

## Evidence Required: A Critical Review of ‘Improving Oversight of Michigan Charter Schools and Their Authorizers’

By Michael Van Beek and Ben DeGrow

### Introduction

This paper offers a critical review of a report published in March by the Citizens Research Council of Michigan titled “Improving Oversight of Michigan Charter Schools and Their Authorizers.”

The report argues that charter schools and charter school authorizers need more oversight. Making the case for this position might include demonstrating that charter schools are performing poorly and showing how additional oversight would bring needed improvements. Surprisingly, the report does neither of those things, and instead rests on broad generalizations about charter school accountability that rely on questionable assumptions that are not explained or justified.

The report suffers from other issues. There are several factual errors or misrepresentations of facts. It supports several seemingly contradictory positions. It is biased towards a particular governance model for public schools — local school boards — but never provides a rationale for that bias.

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The following sections explain each of these shortcomings in detail. While some of these issues only tangentially relate to the main argument of the paper, on the whole, it fails to sufficiently demonstrate that charter schools need more public oversight.

### Lack of evidence for fundamental assumptions

The report’s argument rests on several assumptions that are not explained or justified. This is especially surprising given the report itself acknowledges that it is difficult to “paint with broad brush strokes as it applies to assessing the efforts of Michigan’s [charter school] authorizers to ensure accountability.”<sup>1</sup> Nevertheless, it does just that.

For example, it declares, “Accountability and oversight of authorizers across the states, and especially in Michigan, has been lax.”<sup>2</sup> The only evidence provided for this statement is that state officials only rarely exercise their power over authorizers and exert control over them. But no evidence is provided to support this assertion, either. Plus, even if true, the fact that state officials are not fixing problems with authorizers could also be evidence that there are few problems with authorizers. The report does not consider this possibility.

1 “Improving Oversight of Michigan Charter Schools and Their Authorizers,” (Citizens Research Council of Michigan, Feb. 2020), 50, <https://perma.cc/9DHA-3DFB>.

2 Ibid., 54.

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More broadly, while the report targets charter school authorizers for more oversight, it never actually presents evidence for this position. In fact, it states: “The research for this report did not produce evidence that the current authorizers were negligent in their activities.”<sup>3</sup> The closest the report comes to providing this evidence is highlighting that this oversight is different than what is used for charter schools in other states and for other public schools in Michigan. But the fact that it is different is not sufficient grounds to suggest that public oversight of charter school authorizers needs to be reformed.

Another important assumption the report relies on but never justifies is that the particular type of oversight it recommends — giving more control to state bureaucrats and creating new state laws and regulations of charter schools — will improve public education in Michigan.<sup>4</sup> The report fails to connect the dots on why this type of oversight is beneficial and why it will lead to improved educational outcomes.

Surprisingly, it discusses reasons to doubt this assumption. The report explains that charter schools “may be subject to more regulations than traditional public schools” and that “over-regulation stymies innovation,” which, according to the report, is charter schools’ key contribution to “increase educational productivity across the whole system.”<sup>5</sup> It then identifies over-regulation as a possible explanation for why Michigan’s charter schools are, as the report sees them, not differentiated enough from conventional public schools.<sup>6</sup>

This evidence suggesting the potential harmful impact of over-regulating should call into question the report’s assumption that more regulation of charter schools and their authorizers will lead to better

educational outcomes. Even though the report tries to draw a distinction between different types of oversight — accountability based on outcomes and regulations based on inputs — the policy recommendations it suggests are primarily regulatory in nature: adopting administrative rules, creating new statutory requirements, mandating accreditation for authorizers, tweaking financial reporting requirements.<sup>7</sup>

Perhaps the strongest evidence provided in the report that more oversight of Michigan charter schools is needed is the state’s “declining status among the states in education achievement.”<sup>8</sup> It says Michigan should mimic the oversight mechanisms for charter school authorizers used in states that have higher average scores on national standardized tests.

But, again, no evidence is offered to suggest that differences in charter school oversight among the states is responsible for or even related to differences in average test scores. In fact, it is highly unlikely from a statistical perspective that the varying performance of charter schools in the states has a large impact on average test scores. In most states, charter schools enroll less than 10% of public school students.<sup>9</sup>

Over more than 50 pages, the report provides many valuable insights into how charter schools operate, but it fails to justify the core assumptions upon which its arguments are based. It does not provide evidence to suggest charter school regulation is lacking — only that it is different. It does not provide evidence that its recommendations will lead to better educational outcomes. The report’s authors instead simply assume these things to be true, which leaves their policy recommendations without any backing.

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3 Ibid., ix.

4 Ibid., 50-51.

5 Ibid., 51.

6 Ibid.

7 Ibid., 52-57.

8 Ibid., 50.

9 “Table 216.90: Public elementary and secondary charter schools and enrollment, and charter schools and enrollment as a percentage of total public schools and total enrollment in public schools, by state: Selected years, 2000-01 through 2016-17” (National Center for Education Statistics, Dec. 2018), <https://perma.cc/PS3B-754K>.

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## Misrepresentations and factual inaccuracies

The report also contains several inaccuracies or misrepresentations of facts. While some of these errors are simple mistakes, others undermine key points made in the report.

One misrepresentation occurs when the report discusses charter schools' "key exemptions from state regulations."<sup>10</sup> That section names only one exemption — charter schools are not subject to Michigan's teacher tenure law — but that exemption is not to a regulation, but to a state statute instead. This may appear to be a nitpick, but considering the report differentiates between statutes and regulations when making recommendations, it seems that readers should expect consistent treatment of these terms throughout the entire report.

The other two "exemptions" mentioned are not exemptions at all.<sup>11</sup> While it is true that most charter schools do not participate in the state's public school pension system or need to comply with Michigan's Public Employment Relations Act, the reason is not because they have a regulatory exemption. It is because charter schools tend to hire private companies to staff their schools, and their employees then are technically private, and therefore, these laws do not apply to their employment. Conventional school districts may also hire private companies that employ private workers, albeit in a more limited way, and most do. These districts could be said to be "exempt" from these laws for the same reason.

A key recommendation of the report is that Michigan should mimic the charter school oversight systems used in other states, but on one occasion, it

misrepresents these laws. The report praises the Massachusetts Department of Education for performing site visits of the schools it authorizes. It then says some authorizers in Michigan do the same, but laments that they are not legally required to do so.<sup>12</sup> But that line of reasoning falls apart because site visits are not legally required in Massachusetts either: state regulations simply allow for them.<sup>13</sup>

The report also fails to provide important context when it compares Michigan's laws about education service providers — private companies that operate many charter schools. It suggests that Michigan's financial disclosure requirements for these providers is lacking compared to other states and describes the requirements used in those states based on a different study.<sup>14</sup> What the report does not mention is that this same study gave Michigan's laws a favorable and high rating. The state received a six out of eight rating, with only one state scoring higher and only six others receiving the same.<sup>15</sup> In other words, the source used to argue that state laws are inadequate actually says that Michigan's law are better than most states.

Some facts about state government presented in the report are, at best, misleading. In arguing that the Michigan Department of Education needs more resources to provide more oversight of charter schools, it says, "State departments suffered budget reductions as a result of the Great Recession a decade ago. Staffing was cut ... Some funding has been replaced in the interim, but not to the extent it was before Michigan's difficult financial period."<sup>16</sup> While this may have been the experience of some state departments, it is not an accurate depiction of MDE.

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10 "Improving Oversight of Michigan Charter Schools and Their Authorizers," (Citizens Research Council of Michigan, Feb. 2020), 28, <https://perma.cc/9DHA-3DFB>.

11 Ibid.

12 Ibid., 37.

13 603 CMR 1.08(2), <https://perma.cc/Z35Q-Q6W2>.

14 "Improving Oversight of Michigan Charter Schools and Their Authorizers," (Citizens Research Council of Michigan, Feb. 2020), 38-39, <https://perma.cc/9DHA-3DFB>.

15 "Transparency Regarding Educational Service Providers (ESPS) Allowed" (National Alliance for Public Charter Schools), <https://perma.cc/MQ3M-D4QY>.

16 "Improving Oversight of Michigan Charter Schools and Their Authorizers," (Citizens Research Council of Michigan, Feb. 2020), 57, <https://perma.cc/9DHA-3DFB>.

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According to the Senate Fiscal Agency, MDE’s staff for fiscal year 2020 was 11% larger than it was immediately after the Great Recession in fiscal 2010. And its budget is significantly larger too. MDE received three times more funding from state revenues in fiscal 2020 than it did in fiscal 2010. These increases are not simply backfilling cuts in revenue from other sources. MDE’s overall appropriations in 2020, including federal, local and private funds, was also three times larger than it was in 2010.<sup>17</sup>

## Inconsistencies

The report discusses at length the varying facets of Michigan’s laws, regulations and practices pertaining to charter schools, with particular focus on charter school authorizers. But the report is inconsistent in how it describes some of these matters, making a few comments appear to contradict information provided elsewhere in the report.

This is particular true when the report discusses the different levels of oversight used for public charter schools. For instance, in one section describing the laws that authorizers must obey, calling them “oversight expectations,” it mentions several specific legal requirements of authorizers. It also explains how MDE can revoke an authorizer’s charter with a school.<sup>18</sup> A similar description is provided of “state government oversight of charter schools” that explains all the laws charter schools must obey.<sup>19</sup> While these are accurate depictions of public oversight of charter schools, language elsewhere in the report gives the impression that there are few, if any, legal requirements of charter schools or their authorizers.

For example, the report claims elsewhere that “state law is largely silent on oversight of charter school authorizers.”<sup>20</sup> What constitutes “largely silent” can be debated, but it seems inconsistent with the fact that there’s an entire section of Michigan statute devoted to charter authorizers, which the report itself describes in detail.<sup>21</sup>

Further, the report explains that the state superintendent is empowered by statute to suspend authorizers he or she believes is not providing appropriate oversight.<sup>22</sup> It also describes how MDE officials review each contract authorizers enter into “to ensure that all statutory requirements are met.”<sup>23</sup> It calls this accountability “negligible” and says “neither the state superintendent nor other state officials have significant oversight powers over authorizers.”<sup>24</sup>

In other places, the report gives the reader the impression that charter schools operate without any public oversight. It calls inadequate “leaving oversight responsibilities to charter authorizers without public oversight.”<sup>25</sup> It calls into question whether charter schools are following the law because they are “without public oversight.”<sup>26</sup> It claims “the law does not provide oversight of [authorizers’] actions.”<sup>27</sup>

Some of this inconsistency could be the result of an overly simplified, shorthand depiction. Perhaps the report expects the reader to know that “without public oversight” actually means “without *sufficient* public oversight.” Either way, these constructions risk misleading readers and are a flaw of the paper.

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17 The growth in the size of the MDE over this period was greatly impacted by an executive order Gov. Rick Snyder signed that moved the Office of Great Start to MDE. Although this significantly increased MDE’s overall budget, it does not account for all of the growth over this period. “Department of Education: Funding History” (Michigan Senate Fiscal Agency, Oct. 10, 2019), <https://perma.cc/J7P5-8FJ9>.

18 “Improving Oversight of Michigan Charter Schools and Their Authorizers,” (Citizens Research Council of Michigan, Feb. 2020), 30, <https://perma.cc/9DHA-3DFB>.

19 Ibid., 21.

20 Ibid., 43.

21 MCL § 380.507.

22 “Improving Oversight of Michigan Charter Schools and Their Authorizers,” (Citizens Research Council of Michigan, Feb. 2020), 30, <https://perma.cc/9DHA-3DFB>.

23 Ibid., 49.

24 Ibid., v, 42.

25 Ibid., vi.

26 Ibid., xii.

27 Ibid., 43..

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## School board bias

The report contains another type of inconsistency from a type of bias that is less obvious. The bias is that the public oversight provided by local school boards over traditional public schools is more effective than the public oversight offered by charter school authorizers. The only potential explanation for this special treatment provided in the report is claiming these schools have their public oversight provided through “democratic accountability” and are “inherently more accountable to the people.”<sup>28</sup>

Although the report notes some of the limits of this type of accountability — school board elections are notorious for their pitiful turnouts, for example — it never explains why this type of oversight should be preferred. There may be good reasons to be biased towards school board governance in this way, but the report does not explain them.

This bias become more apparent when considering the rationale provided in the report’s conclusion for increasing regulations of charter schools. It simply declares: “[T]he costs of failure are too great.”<sup>29</sup> Considering that almost 90% of students in Michigan attend public schools run by local school boards, the potential costs of failure from these schools far surpasses those that could result from insufficient public oversight of charter schools.

To be fair, the focus of the report is on charter schools, and a discussion of conventional public school oversight might be beyond its scope. But because so many of the concerns the report raises apply equally to conventional public schools and their boards, this omission implies that charter schools should be subjected to higher standards. The report does not address this issue or explain why charters should be held to these different standards.

For instance, the report tries to identify a shortcoming of state regulations of charter school authorizers, pointing out that there are not “legally-binding performance or quality standards that an authorizer must meet.”<sup>30</sup> It also says that the state has only a “limited” role in providing oversight of charter school academic performance, because “it is up to the schools and the authorizers to interpret [standardized tests] results and take action.”<sup>31</sup> If these problems affect authorizers, they equally affect school boards.

In fact, there are whole passages of the report where the term “school board” could be substituted for “authorizer” or “charter school” and every detail would remain true. Consider the following edited passage:

School boards are subjected to limited oversight from the state government (state actors have authority to close low-performing schools). How well school boards oversee their schools by holding them accountable for meeting legal requirements and performance goals depends on the school board. It is difficult to paint with broad brush strokes as it applies to assessing the efforts of Michigan’s school boards to ensure accountability of the schools they operate because of the number of school districts and assortment of those entities. Some public schools are indeed subject to intense oversight from their school boards with systems of clear rewards and sanctions.

There is nothing inaccurate about the passage as written, but it was originally purposed as part of the argument used in the report for creating more regulations for charter schools.<sup>32</sup> What appears here is only slightly modified.

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28 Ibid., 30, 50.

29 Ibid., 58.

30 Ibid., 44.

31 Ibid., 29.

32 Ibid., 50.

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Without explaining why this is necessary, the report sets higher standards for one set of public schools than for another. It says that public oversight of charter schools must focus on outcomes.<sup>33</sup> Given that the report notes that charter schools are subject to all the same outcome-based accountability standards that traditional public schools are, the report is either recommending a new and higher standard exclusively for charters or an additional focus on outcomes that should apply equally to all public schools.<sup>34</sup> If there is a rationale for making charter schools alone meet these higher standards, the report does not provide it.

In arguing that state bureaucrats and state statutes should have more authority over charter school authorizers, the report says that “oversight without the threat of sanctions is just monitoring” and “accountability with clear roles for state actors and explicit expectations and sanctions for authorizers is needed.”<sup>35</sup> Public school boards rarely face sanctions from state officials. So, if the state is only “monitoring” charter schools and their authorizers, it’s also only monitoring all the rest of the public schools, too. If the former is a problem, the latter should be an even larger one.

## Conclusion

CRC’s report, “Improving Oversight of Michigan Charter Schools and Their Authorizers,” is severely lacking. While it accurately describes a lot about how charter school authorizing works, the report fails to provide why the current public oversight of charter schools and their authorizers needs to be reformed. As such, readers only learn that charter school oversight needs to change simply because it is different than the type of oversight used for other public schools in Michigan and for charter schools in other states.

Charter schools and charter school authorizers have been serving Michigan families for more than two

decades. To be sure, there are policy changes that could help these public entities improve. But this CRC report does little to help policymakers with that task, because it fails to make the case for why reform is needed and fails to articulate how the proposed reforms will lead to better educational outcomes.

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33 Ibid., 51-52.

34 Ibid., 21.

35 Ibid., ix, x.

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ISBN: 978-1-942502-48-7 S2020-03