statewide charter school authorized by another district. Moreover, it's more efficient for a school and its governing board with the capacity and strategic direction to serve students statewide to answer to a statewide authorizing body—which must, in turn, be forceful in ensuring that the school delivers satisfactory results. This promising (and potentially money-saving) advance in the delivery of public education transcends traditional district boundaries, and our governance arrangements should advance apace. Oklahoma created an authorizing body specifically for a statewide charter virtual school, but states don't have to go that far. They should merely allow virtual charter applicants to seek authorization from a suitable state-level entity that is serious about innovation and educational quality.

## The way forward

The charter sector still stands for independence, innovation, empowerment, and accountability, yet its structural arrangements are too often out of sync with the innovations worth securing, promoting, and protecting.

For a movement that has favored creativity, flexibility, and efficiency, charters and their champions have paid too little attention to how these schools should be governed. Now that charters have matured for twenty years, we can more clearly see how many governing policies and practices look antiquated and inadequate. It's time to reboot charter school governance for the next twenty years.

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6. Rosalind Rossi and Art Golab, "Chicago charter schools produce wildly uneven results on state tests," *Chicago Sun-Times*, November 30, 2011.

7. Gregg Vanourek, "An (Updated) Primer on Virtual Charter Schools: Mapping the Electronic Frontier," National Association of Charter School Authorizers, September 2011.