



NATIONAL RESOURCE CENTER ON

CHARTER  
SCHOOL

FINANCE & GOVERNANCE

A GUIDE FOR STATE  
POLICYMAKERS

# Increasing Charter School Accountability Through Interventions and Closures

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## ABOUT THE NATIONAL RESOURCE CENTER ON CHARTER SCHOOL FINANCE AND GOVERNANCE

The National Resource Center on Charter School Finance and Governance was established in fall 2006 with funding from the U.S. Department of Education's Office of Innovation and Improvement (Grant No. 0282N060012) under the Charter Schools Program National Leadership Activities Grant Program. The National Resource Center (NRC) develops and disseminates tools, information, and technical assistance to help charter leaders at all levels—operators, authorizers, and state policymakers—take steps to improve charter school finance and governance.

For more information, visit the NRC website at [www.CharterResource.org](http://www.CharterResource.org) or e-mail NRC at [info@charterresource.org](mailto:info@charterresource.org).

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## PREFACE

This report on the consequences of financial mismanagement is one in a series of state policy guides on charter school finance and governance produced by the National Resource Center on Charter School Finance and Governance (NRC). The policy guides were developed as a result of research conducted by the NRC between January and August 2007 and updated in 2009. The charter school laws in 40 states and the District of Columbia were reviewed to gain a better understanding of the policy context affecting charter school finance and governance. In addition, approximately 80 interviews were conducted with administrators from charter school offices in state departments of education and with leaders of state charter school associations, resource centers, and technical assistance centers.

The policy guides aim to help state policymakers understand the charter school finance and governance legislative and policy landscape nationwide, the approaches available to states, and the strategies that states are pursuing to strengthen charter school finance and governance. Each guide begins by identifying the challenges posed by a particular finance or governance area. Policy options showcase the strategies that different states are using to address these challenges, highlighting specific examples in the legislation as well as experiences in the field. The NRC does not advocate one policy option over another; the guides provide considerations for weighing the options so states can decide for themselves what course to take. Finally, additional resources are identified in each finance and governance area so policymakers can learn more about topics of importance to their state.

The contents of this state policy guide do not necessarily represent the policies of the U.S. Department of Education. Endorsement by the federal government should not be assumed.



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## SUMMARY

This guide examines the laws, policies, and programs that states use to establish consequences for financial mismanagement in charter schools. It discusses how states define the financial conditions for intervention. It also describes the approaches to corrective actions for deficient charter schools and the procedures for closing charter schools.

The guide reviews the prevalent policy options and provides examples from existing state laws and practices. It also raises issues that state policymakers may want to consider when adopting or amending approaches to establishing consequences for charter school financial mismanagement.

## INTRODUCTION

A basic premise of charter school reform in public education is offering more autonomy in the use of funds and the design of curriculum in exchange for greater accountability in academic and financial outcomes. This premise poses a significant policy challenge for state policymakers to establish an appropriate level of regulation; charter schools must be sufficiently independent yet still conform to most state and federal education and financial management laws. In crafting legislation, state policymakers strive to strike a balance between creating an overly prescriptive charter law and failing to sufficiently safeguard public investments. Management and oversight of public funds is a serious responsibility. Exercising this responsibility includes monitoring the appropriate use of funds and implementing consequences for financial mismanagement that range from interventions to school closure.

Charter schools are independently operated public schools. Regardless of individual state law and regulations, each school charter school has three basic oversight structures: a board of trustees, an authorizer, and state government. (In some cases, the state is the authorizer.) The board of trustees is the party that “holds” the charter and is responsible for providing the most direct level of oversight. The board oversees the operations of the school and ensures the school’s adherence to the mission stated in its charter. The board maintains fiduciary responsibility for the

charter school, so board members are responsible for ensuring the school meets its mandate to manage the public's resources appropriately.

State charter laws establish authorizers.

Authorizers are entities charged by law to approve new schools, monitor ongoing performance, and evaluate the performance of public charter schools in order to make renewal decisions. Authorizers' powers and responsibilities vary depending on their state's charter legislation. If the school fails to deliver its promised education results or mismanages its finances, the authorizer may deny renewal for a new charter term or revoke the charter and close the school.

In some state legislation, lawmakers have called for oversight mechanisms at the state level, including charter school offices that are housed within the state department of education or elsewhere within state

government. These state-level entities may also hear appeals by charter schools in response to interventions ordered by authorizers.

Data for this guide comes from a review of the charter school laws in each state and the District of Columbia as well as interviews conducted within each state. Nearly 80 interviews were conducted with administrators from state departments of education and charter school offices and with leaders of state charter school associations, resource centers, and technical assistance centers. This guide will help state policymakers consider the various policy options for defining financial conditions for state intervention, determining appropriate corrective actions for deficient schools, and establishing procedures for closing schools.

**Regardless of individual state law and regulations, each school charter school has three basic oversight structures: a board of trustees, an authorizer, and state government.**

## THE CHALLENGE

One of the fundamental premises of the charter school movement is that in exchange for greater independence, a school is held accountable for its ability to deliver on its promises, including fiscal responsibility. Charter school authorizers are expected to intervene in schools that do not meet their education and fiscal management responsibilities. Many states have established the specific conditions under which charter school authorizers may intervene. In these cases, authorizers identify specific problems and require schools to take corrective actions. If the charter schools cannot correct their deficiencies over time, their charter is revoked or is not renewed. Some states and authorizers establish detailed procedures for how charter schools should be closed, including procedures for assigning financial assets.

Despite such protections and programs of corrective action, some charter schools with poor financial management still escape closure. According to the Center for Research on Education Outcomes (CREDO) at Stanford University, “At present there appears to be an authorizing crisis in the charter school sector. For a number of reasons—many of them understandable—authorizers find it difficult to close poorly performing schools.”<sup>1</sup>

Secretary of Education Arne Duncan has espoused a similar sentiment, saying “Charter authorizers need to do a better job of holding schools accountable.”<sup>2</sup>

According to a report by the Center for Education Reform, inadequate resources and poor financial management account for 41 percent of charter school closures annually.<sup>3</sup> Charter school experts nationwide also note the connection between poor financial manage-

ment and school closures. One charter school expert from **South Carolina** reports, “. . . [I]n most cases, you’ll find that financial insolvency is the basis for the collapse and revocation of the charter school.” Another charter school expert from **Texas** agrees, saying “. . . with the charters that have been closed, many of them had significant financial management problems.”

The challenge for policymakers is creating a continuum of consequences that enables the charter school to learn from and correct its previous financial mistakes and that imposes more serious interventions if changes are not made within a specified timeframe. As a baseline, legislation for consequences must establish the authorizer’s authority to begin interventions and to close schools for financial mismanagement reasons. An effective law will clearly describe the entities that have the authority to close poorly performing schools and provide a path for authorizers to take legal action. In addition, a well-crafted law provides guidelines for interventions by authorizers. Including these elements will enable state policymakers to create legislation and regulations that offer sound guidance on the roles and processes for intervening in financially challenged charter schools with sufficient flexibility to both address unique circumstances *and* safeguard public funds.

“At present there appears to be an authorizing crisis in the charter school sector. For a number of reasons—many of them understandable—authorizers find it difficult to close poorly performing schools.”

—Center for Research on Education Outcomes, Stanford University

<sup>1</sup> Center for Research on Education Outcomes, *Multiple Choice: Charter School Performance in 16 States* (Stanford, Calif.: Stanford University, Center for Research on Education Outcomes, June 2009), <http://www.credo.stanford.edu>.

<sup>2</sup> Secretary of Education Arne Duncan, “Turning Around the Bottom 5 Percent” (speech at a conference of the National Alliance for Public Charter Schools, June 22, 2009, Washington, D.C.).

<sup>3</sup> The Center for Education Reform, *The Accountability Report: Charter Schools* (Washington, D.C.: The Center for Education Reform, 2009)

## WHAT STATES CAN DO

Currently, states are pursuing three policy options to address charter school financial mismanagement.

They are:

- defining conditions for intervention;
- establishing corrective actions for deficient schools; and
- developing procedures for closing charter schools.

### Policy Option: Define Conditions for Intervention

Of the 41 states (including the District of Columbia) that have charter school legislation, 40 identify specific conditions that may lead to an authorizer intervening in the operations of a charter school and eventually revoking its charter.<sup>4</sup> The conditions for intervention fall into three categories:

- failure to meet educational goals;
- failure to satisfy generally accepted accounting and fiscal management standards; and
- failure to complete other obligations as specified in each individual charter.

In addition to these three general categories, some states have other financial and nonfinancial criteria that may result in a school's charter being revoked. Consider these examples.

- In **Florida**, a school's charter may be revoked for receiving an "F" in the state's accountability system for two consecutive years. The law states: "The sponsor may choose not to renew or may terminate the charter for . . . failure to participate in the state's education accountability system created in s. 1008.31, as required in this section, or failure to meet the requirements for student performance stated in the charter" (Section 1002.33).
- In **Georgia** and **North Carolina**, a school's charter may be terminated if teachers, support

staff, and parents of student's vote to do so.

Georgia law states: "The state board may terminate a charter under the following circumstances: (1) (A) If a majority of the parents or guardians of students enrolled at the charter school [or] . . . (B) If a majority of the faculty and instructional staff employed at the charter school vote by a majority vote to request the termination of its charter at a public meeting called with two weeks' advance notice and for the purpose of deciding whether to request the state board to declare the charter null and void" (Section 20-2-2068).

- Four states (**Hawaii**, **Nevada**, **New Mexico**, and **Texas**) specify that charter schools may be closed for health and safety deficiencies. Texas law states: "The commissioner may modify, place on probation, revoke, or deny renewal of the charter of an open-enrollment charter school if the commissioner determines that the charter holder: (2) failed to protect the health, safety, or welfare of the students enrolled at school" (Section 12.115).

The specificity of a state's charter school law affects how and when authorizers may intervene with schools they consider to be mismanaging funds. Intentional mismanagement and illegal actions, such as an administrator using school funds for personal benefit, are grounds for intervention in nearly every state. Fewer states, however, go further and identify conditions such as financial instability or insolvency as grounds for intervention. A charter school expert from **Arizona** suggests the challenge this creates. "There's nothing in our law that says [charter schools] have to maintain assets in excess of liabilities . . . so if a school looks very financially shaky, and we're afraid that it's going to close midyear, we don't have any jurisdiction to deal with that issue . . . and it puts a bad light on charters when we have a lot of schools closing midyear."

<sup>4</sup> Maryland does not establish specific conditions for intervention at the state level, but it does require those conditions to be defined at the local level.

## Policy Option: Establish Corrective Actions for Deficient Schools

Before revoking a charter, authorizers in most states afford the school an opportunity to correct its deficiencies. This process often involves engaging the school in specific corrective actions. Interventions can be complicated, because authorizers must strike a balance between holding charter schools accountable and respecting their autonomy.

- In **California**, charter school authorizers use a school intervention protocol that establishes uniform procedures for notifying schools of a deficiency, allowing time for remediation, placing schools on probation, and deciding whether to revoke their charter. The law states: “Prior to revocation, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to remedy the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils” (Section 47607).
- The **North Carolina** Department of Public Instruction has established “three (3) stages of financial noncompliance under which a charter school may be placed: cautionary, probationary, and disciplinary” (State Board of Education Policy EEO-U-006). Charter schools have 60 days to remedy deficiencies while in both the cautionary and probationary stages. If they cannot do so, they reach a disciplinary stage in which they face closure if they do not correct the deficiency within 10 days.

Except in cases of serious health and safety concerns, nearly all states place schools on probation before revoking their charter. The decision to place a charter school on probation is usually voted on by the state board of education, the local school board, or the chartering authority, depending on which body authorized the school. In some states, such as **California** and **Louisiana**, the state department of education may place schools on probation regardless of whether they were the authorizing body of the particular school. The level of dysfunction (and preliminary conditions) required for

probation is determined differently by various state laws and in authorizer regulations.

Charter schools placed on probation are subject to increased operational restrictions and oversight of their financial management.

- **Connecticut** law states: “If a charter school is placed on probation, the commissioner shall provide written notice to the charter school of the reasons for such placement . . . and shall require the charter school to file with the department of education a corrective action plan acceptable to the commissioner not later than thirty-five [35] days from the date of such placement” (Section 10-66bb (h)). Charter schools on probation also cannot increase their enrollment or recruit new students, and they may have to submit interim reports.
- **Minnesota** law states: “If the commissioner receives as part of the audit report a management letter indicating that a material weakness exists in the financial reporting systems of a charter school, the charter school must submit a written report to the commissioner explaining how the material weakness will be resolved” (Section 124D.10 Subd.6a).

These early interventions can be an effective strategy for correcting financial management deficiencies before they become too severe. State charter school resource centers can also provide targeted training and technical assistance to support schools during state intervention and assist in their recovery.

Some states will withhold a portion of operating funds to schools that are not complying with financial management standards. Often a charter school cannot recover the withheld funds after correcting the deficiency.

- In **Arizona**, “the sponsor of a charter school may submit a request to the department of education to withhold up to ten [10] percent of the monthly apportionment of state aid that would otherwise be due the charter school” if the charter school misses the deadline for submitting its financial audit (Section 15-185).
- Charter schools in **Michigan** have a full month of funding withheld if they fail to submit their required

## Protocol for Closing California Charter Schools

California has adopted a memoranda of understanding template for charter school authorizers, a section of which establishes uniform procedures for school closures throughout the state. Charter schools that are closing must provide their authorizing district with:

- a description of current and projected payroll and benefits commitments through closure;
- a budget showing anticipated expenditures for transitioning the students and records; completing all administrative closure-related tasks; closing out contracts and grants; and satisfying all remaining liabilities;
- a comprehensive inventory of all fixed assets that details whether such assets were purchased with public or private funds;
- a report of outstanding liabilities that identifies any secured creditors; and
- a plan for the liquidation of assets.

The authorizing school district is responsible for overseeing the charter school throughout the closure. The district ensures that the charter school satisfies any outstanding claims by creditors and properly liquidates and distributes its assets. Any assets of the charter school purchased with public funds are returned to the school district, and all grant funds and restricted categorical funds are returned to their source.

financial reports. Michigan law states: “If a district or public school academy does not comply with this subsection, the department shall withhold an amount equal to the August payment due under this section until the district or public school academy complies with this subsection. If the district or public school academy does not comply with this subsection by the end of the state fiscal year, the withheld funds shall be forfeited to the school aid fund” (Section 388.1631a).

- Charter schools in **Arkansas** may have a portion of their funds withheld per state law. “If the auditors of the financial accountability office determine that the financial records are deficient, then the school district, open-enrollment charter school, or education service cooperative shall be notified and shall have thirty (30) days to respond prior to suspension of the grants and aids” (Section 6-20-2202).

Withholding funds may motivate charter school operators to complete required financial reporting, but it may exacerbate the school’s financial difficulties. When creating intervention procedures, policymakers must balance the obligation to be responsible stewards of public funds against the commitment to ensure a degree of stability for charter schools and, by extension, their students.

## Policy Option: Develop Procedures for Closing Charter Schools

Charter schools that cannot correct their deficiencies may have their charters revoked. In most states, the authorizer is required to provide the charter school with written notice of the reasons for the proposed revocation and a citation of specific incidents of non-compliance. The authorizer may then convene a hearing at which leaders of the charter school may present their case against the proposed revocation. This hearing produces a decision on revoking the school’s charter and, in some states, that decision is final. In other states, schools whose charters have been revoked by a local authority may appeal that decision to the state board of education or an appropriate court.

States and authorizers must have clear laws and regulations related to the procedures for closing charter schools, regardless of the reason for closure (see Disincentives for Closing Charter Schools). Poorly constructed closing procedures affect students and their families in significant ways. For example, in summer 2004, the California Charter Academy, a for-profit education management company, closed more than 60 campuses after the state superintendent of public instruction began an investigation into the company’s finances. The closure left nearly 10,000 students looking

for placements in new schools one month before classes began.<sup>5</sup> As a result, **California** has adopted a detailed memoranda of understanding template for charter school authorizers (see Protocol for Closing California Charter Schools). This memorandum of understanding includes a clear set of guidelines and procedures for closing failing schools.

Charter legislation in 15 states specifies procedures for distributing a school's remaining assets after it closes. Most charter schools must complete a final audit to determine the disposition of all assets and liabilities. Any assets purchased with public funds are returned to either the school district or the state, usually depending on which body initially authorized the charter school. The assets are then redistributed to other public schools. Charter schools must also close out any federal grants and return any remaining grant funding to its source.

- Assets of charter schools closing in **Ohio** “shall be distributed first to the retirement funds of employees of the school, employees of the school, and private creditors who are owed compensation and then any remaining funds shall be paid to the state treasury to the credit of the general revenue fund” (Section 3314.074(A)).
- **Florida** law states: “In the event a charter school is dissolved or is otherwise terminated, all district school board property and improvements, furnishings, and equipment purchased with public funds shall automatically revert to full ownership by the district school board, subject to complete

satisfaction of any lawful liens or encumbrances” (Section 48.1002.33(8e)). The school board may seek to obtain any recoverable assets, such as furniture or equipment. However, it may not seek to recover liquid assets relating to costs such as rental fees, maintenance, and renovations.

- **Indiana** law states: “All remaining assets, except funds specified in subdivision (2), shall be used for nonprofit educational purposes” (Section 20-24-3-3).
- **Nevada** law states: “If a charter school ceases to operate as a charter school during a school year, the remaining apportionments that would have been made to the charter school pursuant to NRS 387.124 for that year must be paid on a proportionate basis to the school districts where the pupils who were enrolled in the charter school reside” (Section 386.570).

In 12 states, the state, the sponsoring school district, or any other chartering authority cannot be held liable if a revoked charter school does not have sufficient funds to meet its outstanding obligations. Instead, the individual charter school is fully responsible for all debts incurred. Only one state, **Indiana**, takes some responsibility for repaying the outstanding obligations of charter schools that have been closed. According to Indiana law, the “state shall repay any remaining obligations of the charter school under IC 20-49-7 from the amount appropriated for state tuition support distributions” (Section 20-24-7-9).

<sup>5</sup> Erika Hayasaki, “Charter Academy Shuts 60 Schools,” *Los Angeles Times*, August 16, 2004.

## Disincentives for Closing Charter Schools

Of the approximately 4,600 public charter schools that have been opened since 1991, approximately 552 have closed as of 2009. Most researchers consider the number of schools that have closed to be fairly low. Although the low number of closures may be a testament to the success of the charter school movement, several factors create disincentives to close charter schools even if they are performing poorly.

- Authorizers may not close an ineffective school for fear of damaging the broader charter school movement.
- Communities become very invested in their schools and closing them can be politically unpopular.
- A charter school that is not meeting the obligations of its charter may still be out-performing other schools in the area.
- The academic success or failure of any school may be difficult to measure definitively.

Source: The Center for Education Reform, *The Accountability Report: Charter Schools* (Washington, D.C.: The Center for Education Reform, 2009).

## WEIGHING THE OPTIONS

Charter schools are public institutions so they must be held accountable by the government agencies responsible for school oversight. The issue for policymakers is how to define effective and balanced processes for intervention and closure. Some policymakers may be reluctant to create processes that would enable charter school opponents to unfairly squash charter school growth and success. Opposition to charter school growth is a legitimate concern, but, in a time of increased calls for accountability, policymakers should craft laws that consider the practical effects of intervention and closure processes. Whether defining the conditions for intervention, imposing corrective actions, or setting procedures for closure, the most formidable obstacle facing authorizers is the absence of clarity. This lack of clarity extends from the conditions for intervention to the roles and processes for evaluation, intervention, and closure. When state laws fail to articulate critical authorizer powers and duties, schools, as well as the students and families they serve, are inadvertently placed at risk of failure.

Policymakers may want to take the following steps when establishing laws and regulations for intervention and closure. See, also, *Summary of Charter School Intervention and Closure Legislation by State*.

- Establish authorization processes that prescribe specific financial management policies and procedures that must be articulated in the charter prior to authorization.
- Require authorizers to establish regular and standardized financial reporting by charter schools on fiscal health and financial practices.
- Require authorizers to clarify regular evaluation procedures, the process for intervention and corrective actions, and revocation/nonrenewal procedures and to publish all of these. This will require clear and measurable financial performance standards and explicit identification of the financial data that will be used for the evaluation.
- Establish clear roles and lines of authority for authorizers for both interventions and revocations, including the means of monitoring and the process for determining nonrenewal or revocation.
- Clarify the assignment of assets upon charter revocation or nonrenewal. This includes the disposition of all properties and funds in a manner that safeguards public investments and protects the assets of non-responsible parties such as teacher retirement funds and moneys owed to legitimate vendors.
- Use all three policy options—intervention, corrective action, and revocation—so a full system of consequences is offered within the law. In particular, create structures and processes that enable authorizers to intervene in charter schools that have financial management issues but do not yet deserve draconian measures.

### Summary of Charter School Intervention and Closure Legislation by State\*

	Legislation identifies conditions for authorizer intervention and termination of charter	Legislation specifies how charter school's assets are dispersed at closure	Legislation establishes procedures for closing charter schools
<b>Alaska</b>	■		
<b>Arizona</b>	■		■
<b>Arkansas</b>	■	■	■
<b>California</b>	■	■	■
<b>Colorado</b>	■		
<b>Connecticut</b>	■		■
<b>Delaware</b>	■		
<b>DC</b>	■		■
<b>Florida</b>	■	■	■
<b>Georgia</b>	■	■	■
<b>Hawaii</b>	■		■
<b>Idaho</b>	■		■
<b>Illinois</b>	■		
<b>Indiana</b>	■	■	
<b>Iowa</b>	■		
<b>Kansas</b>	■		■
<b>Louisiana</b>	■	■	■
<b>Maryland</b>			■
<b>Massachusetts</b>	■		■
<b>Michigan</b>	■	■	■
<b>Minnesota</b>	■		■
<b>Mississippi</b>	■		
<b>Missouri</b>	■		
<b>Nevada</b>	■	■	
<b>New Hampshire</b>	■		
<b>New Jersey</b>	■		■
<b>New Mexico</b>	■	■	
<b>New York</b>	■		
<b>North Carolina</b>	■	■	■
<b>Ohio</b>	■	■	
<b>Oklahoma</b>	■		■
<b>Oregon</b>	■	■	■
<b>Pennsylvania</b>	■	■	■
<b>Rhode Island</b>	■		
<b>South Carolina</b>	■	■	
<b>Tennessee</b>	■	■	
<b>Texas</b>	■		
<b>Utah</b>	■		
<b>Virginia</b>	■		
<b>Wisconsin</b>	■		
<b>Wyoming</b>	■	■	

\* The information presented in this table is based on a scan of state charter school laws. Some states may have established procedures for school intervention and/or closure that are not incorporated into legislation.

## CONCLUSION

Striking the appropriate balance between oversight and autonomy can be challenging for policymakers interested in ensuring sound financial management by charter schools. On the one hand, the charter school concept is explicitly meant to foster innovation and reduce bureaucracy, enabling visionary school leaders to bring effective new schools into existence free from administrative hindrances. On the other hand, state policymakers have a fiduciary and ethical obligation to ensure public funds are used without fraud, waste, or abuse. Of course, charter schools themselves see fiscal stability as key to fulfilling their mission. In light of this challenge, policymakers must create appropriate oversight procedures and processes for intervention and closure that are clear, fair, and effective.

## ADDITIONAL RESOURCES

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[http://www.publiccharters.org/files/publications/ModelLaw\\_P7-wCVR.pdf](http://www.publiccharters.org/files/publications/ModelLaw_P7-wCVR.pdf).

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