



ONE PLUS ONE

The Dual Authorizer
Structure and the Future
of New Orleans Schools

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INTRODUCTION

In the current legislative session, state lawmakers filed several bills directed at reducing the state's role in governing Orleans Parish public schools. Recently, the Senate unanimously approved a bill providing for the transfer of charter schools from the state Recovery School District (RSD) to the Orleans Parish School Board (School Board).¹ This would reduce the role of the state Board of Elementary and Secondary Education (BESE) as a charter authorizer in New Orleans.² These changes would depart significantly from the dual authorizer structure that has been an unsung hero in Orleans Parish public schools' success story.

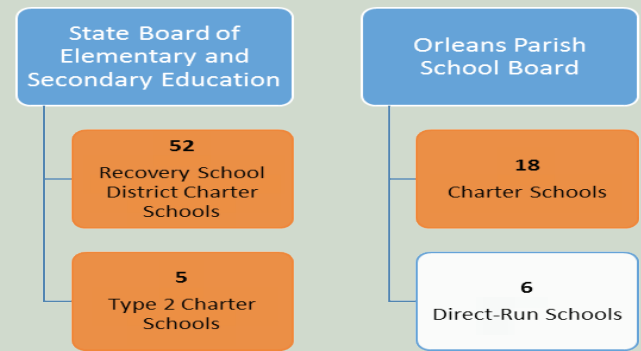
Charter authorizing carries more significance than its name might suggest. Charter authorizers grant charters in the first instance, but then continue in an oversight and accountability role, enforcing charter contracts and performance standards. In essence, charter authorizers serve as charter school regulators. They must foster autonomy and accountability at the school level and support the system's ability to deliver high-quality education. In a system of mostly charter schools, the quality of the authorizing function directly affects the system's performance and its future growth. For that reason, legislators must approach the charter authorizing structure with care.

As part of **its ongoing reporting** on public education issues, this report seeks to inform lawmakers and the public about the current structure and the potential risks that accompany a diminished role for BESE and the RSD in charter management. The report recommends ways to reduce those risks. To be clear, BGR is not currently taking a position on the issue of whether, when or to what extent RSD charter schools should be placed under School Board management. Instead, BGR seeks to ensure that, as lawmakers chart the course for Orleans Parish public schools, whether now or in future legislative sessions, they elevate the charter authorizing structure among the many issues that are essential to long-term charter school success.

OVERVIEW OF THE CURRENT AUTHORIZING STRUCTURE

The current authorizing structure existed before Katrina, but only a few charter schools were approved. After the storm, the landscape evolved primarily through the rapid expansion of the RSD in New Orleans. Faced with a physi-

New Orleans Public Schools by Governing Body, 2015-16 School Year



Note: Type 2 charter schools are schools that are authorized by BESE but not placed within the RSD. Unlike other types of charter schools, they can enroll students residing either in Orleans or elsewhere in the state.

Sources: Orleans Parish School Board and Louisiana Department of Education.

cally devastated and academically failing system, state lawmakers transferred most of New Orleans' schools from the School Board to the RSD. Subsequently, the School Board and the RSD, acting through BESE, began turning schools over to charter operators.³ Today, 93% of Orleans students attend a charter school, by far the highest percentage among the nation's school systems. The chart provides a breakdown by governing body of the 81 Orleans Parish schools in operation for the 2015-2016 academic year.

The transfer of schools to the RSD and the birth of a mostly charter school system spurred significant academic gains.⁴ More than 60% of students are testing at or above grade-level expectations, compared to 35% prior to Katrina.⁵ The high school dropout rate has fallen from 11.4% to 6.1%.⁶ The number of high-performing schools has risen from four to 25, even though the total number of schools declined.⁷ Only nine schools are failing, compared to 69 before Katrina.⁸

Heading into the 2016 legislative session, the School Board and BESE are full-fledged charter school authorizers. Both have the power to directly authorize and oversee charter schools.

The School Board can grant new charters or convert its remaining direct-run schools to charter schools. Its superintendent and central office monitor charter schools, intervene when they fail to perform and recommend closure, if needed, to the School Board.

BESE can grant new charters in the RSD on the recommendation of the state superintendent of education, but the RSD superintendent controls when the school opens. Outside the jurisdiction of the RSD, BESE can authorize charters on appeal from School Board denials of charter applications.⁹ The Louisiana Department of Education monitors all BESE-authorized charters, including those in the RSD, which is a division of the department. The RSD superintendent intervenes when problems arise with an RSD charter school and, if necessary, recommends closure to BESE.

Charter schools may also transfer from one authorizer to another under certain circumstances. Current state policy requires non-failing RSD charter schools to decide annually whether to transfer to the School Board. Both the School Board and BESE must approve the transfer.¹⁰ In addition, charter schools authorized by the School Board (including those that have transferred from the RSD) may petition BESE for a transfer in the face of unacceptable contract amendments or renewal terms.¹¹ Only BESE must approve this type of transfer.

NATIONAL TRENDS AND BEST PRACTICES

Having BESE as a full-fledged alternative authorizer to the School Board generally follows national trends and best practices. Of all the states that permit charter schools, none places sole authorizing authority in the hands of local school boards.¹² Ten states and the District of Columbia vest authorizing authority solely in state or statewide entities, either by law or by choice. In addition, 22 of the 27 states that do permit local school boards to authorize have established an alternative authorizer with the ability to receive charter applications directly, not only on appeal from local board decisions.

The experience in some other states illustrates the problems with relying on a locally-elected board as the sole charter authorizer. For example, Georgia and Colorado each created second authorizers when local boards denied applications, mounted legal challenges and otherwise opposed the creation of charter schools.¹³ States have confronted not just the influence of local politics, but also inadequate funding and a lack of staff expertise for authorizing on local boards, as well as a tendency of their central offices to tread on the autonomy of charter schools.¹⁴

Establishing an alternative authorizer to the local school board is consistent with the recommendations of the Na-

tional Association of Charter School Authorizers (NACSA), which sets national standards for charter authorizing. NACSA recommends that states establish at least one high-quality authorizer in addition to the local school board. Ideally, this would be a statewide, independent board dedicated to charter authorizing. It recommends empowering the alternative authorizer to receive charter applications directly, and not solely on appeal.¹⁵

In NACSA's view, the alternative authorizer acts as a safeguard for charter school operators if the local board does not follow good practices. It offers them an escape from a local authorizer intent on blocking quality charter applicants, opposing their charter renewals or interfering with charter schools. An alternative authorizer, particularly a statewide body removed from local elections, can provide a check against politicized authorizing. It can set expectations for authorizing standards in the jurisdiction and act as a model for the local school board to follow.

An alternative authorizer empowered solely to hear appeals has a narrow focus. It can only consider applicants denied or disqualified by a local board, which prevents it from authorizing within a systemwide strategy. Also, an appeal body might focus only on procedural issues in the local decision, rather than on the merits of the application itself. In NACSA's view, this risks approval of a weak

Charter Authorizing Among the States

Of the 37 states and the District of Columbia that permit charter schools:*

- **10 states and the District of Columbia** vest authorizing authority solely in state or statewide entities, either by law or by choice.
- **5 states** allow local school boards to act as authorizers, with only an appeal process for unsuccessful local applicants.
- **9 states** allow local school boards to act as authorizers but have one or more authorizers to charter schools directly alongside the local board.
- **13 states (including Louisiana)** allow local school boards to act as authorizers but have both additional authorizers and an appeals process.

*BGR did not include five other states that allowed charter schools in name, but without laws providing the typical autonomy in legal, fiscal and personnel matters. Information is current as of the 2014-15 school year.

Sources: The National Alliance for Public Charter Schools, the National Association of Charter School Authorizers, and individual state education departments and charter school associations.

school or rejection of a strong proposal on a matter of process. Granting the alternative authorizer the direct ability to authorize charter schools allows it to act strategically, rather than reactively, and to focus on the merits of each proposed school.

The Education Commission of the States, a national policy organization, has found that competition between authorizers for students and dollars encourages the authorizers to improve their practices to attract and retain schools. An alternative authorizer can take the lead in implementing quality authorizing practices for local districts to emulate. It also increases the potential for innovative educational approaches to emerge on a large scale, which might not occur within the constraints of a traditional district bureaucracy.¹⁶

ASSESSING THE CURRENT STRUCTURE

The current authorizing structure in New Orleans is fairly consistent with national best practices. It varies from NACSA's recommended approach only in that the alternative authorizer is a state board of education, rather than a statewide independent chartering board. BESE performs other duties besides chartering, and, with eight elected members and three members appointed by the governor, it might not be as insulated from politics as an independent chartering board.¹⁷

But having BESE as an alternative authorizer to the local school board provides a check against the influence of local politics on authorizing decisions and offers a safe haven for schools if the local authorizer becomes weak or hostile. The current structure also fosters competition between the authorizers.

The two-authorizer structure in New Orleans provides charter schools with a choice of application processes for prospective schools, an appeal process for unsuccessful applicants to the School Board, and transfer rights for existing RSD and School Board charter schools. These mechanisms, absent in a single-authorizer structure, give schools the option of another authorizer in the face of arbitrary treatment or faltering performance by the School Board or BESE.

Competitive forces created by the two-authorizer structure encourage authorizers to treat schools fairly. If an authorizer does not, it risks losing good charter applicants

and schools to the competing authorizer.

A second authorizer can support overall accountability in the school system if it sets the bar for good authorizing standards. The presence of a second authorizer can curb pressure to soften accountability for poor-performing or noncompliant schools, a matter of particular concern with regard to the locally-elected School Board. School closure decisions can present special challenges for authorizers because proposed closures often elicit strong emotions from school leaders, parents, students and other stakeholders.¹⁸

The School Board's steady efforts to improve its charter authorizing practices are perhaps a good indicator of how the competitive forces of a two-authorizer structure work. In the dual authorizer structure, BESE set the standard to which the School Board eventually rose. For example, over the past two years, the School Board has revamped its old charter school oversight policies to include new oversight and accountability practices that align with nationally recommended practices. The School Board's policies are now comparable to, and in terms of financial requirements stronger than, BESE's. In addition, according to BGR's interviews with several charter school leaders and other observers, the School Board has run a fair charter application process that has resulted in few appeals to BESE. And they say the board works to resolve charter disputes as they arise, as evidenced by the fact that no Board-authorized charter school has requested a transfer to BESE.

Admittedly, the two-authorizer structure has some drawbacks. Having two authorizers complicates systemwide planning. With neither authorizer in charge of the system as a whole, the system's overall health depends on coordination between the two authorizers. For example, BESE and the School Board have sought to manage such risks by jointly funding regular studies of the student population and enrollment trends. Facility and financial planning are also complex. RSD and School Board administrators meet on a weekly basis to address common concerns.

With two authorizers, there is also the risk of unhealthy forum shopping. Having multiple authorizers potentially enables weak charter applicants or operators to seek out the less demanding authorizer to avoid accountability.¹⁹ This risk increases with the number of authorizers. NACSA cautions against allowing too many authorizers in a single locale, but it does not recommend a maximum number.²⁰

BESE, the School Board and their superintendents have

so far controlled this risk through quality authorizing practices. Each has consistently followed the recommendations of independent experts in approving and disapproving charter applications.²¹ Both have strengthened their charter oversight policies such that each has high standards.²² And neither authorizer has shirked its responsibility to push failing charter schools to improve or to close them, although BESE and the RSD have been tested in this area far more than the School Board has.²³

In short, the success of New Orleans' system has been built on a solid dual authorizing structure. The current structure provides safeguards for charter schools through a choice of authorizers, as well as appeal and transfer rights. It provides a competitive playing field that motivates and sustains authorizer performance.

THE AUTHORIZING STRUCTURE AT RISK

If RSD charter schools transfer to the School Board and BESE stops granting New Orleans charters in the RSD, BESE's role as an alternative authorizer will weaken. BESE will oversee only a handful of local charter schools outside of the RSD,²⁴ and its future authorizing will be limited to hearing appeals from local applicants or transfer requests. This will leave authorizing functions almost entirely in the School Board's hands.

Without a competing authorizer, the School Board would no longer face the same level of pressure to maintain appropriate policies, processes and systems. This raises the risk that it will allow local politics to influence important authorizing decisions, such as approving charter schools, renewing charters, and intervening in or closing non-performing or non-compliant schools. The School Board could be less likely than other school districts to be hostile to charter schools, as 75% of its schools are already charter schools. But as a locally elected school board, it is vulnerable to political pressures.²⁵

Given the School Board's troubled history, the risk of political influence in authorizing decisions is all too real. BGR surveyed the past 25 years of the School Board's history and found that it fell again and again into periods of dysfunction. To varying degrees, these periods saw the board struggling to reach consensus on key decisions, power struggles between individual board members and excessive focus on contracts at the expense of pressing educational concerns. In the last decade alone, two past

board members have pleaded guilty to crimes related to their board activities. And from 2012 to 2015, the board took more than two and a half years to hire a superintendent. The School Board has since settled back into a more business-like mode of operation and given its new superintendent clearer control of the administration of the district. While these changes are promising and may place some limits on future School Board dysfunction, history shows that a future election could very well usher in a board intent on interfering with the superintendent's work and micromanaging charter schools.

CONCLUSION

In light of these risks, legislators should avoid restricting BESE's authorizing power. Doing so might indirectly grant the School Board a monopoly on future charter authorizing in New Orleans. Should BESE stop chartering new schools in the RSD and lose its ability to hear appeals from School Board applicants, the existing best practice authorizing structure would unwind. New Orleans would no longer have the authorizing structure that has helped make it a national model.

At a minimum, legislators should preserve the safeguards of BESE's appellate role and ability to consider transfer requests. However, to maintain the structure's current alignment relative to the best practices explained above, it would also be prudent to consider providing BESE with direct authorizing power outside of the RSD.²⁶

Before proceeding to decisions regarding local control – decisions with far-reaching consequences – lawmakers should carefully consider the risks involved with concentrating charter authorizing power and responsibility with the Orleans Parish School Board. They must ensure that any change preserves a vital and effective authorizing structure that promotes accountability and performance while protecting autonomy. Ultimately, they should think twice before making any changes that might endanger the remarkable progress New Orleans schools have made over the past decade.

ENDNOTES

1 See La. SB 432, Reg. Sess. 2016. Four other bills have been filed to provide for the transfer of RSD charter schools: La. HB 466, HB 1033, HB 1108 and HB 1111, Reg. Sess. 2016.

2 Besides the bills to transfer RSD charter schools, lawmakers introduced other bills aimed at limiting BESE's authorizing power. See La. HB 167 and 502, and La. SB 170 and 198, Reg. Sess. 2016. These bills would apply in Orleans and other parishes. HB 167 would prohibit BESE from authorizing charter schools, either within the RSD or outside of it, if the state reduces the Minimum Foundation Program appropriation. HB 502 would require BESE to study the fiscal impacts of proposed charter schools. SB 170 and 198 would prohibit BESE from authorizing schools on appeal from high-performing districts, such as the Orleans Parish School Board. Two other bills, HB 98 and SB 260, seek to eliminate BESE's power to create local charter authorizing agencies, which is a related issue.

3 Act 35 of the 1st Ex. Sess. of 2005, which transferred most Orleans Parish schools to the RSD, prohibited the School Board from chartering new schools because it was in academic crisis. The act directed prospective schools to apply to BESE for Type 2 charters. The state did not lift the academic crisis designation until 2011. The School Board then resumed chartering new schools and BESE stopped directly authorizing new charter schools outside the RSD. Act 35 did not restrict the School Board's ability to open schools it had authorized prior to the effective date of the act, or its ability to convert direct-run schools to charters.

4 The RSD takeover and the shift to charter schools were key parts of a broader package of post-Katrina education reforms in New Orleans. Other reforms included the shift to citywide school choice and BESE's adoption of tougher school accountability standards. A recent study found that the entire reform package has produced statistically significant increases in student test scores. The study could not isolate the effects of individual reforms. Harris, Douglas N., "Good News for New Orleans: Early evidence shows reforms lifting student achievement," *Education Next*, Vol. 15, No. 4 (Fall 2015), accessed August 18, 2015 at <http://educationnext.org/good-news-new-orleans-evidence-reform-student-achievement/>. Another study found the RSD's conversion of direct-run schools to charter schools generated substantial gains in test scores among students who remained enrolled in those schools. Abdulkadiroglu, Atila, et al., *Charters Without Lotteries: Testing Takeovers in New Orleans and Boston*, National Bureau of Economic Research, Working Paper No. 20792, December 2014.

5 Louisiana Department of Education, *10 Years After Hurricane Katrina*, "Spring 2005 and Spring 2007-Spring 2014 Comparison."

6 BGR calculations based on data compiled by the Louisiana Department of Education. The state average in 2013-14 was 4.5%. The 2013-14 school year is the most recent data available from the state.

7 There were 110 schools rated under the state's accountability system in the 2004-05 school year, compared to 79 in the 2014-

15 school year. BGR counted as high performing those schools receiving four or five stars under the rating system used in 2004-05 or letter grades of A or B in the rating system used today.

8 The 2014-15 figure counts only schools with F letter grades. Two other schools received T grades, which the state assigns to a failing school in its first two years of transition under a new operator that has agreed to assume all previous grade levels and former students. However, neither school's score in 2014-15 was below the threshold for failing. The pre-Katrina count excludes four schools that did not receive letter grades because they were transferred to the RSD.

9 These are designated as Type 2 charter schools. Besides the circumstance of an application denial, the right to appeal can arise if the School Board fails to meet certain procedural requirements or places unacceptable conditions on the applicant. See La. R.S. 17:3982(A) and 17:3983(A)(2)(a).

10 See BESE Bulletin 129, *Recovery School District*, Sec. 505. To be eligible to transfer, a school must have been in the RSD for at least five years and earned a school performance score of 54.0 or higher for the past two consecutive years. This is four points above the current threshold for academically unacceptable, or failing, performance in the state's accountability system.

11 The transfer right applies to all charter schools authorized by local school boards in Louisiana. See La. R.S. 17:3983(B)(2). In addition, the School Board must allow the charter school to remain in its existing facility upon conversion to a BESE-authorized charter. See La. R.S. 17:3982(B)(1). Once that transfer is made, the school cannot return to the local board.

12 BGR analyzed charter authorization structures in the 37 states (including Louisiana) and the District of Columbia that permitted autonomous charter schools during the 2014-15 school year. BGR did not include five other states that allowed charter schools in name, but without laws providing the typical autonomy in legal, fiscal and personnel matters. BGR gathered data from the National Alliance for Public Charter Schools (NAPCS), *The Health of the Public Charter School Movement: A State-by-State Analysis*, October 2014; National Association of Charter School Authorizers (NACSA), *On the Road to Better Accessibility, Autonomy, & Accountability: State Policy Analysis*, December 2015, and *On the Road to Better Accountability: An Analysis of State Charter School Policies*, December 2014; and individual state education departments and charter school associations.

13 In Georgia, the legislature created a statewide independent chartering board in 2008, when local school boards were rejecting most charter school applications. Several school boards challenged the constitutionality of the law establishing the board and won in court in 2011. In 2012, voters approved a constitutional amendment to re-authorize the commission. See: Stepp, Diane, "New route to charter status sought," *The Atlanta Journal-Constitution*, January 27, 2008; Rich, Motoko, "Georgia's Voters Will Decide on Future of Charter Schools," *The New York Times*, November 5, 2012; Prothero, Arianna, "More States Create Independent Charter-Approval Boards," *Education Week*, August 19, 2014. Colorado's only alternative for many years was a state appeal process, which had survived

a legal challenge by Denver Public Schools in 1999. In 2004, recognizing opposition to charter schools by other districts, the state created an independent chartering board to grant charters in local districts “not desiring to do so themselves.” See Colorado R.S. 22-30.5-501(2)(a), and Griffin, Jim, “Colorado’s charter schools: Their history and their future,” *The Denver Post*, May 19, 2013.

14 NACSA, *On the Road to Better Accountability*, pp. 19 and 22. Such concerns were also discussed in early studies of charter authorizing. See, for example, Palmer, Louann Bierlein, and Rebecca Gau, *Charter School Authorizing: Are States Making the Grade?* prepared for the Thomas B. Fordham Institute, June 2003, p. 1.

15 NACSA, *On the Road to Better Accessibility, Autonomy, & Accountability*, p. 15. NACSA states that it “supports policy that produces at least two high-quality authorizers in every jurisdiction. At least one of these authorizers should be an alternative to the local school district (LEA) – ideally a statewide independent chartering board (ICB) established with the sole mission of chartering quality schools. Each charter applicant should be able to apply directly to either authorizer. If only one authorizer is present, such as a local school district, there should at a minimum be an authorizer that can consider and authorize on appeal.”

16 Hassel, Bryan, Todd Ziebarth and Lucy Steiner, *ECS Issue Brief: A State Policymaker’s Guide to Alternative Authorizers of Charter Schools*, prepared for the Education Commission of the States, September 2005, p. 2.

17 Of the 22 states with direct alternative authorizers to local school boards, half have created independent chartering boards. The quality of an independent chartering board depends on the strength of the appointment process and the quality of the appointees, meaning there is no guarantee that an independent chartering board in Louisiana would perform better than BESE. It should be noted that, in its 2015 assessment of Louisiana’s charter school laws and policies, NACSA awarded Louisiana the full score for its alternative authorizer structure. See NACSA, *On the Road to Better Accessibility, Autonomy, & Accountability*, pp. 69-70.

18 Edelman, Josh, “Portfolio Management Models: From the Practitioner’s Eyes,” in *Between Public and Private: Politics, Governance, and the New Portfolio Models for Urban School Reform*, Katrina E. Bulkley, Jeffrey R. Henig and Henry M. Levin, eds. (Cambridge, Mass.: Harvard Education Press, 2010), pp. 312-313.

19 NACSA, *On the Road to Better Accountability*, p. 9.

20 *Ibid.*, p. 11.

21 BGR reviewed BESE’s authorization decisions for New Orleans charter applications since 2006 and the School Board’s since it began approving new charters in 2011. It found two cases in which BESE went against its expert recommendations, and two cases in which the School Board did.

22 BGR compared both authorizers’ policies to NACSA’s

recommended practices in its *Principles & Standards for Quality Charter School Authorizing*, 2012 ed., pp. 17-19.

23 BGR reviewed the instances of failing charter schools from 2005-06 to 2014-15. Of the 36 cases of failing RSD charter schools, 16 improved their performance, three still have time to do so, and four were alternative schools evaluated under special standards. Thirteen others did not improve and lost their charter. The School Board has faced only one instance of a failing charter school, and the school eventually closed.

24 BESE will continue to oversee more than 50 charter schools statewide.

25 BGR did find one instance of a locally elected, big-city school board that has functioned effectively as the lone charter authorizer in its school system. Denver Public Schools has about 88,000 students, 17% of whom attend charter schools. The district’s seven-member elected board has authorized all 52 of the charter schools in Denver and is currently subject only to a state appeal process. If the board were to become unwilling to authorize charter schools, an independent agency of the state education department could begin authorizing charter schools in Denver. So far, Denver Public Schools has strived to become a model for charter authorizers nationally.

26 BGR acknowledges that ongoing litigation poses a risk to this option, as well as the ability of School Board charters to exercise existing appeal and transfer rights. In each case, BESE would be granting the school a Type 2 charter, which it uses to authorize schools created outside of the RSD. The litigation, brought by a teachers’ union and another school board and currently before a state appeals court in Baton Rouge, seeks to block Type 2 charters from receiving state and local funding under the Minimum Foundation Program (MFP). See *Iberville Parish School Board v. BESE*, 2015-CA-1416, consolidated with *Louisiana Association of Educators v. BESE*, 2015-CA-1417 (La. 1 Cir., filed July 6 and 27, 2015). If the litigation succeeds and no alternative funding is found, it would put the brakes on BESE’s efforts to create new Type 2 charters unless the state constitution were amended to address the issue. Notwithstanding this risk, BGR believes the best-practice concept of having an alternative authorizer with the power to authorize schools directly is still valid.



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