

## *Executive Summary*

**I**n 1992, the California Charter Schools Act gave teachers, parents and school administrators unprecedented freedom from red tape to use innovative strategies to improve learning opportunities for California students. Former California State Senator Gary Hart, author of the legislation, pronounced it a “license to dream” for teachers, parents and the community to “create educational programs from scratch, unfettered by bureaucratic constraints.”<sup>1</sup>

The goal of the legislation was to improve education for all California students at all public schools, with charter schools serving as incubators for innovation. Knowledge gained and successful teaching models honed could be shared with all classrooms across California. Seventeen years later, 912 charter schools in California educate hundreds of thousands of students, or approximately 5 percent of all public school students in the state.<sup>2</sup>

The Little Hoover Commission first assessed the progress of charter schools in 1996, in the infancy of the implementation of the charter school law. Many of the problems identified in the Commission’s 1996 study – including the 100-schools per year cap on charter schools, funding inequities and limited appellate opportunities for denied charter petitioners – later were resolved through legislation.

This follow-up provides an assessment of the progress of the charter school movement and identifies further opportunities for refining the charter school experiment. California is nationally recognized as a leader in its charter school laws, in part, because of its willingness to continue to refine its laws.<sup>3</sup>

Many charter schools in California have flourished; some now rank among the top performing schools in the nation. The Commission had the opportunity during the course of this study to visit inner-city schools and meet students who were outperforming their peers in neighboring traditional public schools as measured by success on the state’s mandated achievement tests. More important, these students were graduating with skills ready for a career and getting accepted to and succeeding in college. At the same time, however, California has numerous poor-performing charter schools that continue to stumble

along, short-changing their students of the quality education promised in charter petitions and required by state standards.

This report is divided into two sections: The first focuses on improving accessibility by eliminating artificial barriers and improving the charter school authorization process. The second focuses on improving accountability by promoting the use of performance contracts and eliminating statutory ambiguities.

## ***Improving Accessibility***

The California charter school movement has grown considerably in the past eight years, doubling from 454 schools in 2003 to 912 in 2010. Each year, approximately 80 new or converted charter schools have opened across the state, although 115 new or converted charter schools opened for the 2010-2011 school year.<sup>4</sup> Some suggest this consistent expansion of charter schools reveals the extent to which the current system is working.

The Commission, however, was told that many local districts and school boards, the primary gatekeepers in the state's charter school system, thwart attempts to open additional charter schools, even when charter school operators are expanding or replicating successful schools.

Charter school operators have singled out the state's dysfunctional charter authorization process, which forces districts into a charter school partnership whether they want one or not, as one of the most significant challenges in California's charter school system. Some districts simply lack the capacity to authorize and oversee charter schools.

Other districts are openly hostile to charter schools and view them as enemies that siphon away students and the Average Daily Attendance (ADA) money they take with them. Charter school operators repeatedly described charter authorization and renewal challenges at the local school board level and what they see as an inescapable conflict of interest.

## ***Charter School Authorization Process***

Anyone can petition to establish a new charter school. A majority of parents of affected students or teachers must support the petition. To convert an existing school into a charter school, at least half of the school's teachers must support the petition.<sup>5</sup> Additionally, legislation enacted in 2010 as part of the state's attempt to qualify for federal Race to the Top grants, expanded the opportunity for parents, in certain

limited circumstances and as one of several possible remedies, to petition to convert an existing school to a charter school. The legislation limits this opportunity to 75 schools.<sup>6</sup>

This latest development expanding opportunities for parents to petition to convert existing schools into charter schools is another step in the right direction, although it will be important to assess whether the criteria or the cap of 75 schools proves to be too limiting or if further adjustments are necessary. The Commission believes that parents should have the opportunity to petition to convert poor-performing schools into charter schools.

In all but a few specific situations, charter school petitions are submitted to the school board of the district where the school will be located. If the local school board approves the charter petition, the school board and district become the charter authorizer and provide the required oversight of the school.

If a petition is denied by the local school board, petitioners can appeal to the local county office of education. If the charter is approved, the county office of education then serves as the authorizer. If a petition is denied by the local board and the county office of education, petitioners can appeal to the State Board of Education. The majority of California's charter schools have been authorized through this process, primarily by local authorizers, however, there are alternative routes, including all-district charters, countywide charters and statewide benefit charters.

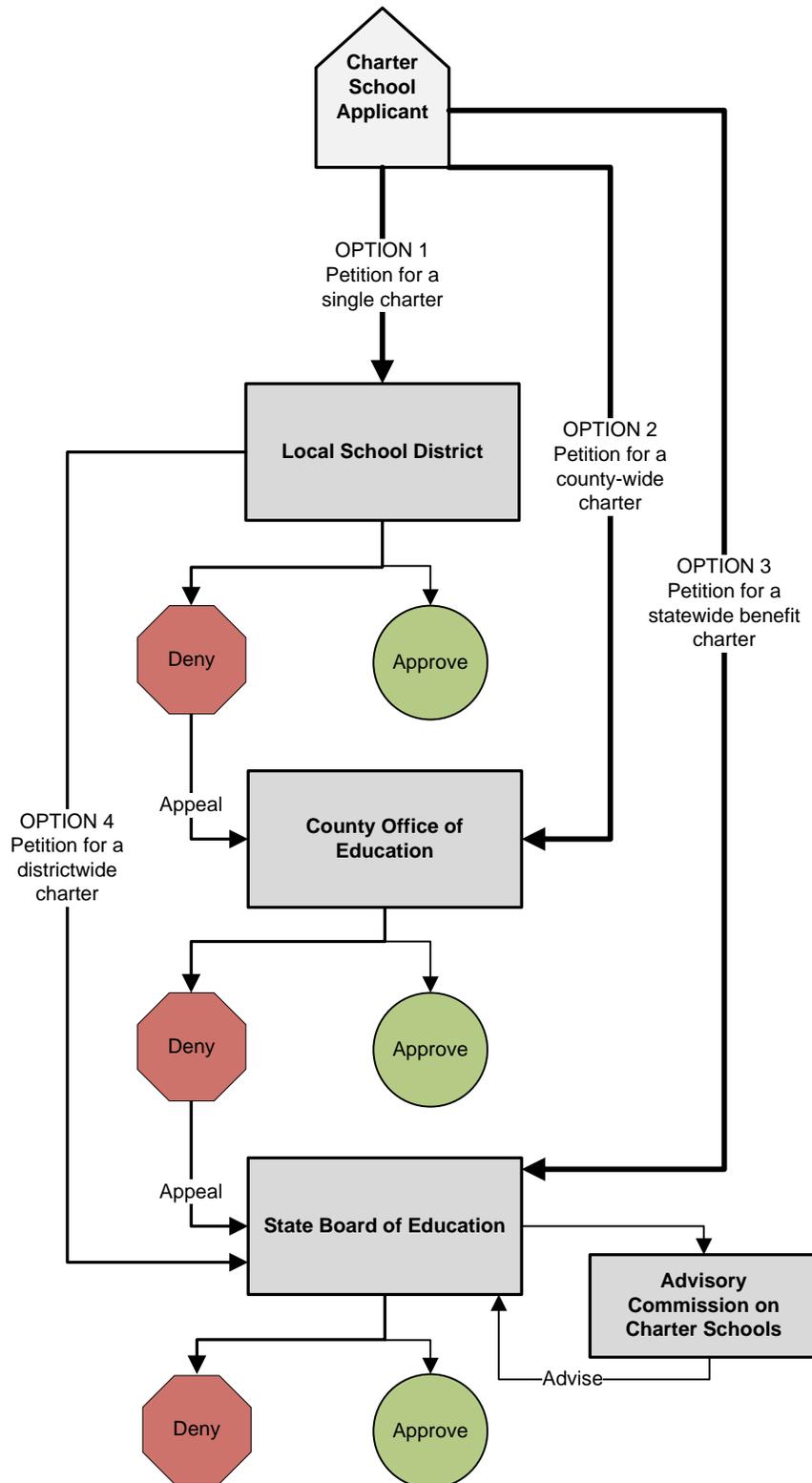
California has more than 1,000 school districts, and each potentially could become a charter school authorizer. In practice, however, only a quarter of California's school districts have authorized one or more charter schools.<sup>7</sup> Of California's 58 county offices of education, 31 have authorized at least one charter school.<sup>8</sup>

Oversight for roughly half of the state's 912 charter schools is provided by just 32 authorizers including the State Board of Education. The largest, the Los Angeles Unified School District, has authorized 183 operating charter schools.<sup>9</sup> Other school districts with a significant number of charter schools operating include the San Diego Unified School District with 41 and the Oakland Unified School District with 31 authorized charter schools.<sup>10</sup>

Districts with many charter schools have the opportunity to gain experience and can dedicate more resources to charter school authorization and oversight. Districts receive a portion of charter school ADA money to pay for oversight, ranging from 1 percent to 3 percent, so

districts with many charter school students have a greater ability to dedicate staff to charter school oversight and authorization.

***Current California Charter School Authorization and Appeals Process***



Small, rural districts or districts with few charter schools cannot benefit from these economies of scale and often lack the resources to be effective authorizers, or later, to provide adequate oversight. These authorizers have less experience in charter school oversight and local costs likely are comparatively higher because all of these authorizers essentially must construct an oversight system from scratch. Charter authorization and oversight is complicated and, for most districts, not central to their mission. Districts structured for compliance-based accountability may lack the competencies required for performance-based accountability.

By design, charter schools are all about choice – for the founders and the teachers, parents and students that choose to be part of the school. In contrast, under the current system, districts do not have the opportunity to choose to be a charter authorizer, but denying a viable charter petition violates the intent of California charter school law. This forced partnership is part of the dysfunction of the current charter school system.

### ***Role of the State Board of Education***

As a result of the difficulty in getting charter petitions approved or renewed locally, more petitioners are relying on the appellate process. The number of appeals reaching the State Board of Education has increased steadily – both for initially establishing charter schools and for schools that have been denied renewal at the local level. As of November 2010, 83 charter petition appeals had been submitted to the California Department of Education for consideration since the appellate process was established in 1998. The State Board currently has authorized and oversees 31 charter schools. Additionally, the board oversees eight all-charter districts operating 18 schools under the joint authorization of the board and the State Superintendent of Public Instruction.<sup>11</sup>

A recent ruling by a California appellate court found that the State Board had incorrectly interpreted and implemented the legislation establishing the provision for statewide benefit charters. The State Board has filed a petition for a California Supreme Court review of this ruling and expects to have an answer on whether the Supreme Court will accept the petition in December 2010.<sup>12</sup> The ruling, however, may slow the expansion of charter schools authorized by the board under this provision. Until more local boards follow the intent of the state’s charter school law, however, the steady stream of appeals by petitioners with valid charter petitions or charter school operators denied renewal at the local level will likely continue.

One product of the appeals and the special charter authorizing provisions is that the State Board of Education has become the second

largest authorizing entity in the state. This is a problem as the State Board, given its broader and more significant role in setting statewide education policy, lacks the capacity and focus to provide effective oversight for its growing stable of charter schools.

According to board members and the former executive director of the board, nearly a third of the board's time is consumed by charter school issues, yet charter school students represent only 5 percent of the total public school student body in California. Nearly every State Board meeting has at least one charter petition appeal and often several petition appeals for new petitions denied or existing charters that were not renewed at the local level. Each charter petition is hundreds of pages long. Board members review the petitions prior to the hearings. At the hearings, held during the bi-monthly board meeting, charter petitioners have an opportunity to present their appeal. The local district and county office of education that denied the charter or denied renewal of a charter present their reasons for denying or not renewing a charter school. Both types of appeals, but particularly those where an existing charter has been denied renewal, can draw dozens of affected faculty, parents and students who want to provide public testimony.

The board has established a nine-member Advisory Commission on Charter Schools in part to comply with a law requiring the board to establish a committee to advise it on non-classroom-based charter schools. Non-classroom-based charter schools include schools made up of home-schooled students and independent study schools, including Internet or software-based instruction and distance learning programs where students meet occasionally with a teacher. The board also has charged the commission with providing broader advice on charter school issues. The commission meets bi-monthly and provides a dress rehearsal opportunity for charter petitioners that are making appeals. The California Department of Education has a Charter Schools Division which provides support to both the State Board and the Charter School Advisory Commission as well as provides oversight for charter schools authorized by the board.

The reality that the State Board of Education has become California's second largest charter school authorizer underscores the need for further refining the state's charter school laws. The state needs to establish an alternative option for charter authorization, a recommendation previously made by this Commission and repeated by the Legislative Analyst's Office in 2004.<sup>13</sup>

Many other states have various combinations of authorizers, although local school boards are the predominant group of authorizers nationwide. Seven states have special-purpose statewide public charter school

boards. Other options include higher education institutions and not-for-profit authorizers. Two states allow the office of the mayor or a local city council to authorize charter schools. Due to the variances in state charter school laws, there is no one perfect authorizer model. There is agreement, however, that the best authorizers are those that actually have a clear desire to be an authorizer.<sup>14</sup>

Some have suggested and even proposed legislation to allow California's universities and community colleges to authorize charter schools. During the course of this study, representatives from public universities and community colleges made clear that they did not want the authority to approve charter school petitions and have opposed legislation that would have allowed them to become charter school authorizers in the past. Given the reluctance of colleges and universities to participate, an independent statewide charter school board provides the best alternative for California.

## **Summary**

Ideally, local school boards and county offices of education would embrace charter schools as one of several effective tools in their educational toolbox. They would approve viable charters, renew charter schools that meet state performance criteria and close schools that consistently do not. Unfortunately, this has not been the California experience.

By establishing an alternative authorizer at the state level, local districts that do not have the capacity or do not want the responsibility of authorizing or overseeing charter schools could opt out of the authorizing role, eliminating the forced relationship that currently exists. Charter school petitioners facing school boards hostile to charter schools would have another option for approval beyond the current appellate process. The existence of an alternative authorizer at the state level might coax local boards into improving charter school authorization and oversight or risk losing control as charter school petitioners would have a new option of going directly to a statewide charter board. A state level charter school board could develop best practices and provide technical assistance to local boards.

Additionally, an alternative authorizer at the state level potentially would relieve pressure on the State Board as fewer petitioners would need to use the appellate process, allowing the board to better focus on its broader education mission. As appeals to the State Board are reduced, the need for an advisory committee on charter schools would be diminished. Policy-makers could shift the role of recommending criteria to establish appropriate funding levels for non-classroom based charter

schools from an advisory committee established by the State Board, as current statute requires, to a state-level charter board.

As well as adding an alternative authorizer, policy-makers should implement a process to assess the viability of local districts and county offices of education to effectively authorize and provide oversight for charter schools. Those districts that have proven effective should have an option to continue to control charter authorization within their districts. The State Board should be given the authority to grant districts and county offices that meet clearly established criteria exclusive authority to approve and oversee charter schools, similar to a model used in Colorado. Criteria would include a local entity's effectiveness in approving valid charters and willingness to renew existing charter schools that meet established performance criteria, as well as the willingness to shut down charter schools that fail to meet goals set in the charter petitions as well as established state benchmarks. The State Board also should have the ability to revoke exclusive chartering authority

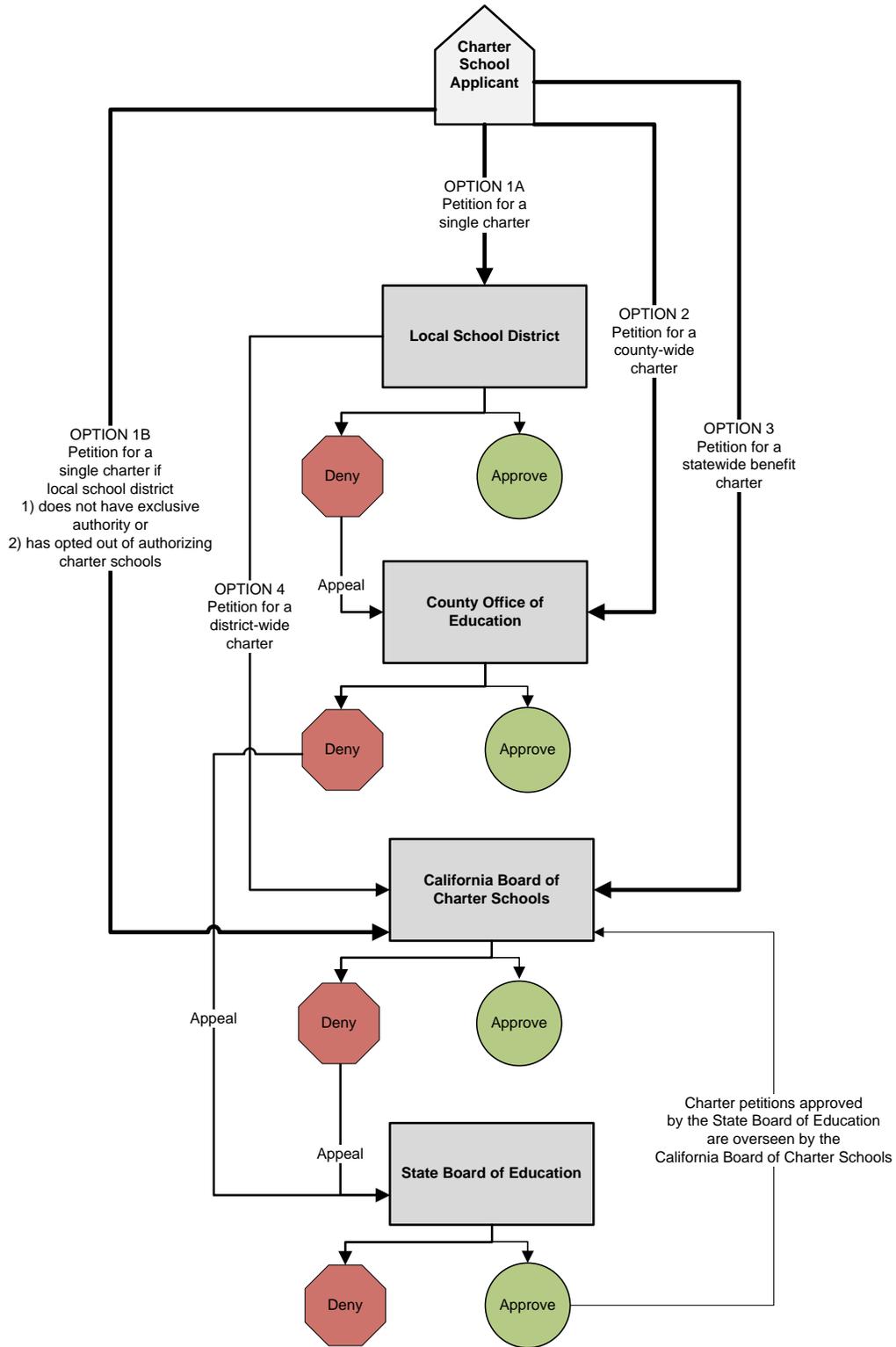
***Recommendation 1: California should establish the California Board of Charter Schools as an independent entity within the California Department of Education, to directly authorize charter petitions and to oversee charter schools.***

- ❑ The board should include an odd number of members with staggered appointments; members should be appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly; members should have knowledge and experience with effective charter school authorization and oversight and should include, but not be limited to, people with experience as school superintendents, charter school administrators, teachers, parents and school governing boards. The board shall be bipartisan with no more than half the appointed members plus one registered as members of the same political party. The Superintendent of Public Instruction or his or her designee should serve on the board. A member of the State Board of Education should serve as an ex-officio member.
- ❑ Charter school-specific functions currently performed by the State Board of Education should shift to the new California Board of Charter Schools. Existing staff positions in the California Department of Education's Charter Schools Division and the funding that supports charter school oversight activities and the Advisory Commission on Charter Schools gradually should be shifted to support the new California Board of Charter Schools.
- ❑ As the number of appeals to the State Board of Education is reduced, so will be the workload of the Advisory Commission on Charter Schools, potentially eliminating the need for this commission. The

Legislature and the Governor should enact legislation that would shift the role of recommending criteria to establish appropriate funding levels for non-classroom based charter schools from an advisory commission established by the State Board of Education to the new California Board of Charter Schools, further reducing the need for the advisory commission.

- ❑ As the primary goal of establishing an independent state-level board should be to encourage improvement in charter school authorization at the local level, the board should not automatically become a permanent state government entity. The California Board of Charter Schools should face a sunset review in 10 years.
- ❑ The California Board of Charter Schools should provide technical assistance on best practices on charter school authorization and oversight to districts and county offices of education.
- ❑ The State Board of Education should retain its current appellate authority for approving charter petitions and renewals denied at the district or county level and also have the authority to approve charter petitions and renewals that are denied by the California Board of Charter Schools. The State Board of Education should retain its current authority to revoke charters.

**Proposed California Charter School Authorization and Appeals Process**



***Recommendation 2: To improve accountability and oversight capacity of charter school authorizers, the State Board of Education should be given the authority to oversee charter school authorizers. Specifically, the State Board of Education should be given the authority to:***

- ❑ Allow school districts to opt out of the role of charter school authorization and oversight and turn over that responsibility to the California Board of Charter Schools.
- ❑ Grant exclusive chartering authority to certain qualified local school districts. To qualify, local school districts must approve charter petitions that meet state criteria, approve renewals for successful charter schools that have met the state’s renewal criteria and must not renew charter schools that have not met the state’s renewal criteria. The new California Board of Charter Schools should establish other performance criteria to qualify as exclusive charter authorizers based on national best practices.
- ❑ Revoke local district charter authorizing and oversight powers, when local districts fail to authorize charters that meet state criteria as required by current state law, fail to renew charter schools that meet state renewal criteria or fail to close charter schools that do not meet state renewal criteria.
  - ✓ Potential charter school operators or existing charter school operators in districts that have opted out or in districts that have had charter authorizing powers revoked would be authorized and overseen by the California Board of Charter Schools.
  - ✓ Potential charter school operators should have the option of petitioning either the California Board of Charter Schools or the local school district in which the charter school will be located for charter authorization and oversight, unless the district has been granted exclusive chartering authority by the State Board of Education.

## ***Improving Accountability***

Charter schools have the opportunity to operate free from the rules and regulations that often constrict public schools. In exchange for the freedom, charter schools commit to increased accountability for student outcomes.

Independent assessments of charter school outcomes have shown mixed results. A June 2009 Stanford University Center for Research on Education Outcomes (CREDO) study on charter school outcomes assessed data from 15 states and the District of Columbia, and covered

approximately 70 percent of all charter school students enrolled nationwide. The research found wide variations between states, but found, on average, test scores in reading and math of California charter school students, the measurement method used in the study, were similar to test scores of students in traditional public schools.<sup>15</sup>

The California Charter Schools Association has assessed charter schools by reviewing the number of schools that meet their predicted Academic Performance Index (API) score. When not viewed in the aggregate, more than 20 percent of charter schools fall in 90<sup>th</sup> percentile or above in the predicted API, while nearly 20 percent fall in the bottom 10<sup>th</sup> percentile of the predicted API.<sup>16</sup>

When initially submitting a charter petition, petitioners are required to provide reasonably comprehensive descriptions of 16 elements required by state law. Two of these required elements are the measurable student outcomes that the school plans to use and the method the school will use to measure the identified outcomes.<sup>17</sup> In California, the charter petition, once approved, becomes the document that the charter school and its authorizers use to measure progress.

### ***Performance Contracts***

California, unlike most other states, does not differentiate between charter petitions and performance contracts. More than 90 percent of the nation's largest authorizers enter into contracts with their charter schools. This is the norm across the nation.<sup>18</sup> A charter petition is a proposal written by one party in the relationship, the potential charter school operator, for review and approval by an authorizer. The petition describes the educational outcomes the school hopes to achieve in return for public funding and freedom from many rules. In most other states, once a petition is approved, the authorizer and the charter school negotiate and enter into a binding performance contract.

Performance contracts describe the rights and responsibilities of the charter school operator and the authorizer, such as when and how to evaluate academic progress, facility use, administrative services, costs and other contractual issues.<sup>19</sup>

A performance contract can be used to hold both the school operator and authorizer accountable and to define and enforce each party's rights. Many charter schools outside of California view their contract "as their best defense against unfair authorizer practices."<sup>20</sup>

Still, some advocates caution that in California, larger issues make performance contracts nearly impossible. Namely, many charter school

authorizers do not want the role of authorizer; the introduction of a contract does nothing to improve their interest in oversight. Additionally, under the current system, some are concerned that charter authorizers could force petitioners into contractual obligations that limit charter school autonomy.<sup>21</sup>

Some local charter school authorizers in California and the State Board of Education use a memorandum of understanding, a less formal, less rigorous approach than a performance contract that lays out minimum expectations for both the authorizer and the charter school. The State Board's memorandum of understanding sets minimum requirements and establishes a course of action if the charter school fails to meet the minimum requirements.

### ***Charter School Revocations and Renewals***

Charter schools authorizers, whether local, county or the State Board, are required to revoke charters if there are serious fiscal issues or if students are in physical danger. The State Board also has the authority, upon a recommendation from the Superintendent of Public Instruction, to revoke the charter of any academically poor-performing school, although it has never used this authority, in part because regulations for doing this had never been developed and in part because the Superintendent of Public Instruction has never recommended the board revoke a charter school. On one occasion, the State Board revoked a charter school that it had authorized through the appellate process.<sup>22</sup> Over the course of the past year, the State Board has painstakingly worked with stakeholders to establish revocation regulations that it adopted in November 2010.

Authorizers also are required to ensure that the schools meet criteria established in the charter petition and to assess whether a charter school petition should be renewed. During this study, the Commission was told repeatedly that the state's renewal criteria are too vague and the bar is set too low, making it difficult for authorizers to close down poor-performing schools. Many recommended that the Legislature change the renewal criteria. Some emphasized that the renewal criteria must remain flexible enough to account for charter schools that serve particularly difficult populations, such as dropouts who otherwise would not be attending school at all.

Currently, a consistently low-performing school can meet the renewal criteria if it meets just one of four criteria, for example, the school meets its Academic Performance Index (API) growth target in the year prior to renewal even if it had previously been a consistent under-achiever. Another of the four criteria allows authorizers to determine that the

school's performance is comparable to that of district schools its students otherwise would attend.

In some districts, all schools within a neighborhood may perform poorly, but the charter school may provide a safe haven for students. Parents and students will beg the local school board to keep a safe charter school open, even if it is not achieving its academic goals. One charter school operator told the Commission that it is unacceptable for poor performing charter schools to remain open simply because all schools in the district are performing poorly and the charter school provides a safe alternative. Several charter school operators told the Commission that a charter school should be required to outperform similar district schools.

Many agree that what is most important – student learning – is difficult to measure based solely on achievement test scores. Unfortunately, as noted in previous Little Hoover Commission studies, the state lacks the data to measure outcomes beyond test scores. As the California Longitudinal Pupil Achievement Data System (CALPADs), still in its infancy, matures and more data becomes available, the state should expand the renewal criteria to include other factors, such as graduation rates, employment readiness as well as college attendance and completion rates.

### ***Charter Renewal Time***

Most experts and charter school operators agree that it can take several years after a conversion of an existing school or the start-up of a new charter school to establish a successful track record. Yet local authorizers sometimes approve charter petitions for only two or three years, causing schools to be in perpetual renewal mode instead of focusing on teaching students. Many agree that all new charter schools, with limited exceptions, should be granted the current maximum five-year charter term.

Some have suggested that charter schools with a successful track record after their first five or more years in operation should be renewed for a longer time period. Recent legislation, AB 1991 (Arambula), would have allowed authorizers to renew charter schools that met and exceeded accountability standards for up to 10 years.<sup>23</sup>

### ***Summary***

California charter school operators have been wary about implementing performance contracts that are embraced by charter schools in other states. This, at least in part, is due to the dysfunctional authorization

process. In establishing an alternative independent statewide authorizer, as previously recommended, the Commission sees the potential for significant improvements in the authorization process and an opportunity to introduce performance contracts. In fulfilling its role as technical advisor on best practices, the new California Board of Charter Schools should develop a model performance contract that could become a required element between authorizers and charter school operators.

The state must raise the bar for charter school renewal while still maintaining options for certain charter schools serving the most difficult student populations. There is broad agreement that the current renewal criteria for charter schools must be improved, though stakeholders do not agree on how to most effectively improve renewal criteria. Two recent bills, AB 1950 (Brownley) and AB 1991 (Arambula) took significantly different approaches to changing charter school renewal criteria and both bills failed to pass. The two bills contained provisions to eliminate one of the four renewal criteria that allows a charter school to be renewed if its performance is comparable to that of the district schools its students otherwise would attend. To establish other areas of common ground to improve renewal criteria, the new California Board of Charter Schools should work with stakeholders to develop recommendations for policy-makers to strengthen the charter school renewal criteria.

Additionally, the state should take steps to ensure that charter operators be allowed a minimum of five years to establish schools, before facing renewal, except in extreme circumstances. To reward schools with consistently successful track records, the state should reduce bureaucracy by extending charter renewal time periods for established charter schools that consistently meet high benchmarks.

***Recommendation 3: The California Board of Charter Schools should develop a model performance contract for authorizers and charter schools by 2012.***

- ❑ The California Board of Charter Schools should use input from state and national experts, and build on the memorandum of understanding currently used between the State Board of Education and the charter schools it has authorized.
- ❑ Once a model contract is developed, the state should require performance contracts between charter school authorizers and charter schools.
- ❑ The model contract should provide a basic framework, but allow enough flexibility for authorizers and charter schools to address special circumstances and unique characteristics of innovative school models.

***Recommendation 4: To ensure that charter schools that have benefited from the flexibility from state education rules are best serving students, the state should improve its charter school renewal criteria. Specifically:***

- The California Board of Charter Schools should develop recommendations to improve the effectiveness of the charter school renewal criteria by 2012. The Legislature and the Governor should enact legislation based on these recommendations.

***Recommendation 5: To ensure new charter schools are granted enough time to incubate, and to reward high-performing charter schools for consistent achievement, the state should change the time limits granted for charter petitions. Specifically:***

- The Legislature and the Governor should enact legislation that requires new charter petitions that meet state established criteria to be authorized for five years. Any authorizer that chooses to authorize a charter school for a period of less than five years must obtain approval from the State Board of Education.
- The Legislature and the Governor should enact legislation that allows high-performing charter schools that meet specified criteria to be renewed for up to 10 years.