

3314.015 Oversight of sponsors.

(A) The department of education shall be responsible for the oversight of any and all sponsors of the community schools established under this chapter and shall provide technical assistance to schools and sponsors in their compliance with applicable laws and the terms of the contracts entered into under section 3314.03 of the Revised Code and in the development and start-up activities of those schools. In carrying out its duties under this section, the department shall do all of the following:

- (1) In providing technical assistance to proposing parties, governing authorities, and sponsors, conduct training sessions and distribute informational materials;
- (2) Approve entities to be sponsors of community schools;
- (3) Monitor and evaluate, as required under section 3314.016 of the Revised Code, the effectiveness of any and all sponsors in their oversight of the schools with which they have contracted;
- (4) By December thirty-first of each year, issue a report to the governor, the speaker of the house of representatives, the president of the senate, and the chairpersons of the house and senate committees principally responsible for education matters regarding the effectiveness of academic programs, operations, and legal compliance and of the financial condition of all community schools established under this chapter and on the performance of community school sponsors;
- (5) From time to time, make legislative recommendations to the general assembly designed to enhance the operation and performance of community schools.

(B)

(1) Except as provided in sections 3314.021 and 3314.027 of the Revised Code, no entity listed in division (C)(1) of section 3314.02 of the Revised Code shall enter into a preliminary agreement under division (C)(2) of section 3314.02 of the Revised Code until it has received approval from the department of education to sponsor community schools under this chapter and has entered into a written agreement with the department regarding the manner in which the entity will conduct such sponsorship.

The initial term of a sponsor's agreement with the department shall be for up to seven years. For every year that the sponsor satisfies the conditions of division (B)(1)(a) or (b) of this section, as applicable, the department shall add one year to the agreement term, subject to divisions (C) and (F) of this section, unless the sponsor notifies the department that it does not wish to have the term of the agreement so extended.

To qualify for the extension of the term of the agreement, the sponsor shall satisfy one of the following conditions:

(a) Prior to January 1, 2015, the sponsor has been approved as a sponsor of community schools by the department of education.

The department shall adopt in accordance with Chapter 119. of the Revised Code rules containing criteria, procedures, and deadlines for processing applications for approval of sponsors, for oversight of sponsors, for notifying a sponsor of noncompliance with applicable laws and administrative rules under division (F) of this section, for revocation of the approval of sponsors under division (C) of this section, and for entering into written agreements with sponsors. The rules shall require an entity to submit evidence of the entity's ability and willingness to comply with the provisions of division (D) of section 3314.03 of the Revised Code. The rules also shall require entities approved as sponsors on and after June 30, 2005, to demonstrate a record of financial responsibility and successful implementation of educational programs. If an entity seeking approval on or after June 30, 2005, to sponsor community schools in this state sponsors or operates schools in another state, at least one of the schools sponsored or operated by the entity must be comparable to or better than the performance of Ohio schools in need of continuous improvement under section 3302.03 of the Revised Code, as determined by the department.

Subject to section 3314.016 of the Revised Code, an entity that sponsors community schools may enter into preliminary agreements and sponsor up to one hundred schools, provided each school and the contract for sponsorship meets the requirements of this chapter.

(2) The state board of education shall determine, pursuant to criteria specified in rules adopted in accordance with Chapter 119. of the Revised Code, whether the mission proposed to be specified in the contract of a community school to be sponsored by a state university board of trustees or the board's designee under division (C)(1)(e) of section 3314.02 of the Revised Code complies with the requirements of that division. Such determination of the state board is final.

(3) The state board of education shall determine, pursuant to criteria specified in rules adopted in accordance with Chapter 119. of the Revised Code, if any tax-exempt entity under section 501(c)(3) of the Internal Revenue Code that sponsors a community school is an eligible sponsor of a community school. If so, the state board shall file a report with the state board of education.

The Road to Redemption

Ten Policy Recommendations for Ohio's Charter School Sector

By Juliet Squire, Kelly Robson, and Andy Smarick
Bellwether Education Partners

December 2014



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The Thomas B. Fordham Institute is the nation's leader in advancing educational excellence for every child through quality research, analysis, and commentary, as well as on-the-ground action and advocacy in Ohio. It is affiliated with the Thomas B. Fordham Foundation, and this publication is a joint project of the Foundation and the Institute. For further information, please visit our website at www.edexcellence.net or write to the Institute at 37 W. Broad St., Suite 400, Columbus, OH 43215. The Institute is neither connected with nor sponsored by Fordham University.

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FOREWORD

This fall, the editorial boards of two Ohio newspapers issued stinging missives urging legislators to make sweeping changes to the state’s charter-school law. In September, the *Cleveland Plain-Dealer* opined that lawmakers should “work together on a bill to improve charter schools.” One month later, in light of revelations about a questionable charter-facilities deal, the *Columbus Dispatch* argued that charter reform “should address lease deals along with other loopholes, conflicts and oversights in Ohio’s charter-school system.”

They’re absolutely right: 120,000 Buckeye charter students deserve to attend a school governed by a great charter law—a law that puts the interests of children first. But at the present time, Ohio’s charter law too often fails to protect these students’ best interests; instead, in too many ways, it protects powerful vested interests, smothers schools with red tape, starves even the best schools, and tolerates academic mediocrity.

Predictably, overall charter-school performance in Ohio has been lackluster. In the two most extensive evaluations of Ohio charter performance in 2009 and 2014, Stanford University’s Center for Research on Education Outcomes (CREDO) found that Ohio charter-school students, on average, make less academic progress than their district counterparts. The 2014 results estimated that charter students received an equivalent of fourteen fewer days of learning in reading and forty-three fewer days of learning in math.

But fixing Ohio’s charter law is no easy task. The law itself is roughly 40,000 words and has been amended nineteen times since its enactment in 1997. It contains many peculiar exceptions, loopholes, and restrictions. Few would argue that the current law clearly expresses how the charter-school system ought to function.

Policymakers must know exactly what needs to be repaired and how best to make the fix. To assist in this task, we enlisted Bellwether Education Partners, one of the smartest education-consulting firms in the land. We were excited that Andy Smarick, who has worked on charter-policy issues with the New Jersey Department of Education and the United States Department of Education, agreed to conduct a thorough review and analysis of Ohio charter law (along with two Bellwether colleagues).

The report that follows offers ten policy recommendations that, if implemented, will lead to stronger charter policy in Ohio. In our view, these recommendations pivot around three central objectives that policymakers must focus on in a charter-reform bill:

- **Define governing relationships:** Currently, Ohio charter law too vaguely defines the powers and responsibilities of each actor in the charter-governing system. State policymakers need to remedy this by more clearly and explicitly establishing the governing relationships, starting with the powers and duties of the State Board and the Ohio Department of Education.

From there, policymakers must make clear the responsibilities of charter-school authorizers, governing boards, and management companies—and to whom (and how) each entity is held accountable.

- **Purge conflicts of interest:** State policymakers should not tolerate permissive laws that allow adults to make dishonest gain at the expense of students’ best interest. For example, a charter authorizer—the entity that regulates a charter school—is allowed to sell services to that school. This bizarre arrangement creates an obvious disincentive for an authorizer to hold its school accountable, especially if closure is called for. Ohio charter-school law also strongly protects management companies, even if they fail to deliver a quality education. Because of a loophole in law, charter-school boards have little leverage to terminate a management contract. One national policy analyst gave this particular provision “the award for the most breathtaking abuse in the nation.”
- **Help charters compete:** At present, state policy treats Ohio charters as second-class public schools. They receive less overall taxpayer funding, garner scant facilities support, and are often at the mercy of traditional districts when it comes to student transportation. Taken together, state policy places charters on an uneven playing field with their district counterparts. While a few Ohio charters are producing exemplary results through smarts and raw determination, their results are the exception, not the rule. For too long, policymakers have unfairly asked charters to make educational bricks without straw, and now is the time to remedy charter-funding inequities.

In 2006, Fordham, along with two national charter organizations, published seventeen recommendations for Ohio charter-policy reform in a report titled *Turning the Corner to Quality: Policy Guidelines for Strengthening Ohio’s Charter Schools*. Some of its suggestions have been adopted, including fairer school accountability that includes student-growth measures and a rigorous evaluation system for charter-school authorizers. Yet other recommendations have fallen on deaf ears.

Eight years later, the Ohio policymaking community is poised yet again to tackle charter-school reform. This report, *The Road to Redemption: Ten Policy Recommendations to Improve Ohio’s Charter Sector*, builds on the policy foundations laid in our 2006 report, considers the latest developments in Ohio charter policy, and reflects some of the very best thinking nationally concerning charter-school policy. Wise policymakers—those who care deeply about the twin principles of good governance and robust competition in our public institutions—will keep this report at their side in the coming days.

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- Chad L. Aldis and Aaron Churchill

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- Juliet Squire, Kelly Robson, and Andy Smarick

EXECUTIVE SUMMARY

In 1997, the Buckeye State embraced a new approach to public-education delivery, launching a pilot program of community (charter) schools. Since then, the state’s community schools sector has grown tremendously. During the 2013–14 school year, 390 schools served approximately 124,000 students—seven percent of students statewide.

Despite its remarkable growth, Ohio’s community school sector continues to struggle with performance. A 2013 analysis by the Center for Research on Education Outcomes (CREDO) found that Ohio’s community schools, on average, provided the equivalent of fourteen fewer days of learning in reading and forty-three fewer days of learning in math compared to district-operated schools.

Ohio’s community school statute is a big part of the problem. Since 1997, nineteen different laws have altered the charter program. The statute and the sector it governs are now so complex that many provisions work at cross-purposes with others, have misaligned incentives, have unintended consequences, or leave room for troublesome loopholes.

Past changes to Ohio’s community school law haven’t been able to rein in low-performing sponsors and schools, grow high-performing schools, rehabilitate the sector’s reputation, or provide enough disadvantaged students with the high-quality schools they deserve. In order to preserve the promise of high-quality public school choice, Ohio policymakers must reexamine the community school law. What follows are analyses and recommendations regarding ten policy issues that deserve immediate attention from Ohio policymakers and sector leaders.

Policy Issue	Key Recommendations
<p>1 & 2: Ensure High-quality Sponsoring Practices</p>	<ul style="list-style-type: none"> • The Ohio Department of Education’s (ODE) new approval process for entities applying to become community school sponsors is promising; it aligns with the standards set by the field’s nationally recognized authority on charter school authorizing. • The new sponsor-ranking system (to be implemented in 2015) also has the potential to rein in low-quality sponsors. However, rigorously implementing both processes will require protecting ODE from political pressure and ensuring it has the necessary capacity and expertise. • The new sponsor-ranking system will make valuable information on sponsors’ practices and effectiveness transparent to the public. However, the statute limits ODE’s ability to revoke sponsoring authority to a small number of sponsors. The Ohio legislature should ensure that all sponsors are accountable to the state under this provision.

3: Address Misaligned Incentives in Sponsor Funding	<ul style="list-style-type: none"> • State policy should prohibit sponsors from selling services to schools they oversee. • State policy should require sponsors to use authorizer fees to solely support oversight functions. Adherence to this rule should be part of the state’s sponsor-ranking system. • The Ohio legislature should introduce a hybrid funding mechanism in which sponsors receive some line-item funding from the state and a smaller percentage of per-pupil revenue from each sponsored school.
4: Hold CMOs and EMOs Accountable	<ul style="list-style-type: none"> • Policy should make final a board’s decision to terminate a management agreement. • Ohio policymakers should clearly define the responsibilities of sponsors and governing authorities—including those that may be delegated to a management company and those that may not. • Given the high proportion of community schools that partner with EMOs or CMOs in Ohio, ODE should provide report cards on operators and include operator accountability as a key principle in the sponsor-ranking system.
5: Protect the Independence of Governing Authorities	<ul style="list-style-type: none"> • State policy should prohibit members of community school boards from being financially compensated for their service, particularly when the school engages a management organization to operate key elements of the school. • State policy should require members of charter school governing authorities to register as public officials with the secretary of state and complete annual conflict-of-interest statements. • State policy should ensure that every governing authority has an independent fiscal officer and attorney. • Pending an opinion from Ohio’s Supreme Court, governing authorities should negotiate ownership of assets and access to school facilities in relevant contracts. Sponsors should build these issues of board independence into their application processes.
6: Eliminate Sponsor Hopping	<ul style="list-style-type: none"> • The statute should be amended to ensure that only schools in good standing are able to seek a new sponsor.
7: Hold All Schools Accountable to High Standards	<ul style="list-style-type: none"> • The statute should be amended to close loopholes that dilute accountability for dropout-recovery schools and create an accountability framework for schools serving primarily special-needs students. • Policy should include mechanisms to hold e-schools accountable to the operating standards adopted by the General Assembly.
8, 9, & 10: Foster High-quality Schools with Equitable Funding, Transportation, and Facilities Policies	<ul style="list-style-type: none"> • State <i>and</i> local dollars should follow students to the schools of their choice. • Community schools should be provided equitable transportation funding to enable them to acquire transportation independent of their local districts. Policymakers should explore ways to incentivize cities—not districts—to develop plans that meet the transportation needs of all public school students. • Community schools should be provided with additional facilities funding, and the statutory language making un- and under-utilized district facilities available to community schools should be strengthened. Policymakers may consider enlisting the Ohio School Facilities Commission to ensure that excess facilities as well as funding for construction and renovation are distributed to schools based on need, rather than sector.

INTRODUCTION

In June 1997, the Ohio House of Representatives passed Amended Substitute House Bill 215. It included hundreds of amendments, ranging from a mileage-reimbursement rate increase to a process for estimating the costs of printing government reports. Buried among the rest was a pilot program of “community schools”—Ohio’s term for charter schools.¹

In the nearly two decades since, *growth* in the community school sector has been tremendous. During the 2013–14 school year, 390 community schools served approximately 124,000 students.² Unfortunately, community school *performance* has been more elusive. A 2013 report from the Center for Research on Education Outcomes (CREDO) at Stanford University found that, on average, Ohio’s community schools provide students with the equivalent of fourteen fewer days of learning in reading and forty-three fewer days of learning in math compared to district-operated schools.³ Ohio’s state report cards show equally dismaying results: In 2012–13, more than six in ten community schools earned a D or F on their Performance Index rating.⁴

Research by CREDO and others has shown that charter schools can and do significantly outperform district-operated schools in many other states.⁵ *So why not Ohio?*

Ohio’s community school statute contributes to the overall sector’s lackluster performance. Since 1997, nineteen different laws have altered the program, including at least one change every year between 2005 and 2013. By comparison, many state legislatures have left their charter school laws untouched for a decade or more to avoid reopening politically contentious debates. These amendments are the result of shifts in political

power, public opinion, budget conditions, and more, pulling the state’s community-school law in different directions and warping the policy environment in which community schools, districts, sponsors, service providers, philanthropists, and others must operate.

Community school opponents have altered policies to constrain community schools’ autonomy while limiting the funding and other resources available to them. Meanwhile, community school proponents have sought to harness the power of supply and demand by creating a school marketplace driven by parental choice. The result is a complex and disjointed policy. Many provisions work at cross-purposes with others, create misaligned incentives, have unintended consequences, or leave room for troublesome loopholes.

Policymakers have made many adjustments, in most cases with the very best of intentions. But their work has just begun. They should renew the state’s longstanding commitment to high-quality public school choice. This will require reexamining state laws, regulations, and practices to ensure they work together to support the growth of high-performing schools and the closure of those that persistently underperform. If successful, the nation’s charter school movement will ultimately see Ohio as its prodigal son and its recent years of middling performance as the growing pains of a highly promising adolescent.

Ten key policy issues must be addressed, and each of them are discussed in the report that follows:

1. Screening New Sponsors
2. Accountability for Existing Sponsors
3. Neutral Funding for Sponsors
4. Management Company Accountability

5. Governing Authority Independence
6. Charter Termination and Nonrenewal
7. Community School Accountability and Automatic Closure
8. Community School Funding
9. Transportation
10. Facilities

The Growth of Ohio’s Community Schools Sector

Ohio’s first community schools opened in fall 1998. Since then, the number of Ohio community schools has grown at an astounding pace. By the 1999–2000 school year, Ohio already had forty-eight community schools serving approximately 10,000 students.⁶ Fourteen years later, there were 390 schools serving approximately 124,000 students—about 7 percent of students statewide (see Figures 1 and 2).⁷ In cities like Cleveland and Dayton, the community school sector has grown to serve nearly one in three students.⁸

Ohio’s growth dwarfs that of the charter school sector nationally. Between 1999 and 2013, the growth rate of its community schools was double the national rate.⁹ A significant portion of this growth was due to schools partnering with non-profit charter management organizations (CMOs) and for-profit education management organizations (EMOs), which operate nearly one-half of all community schools across the state today.¹⁰

The aggregate growth of the sector as a whole should not obscure its distinctive elements, however.

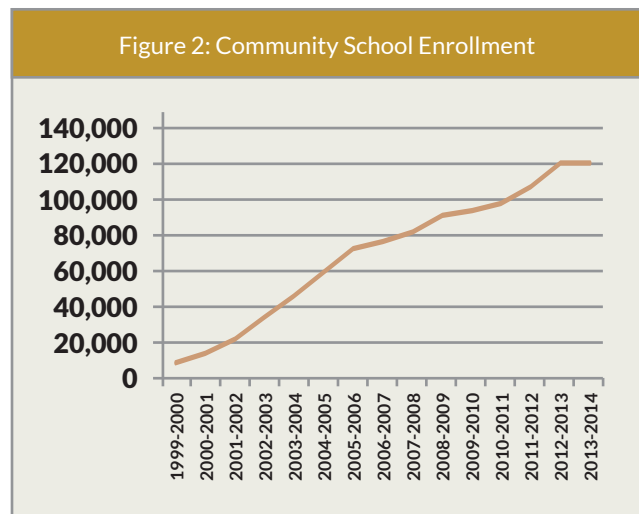
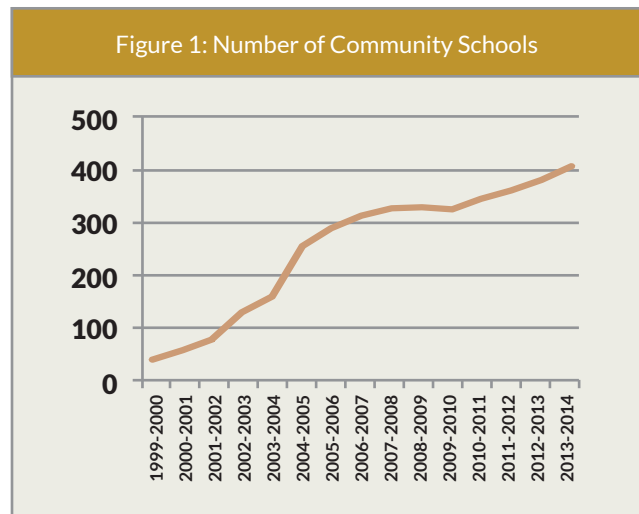


Figure 3: Community Schools by Type

Type	Number
Conversion	63
E-schools	25
Dropout-recovery	86
Special-education	34
Site-based, general education, start-ups	210

First, statutory language often singles out schools that have certain characteristics (see Figure 3). A conversion school, created when a district converts an existing school to a community school, is different from a new-start community school. Some schools serve primarily dropout-recovery or special-education populations, while e-schools provide instruction primarily online.¹¹ Moreover, some schools have more than one of these characteristics. For instance, two special-education schools and thirty-three conversion schools are also dropout-recovery schools; fifteen dropout-recovery schools are also e-schools.¹² Policies sometimes apply differently to schools, based on these characteristics.

Second, the sector is divided by geography. The original community school legislation limited new-start community schools to Lucas County in northwest Ohio. Two months later, legislation allowed the Ohio Department of Education (ODE) to sponsor new-start community schools in any “challenged” school district, which the law defined as Ohio’s “Big 8” urban districts (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown). The definition of a challenged school district was expanded in 1999 to include the twenty-one largest urban districts in the state and any district in Academic Emergency, and in 2001 to include districts in Academic Watch. In 2003, legislation limited the definition of challenged districts to the “Big 8” urban districts and those in Academic Watch and Academic Emergency.¹³ This legislation is still in place today, and currently allows new-start, brick-and-mortar community schools to open in thirty-eight out of 612 districts across the state.¹⁴

Conversion community schools have always been allowed across all districts, but most are located within Ohio’s urban centers. E-schools sponsored

by districts can typically only enroll students from within district boundaries, while those with non-district sponsors can enroll students statewide.¹⁵ There has been significant churn regarding what kind of community schools are permitted to open and where—and e-schools are often the only community school option available to students in suburban or rural communities.

Third, the sector is splintered by the kinds of entities that are permitted to sponsor (Ohio’s term for “authorize”) community schools. The state’s original community school law allowed any district to sponsor a conversion charter school, but named Lucas County Education Service Center and the University of Toledo as the only entities allowed to sponsor new-start community schools. When the legislature expanded new-start community schools to the “Big 8” districts a few months later, it gave ODE the authority to sponsor community schools.¹⁶ In January 2003, however, after a scathing report from the state auditor faulted ODE for poor oversight,¹⁷ new legislation revoked ODE’s sponsoring authority and extended it to regional Educational Service Centers (ESCs), thirteen institutes of higher education (IHEs), and qualified nonprofit organizations. ESCs were also permitted to sponsor conversion community schools.¹⁸

There are now almost seventy entities sponsoring community schools in Ohio, including ODE, which regained its sponsoring authority in 2011. Laws and regulations affect these sponsors differently, depending on what types of schools they sponsor and when they gained the authority to do so.

The fractures within Ohio’s community school sector create a complex web of competing priorities, alliances, and incentives. Bill Sims—former president of the Ohio Alliance for Public Charter Schools, a membership organization that works

to promote high-quality community schools—explains, “When policy considerations come up, legislative leadership is frequently confused by a cacophony of special-interest noise, as given policy initiatives impact different parts of the community school sector in different ways.”¹⁹

The Quality of Ohio’s Community School Sector

What ties all Ohio community schools together, unfortunately, is the sector’s reputation as a whole. It isn’t good. Todd Ziebarth, senior vice president for state advocacy and support at the National Alliance for Public Charter Schools (NAPCS), explains, “Ohio got tagged in the early to mid-2000s as a low-quality state... and it’s been hard to shake.”²⁰

In 2013, the Center for Research on Education Outcomes (CREDO) analyzed charter school performance in 27 states, including Ohio. The study found that on average, Ohio’s community schools provided students with the equivalent of fourteen fewer days of learning in reading and forty-three fewer days of learning in math compared to students in district-operated schools. This poor performance placed Ohio’s charter school sector near the bottom of charter sectors nationwide. Compared to twenty-six other states’ charter sectors, CREDO ranked Ohio twenty-first for its impact in reading and twenty-fourth for its impact in math.

In 2014, CREDO used longitudinal student-level achievement data to compare the learning gains of students in Ohio’s community schools to the gains students would have made in district-operated schools. The results were also concerning: Overall, students in Ohio’s community school students showed less growth in both reading and

math than in district-operated schools (see Figure 4). While community school students in poverty, and especially Black students in poverty, learned more than they would have in district-operated schools, Hispanic community school students learned significantly less.

Ohio’s community schools also fare poorly on state report cards. According to ODE’s 2012–13 community school annual report, the most recent report available, 57 percent of community schools earned a C or below on Ohio’s measure of student *growth*. Community school grades on Ohio’s measure of student *performance* were worse. Eighty-eight percent of community schools earned a C or below.²¹ Former state superintendent Susan Zelman notes, “It’s an embarrassment for the state of Ohio. There are exceptionally good community schools, but far too few.”²²

The National Alliance for Public Charter Schools (NAPCS) is a national nonprofit organization focused on “advancing the quality, growth, and sustainability of charter schools.” The organization serves as the united voice for the charter school movement and works to develop high-quality charter schools by providing assistance to state charter school associations and resource centers and developing and advocating for improved state and federal charter school policies.

Figure 4: Academic Growth for Community School Students, Compared to District School Peers, School years 2007-08 through 2012-13 (measured in days of learning)

Student Characteristics	Reading	Math
Average	- 14	- 43
Black students	-7	No diff.
Hispanic students	- 29	- 58
Students in poverty	+ 14	+ 14
Black students in poverty	+ 29	+ 22
Hispanic students in poverty	-14	-36
Students with special needs	- 14	No diff
English-language learners	- 7	- 50

Source: Center for Research on Education Outcomes, "Charter School Performance in Ohio," December 2014.

NECESSARY POLICY CHANGES

What follows are findings and recommendations on ten policy issues that deserve attention from Ohio policymakers and sector leaders. Separately, these recommendations seek to strengthen policy implementation, address misaligned incentives, remedy unintended consequences, and ensure equal treatment of stakeholder groups. Collectively, they will help build a policy environment that fosters strong accountability and the growth of high-quality community schools.

The first issue that must be addressed is the large number of sponsors in Ohio, many of which have not proven effective in overseeing the schools in their portfolios. There are two primary avenues for recourse. The first, discussed under Policy Issue 1, is *forward* looking: creating higher standards for new entities that wish to begin sponsoring community schools. The second is *backward looking*. Discussed under Policy Issue 2, it includes creating mechanisms for holding existing sponsors to account for poor authorizing practices and the weak academic performance of their schools. Each is addressed in turn.

Policy Issue 1: Screening New Sponsors

Current Policy

Sponsors play a pivotal role in Ohio's community school sector, and it is important to understand the policies that determine which entities are *permitted* to play this role. As already noted, there have been numerous legislative changes between 1997 and today. Two provisions have had particularly important implications.

First, the inclusion of nonprofit organizations and regional education service centers (ESCs) is unusual: As of 2013, nonprofit authorizers are only permitted in four states (Ohio, Minnesota, Louisiana, and Hawaii) and are only active in two (Ohio and Minnesota).²³ Only two states (California and Hawaii) allow entities roughly analogous to Ohio's ESCs to authorize charter schools.²⁴ Combined, nonprofit organizations and ESCs now sponsor nearly four out of every five community schools in Ohio.²⁵

Second, the 2003 legislation that revoked ODE's authority to sponsor community schools simultaneously gave ODE the responsibility for screening eligible ESCs, IHEs, and nonprofit organizations that wished to sponsor community schools.²⁶ In other words, though the legislature determined ODE wasn't well positioned to sponsor community schools, it decided ODE would be able to oversee sponsors.

From 2003 to 2013, ODE implemented what was largely a perfunctory application process for eligible entities. For example, nonprofit entities were simply required to demonstrate that they met the requirements written into statute, including a cash balance of at least \$500,000, and that they were an "education-oriented" entity. Thirteen sponsors have been approved (mostly ESCs and nonprofit organizations) and now operate under contracts with ODE.²⁷

The significant expansion of sponsoring authority and ODE's minimal screening process combined to open the floodgates for sponsorship in Ohio. The state has nearly seventy sponsors today, including ODE, which regained sponsoring authority in 2011 (see Figure 5).²⁸

Figure 5: Number of Sponsors and Schools, by Type, 2012-13²⁹

Authorizer type	Number of entities	Number of schools	Number of students served	Types of schools that can be authorized
Local Education Agency (i.e., traditional school districts and joint-vocational districts)	45	67	13,578	Conversion schools New-start schools
Not-for-Profit	7	190	62,964	New-start schools
Higher-Education Institute	1	1	571	New-start schools
State Education Agency ³⁰	2	12	1,975	New-start schools
Education Service Center	12	97	36,235	Conversion schools New-start schools
Total	67	367	115,323	

A promising new provision enacted in 2013 requires ODE to exercise significantly more discretion in its role as “authorizer of authorizers.” An organization that wishes to become a sponsor must now submit information not only demonstrating that it meets eligibility requirements, but also detailing the performance of any schools it sponsors in other states, its staff’s skill and expertise in sponsoring, and its willingness to comply with applicable laws.³¹ ODE can also include additional requirements. Under fresh, active leadership, ODE’s Office of Quality School Choice has taken this opportunity to create two different pathways for additional entities to become sponsors (and one pathway for existing sponsors, which is discussed in the next section, see Figure 6).³²

Figure 6: Sponsor Application Options and Requirements

	Pathway I – New Sponsors	Pathway II – New Sponsors	Pathway III – Existing Sponsors
Who can apply using this pathway	<ul style="list-style-type: none"> • Entities that intend to be fully operating authorizers, independent of other organizations 	<ul style="list-style-type: none"> • Entities seeking to become an authorizer that is functionally assisted by an exemplary authorizer 	<ul style="list-style-type: none"> • Current authorizers of conversion schools seeking approval to authorize start-ups, or grandfathered authorizers seeking incentives associated with an exemplary rating
Expectations	<ul style="list-style-type: none"> • Demonstrate evidence of organizational commitment to authorizing • Agree to participate in a planning period of at least eighteen months • Demonstrate fiduciary capacity and willingness to spend \$750,000 during the planning phase 	<ul style="list-style-type: none"> • Applicants must enter into an MOU with an exemplary authorizer that clearly outlines the roles and responsibilities of both. The Pathway II authorizer will be responsible for all material decision-making, including applicant approvals, charter decisions, and outcomes. The partnering organization will provide technical assistance, oversight, and evaluation after a charter has been approved. 	<ul style="list-style-type: none"> • Commitment to and capacity for authorizing • Fiduciary capacity for authorizing • Staff capacity for authorizing
Written application criteria	<ul style="list-style-type: none"> • Applicants must submit written responses to questions in each of the following categories: <ul style="list-style-type: none"> – Sponsor commitment and capacity – Sponsor application process and decision making – Authorizer performance and contracting – Authorizer oversight and evaluation – Authorizer termination and renewal decision making – Technical assistance and authorizer requirements 	<ul style="list-style-type: none"> • Applicants must submit written responses to questions in the following category: <ul style="list-style-type: none"> – Sponsor commitment and capacity – Applicants must also include the following attachments: <ul style="list-style-type: none"> – Board or council resolution supporting the authorizing application – Current staff résumés – Conflict-of-interest policy – Vision and mission statements – Five-year annual budget – Any other documents the organization wishes to provide 	<ul style="list-style-type: none"> • Applicants must submit written responses to questions in each of the following categories: <ul style="list-style-type: none"> – Sponsor commitment and capacity – Sponsor application process and decision making – Authorizer performance and contracting – Existing school performance – Authorizer oversight and evaluation – Authorizer termination and renewal decision making – Technical assistance and authorizer requirements

Analysis

The wide range of organizations eligible to serve as community school sponsors, combined with a low bar for approval from ODE, has created an imbalance between sponsor quantity and quality: there are too many sponsors without the expertise or capacity to provide effective oversight.

The National Association of Charter School Authorizers (NACSA) is a national organization that works to improve the policies and practices of charter school authorizers. It has developed both a set of best practices for authorizers and a framework for evaluating the work of authorizers. The preeminent authority on quality authorizing, state and local policymakers and charter school advocates alike look to NACSA to inform authorizing practices.

The rigor of ODE’s new application process is therefore a welcome, though overdue, step. It evaluates entities on their commitment and ability to execute the “principles and standards” for

quality authorizing developed by the National Association of Charter School Authorizers (NACSA). This is very encouraging. The Pathway-I requirement that all new sponsors participate in a planning period of at least eighteen months is an opportunity to ensure that new sponsors fully understand the challenges associated with sponsoring and that they have invested the necessary resources to prepare. Pathway II lays out a promising practice through which new sponsors can receive guidance from existing exemplary sponsors.

The remaining challenge for this new-sponsor screening process is fidelity of implementation. ODE must ensure that the new-sponsor review process is and remains rigorous and that the eighteen-month planning process is used to effectively prepare entities to become community school sponsors. The rating system through which sponsors are deemed exemplary, discussed in the following section, must also remain a high bar. Effective follow-through will require ODE to have strong political will, insulation from political pressure, adequate internal staff capacity, and access to external expertise.

Recommended Changes

1. The legislature and ODE should take steps to insulate from political pressure the department’s Office of Quality School Choice. This should be coupled with policies and practices that make the office’s processes and decisions fully transparent. For example, ODE should make public all sponsor applications, the state’s evaluation of each application, and documentation for the rationale behind each application’s denial or approval.
2. Policymakers in the legislature and leadership at the ODE should prioritize building the internal capacity of the Office of Quality School Choice and enabling the office to make use of external expertise. This office should be given the authority (including competitive compensation packages and streamlined contract approval processes) to hire, develop, and retain a highly effective staff and procure the outside expertise necessary to execute nation-leading practices.

Policy Issue 2: Accountability for Existing Sponsors

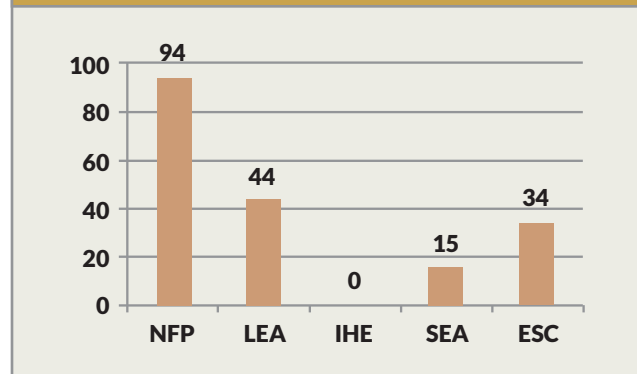
Current Policy

Among sponsors' most critical functions is ensuring that only schools with the highest probability of success are approved to open, only high-performing schools are renewed, and persistently low-performing schools are closed. NACSA President and Chief Executive Officer Greg Richmond explains that "it is authorizers' responsibility to keep the left-hand side of the curve [of charter school performance] small by not approving weak proposals in the first place and by closing charter schools that consistently fail."³³ Fulfilling this obligation requires rigorous, high-quality authorizing practices.

There is little information available on whether Ohio sponsors meet NACSA's "principles and standards for quality authorizing." NACSA has identified a threshold in sponsor quality, finding that "authorizers with at least five schools are more likely to have the capacity to perform their authorizer functions well." Yet fifty sponsors in Ohio oversee five or fewer schools.³⁴ In addition, few sponsors have proved willing to order the closure of community schools for persistent failure to meet academic expectations.³⁵ It appears that the quality of authorizing practices varies dramatically among existing sponsors in Ohio.

As of 2014, 190 community schools have closed statewide (see Figure 7).³⁶ In some cases, school closures can be an indicator of high-quality authorizing practices: a sponsor's willingness to make tough decisions when a school persistently fails to improve. However, school closures can also indicate an insufficiently rigorous review process, for instance, when new schools are approved only to collapse soon after opening. The latter is far too common in Ohio.

Figure 7: School Closures By Authorizer Type



In numerous cases, newly authorized schools have had such limited capacity for success that they have barely made it off the ground. At least two dozen community schools have closed before the end of their first year.³⁷ In 2013, Columbus saw nine schools close only a few months into the school year.³⁸ In one case, an applicant sought and was approved to open two new schools. It was later discovered that he had been convicted of felony theft in Florida in 2010 and sentenced to probation. The applicant had also previously opened a community school in Ohio that closed during its first year.³⁹ A rigorous review process would certainly have unearthed these troubling facts.

Demonstrating a keen awareness of the challenges in sponsor quality, Ohio policymakers have already created four ways to address weak sponsoring practices:

1. Since 2003, ODE has had the authority to revoke any organization's sponsorship authority if it is "not in compliance with, or is no longer willing to comply with" its contract with any community school or with the department's rules for sponsorship.⁴⁰
2. Though the application process for new sponsors between 2003 and 2013 was perfunctory, it does mean that thirteen sponsors approved during this time period oper-

ate under contracts with ODE. When these contracts expire, these sponsors will reapply through the new, more rigorous process.

3. The revised application process for new sponsors includes a Pathway III (see Figure 6) for existing sponsors that do *not* operate under a contract with ODE but who wish to initiate one. This path is made more appealing by potential rewards and incentives.
4. Finally, in 2013, the Ohio legislature created a system for ranking sponsors and imposing consequences for poor practices. Implementation has occurred in two stages. Currently, ODE ranks all sponsors based on a composite performance index score of their schools. Statute prohibits sponsors that rank in the bottom 20 percent statewide from sponsoring additional schools. Starting in January 2015, sponsor rankings will be based on:
 - a. The academic performance of the students enrolled in the schools they have authorized (dropout-recovery schools and special-education schools—defined and discussed in Policy Issue 8—were not included in the initial ranking system. However, dropout-recovery schools will count toward sponsors’ rankings under the new system);
 - b. adherence to “quality practices” outlined by ODE in a Quality of Community School Sponsor Practices Review (QSPR) framework; and
 - c. compliance with applicable laws regarding sponsorship.⁴¹

Each component will count as one-third of the sponsor’s total score.⁴² Sponsors will be rated annually as exemplary, effective, or ineffec-

tive. Any sponsor ranked ineffective through this process will be prohibited from sponsoring *additional* schools.⁴³ ODE can also revoke sponsoring authority for any ineffective sponsor with which it has a contract.

Sidebar 1: Sponsor Revocation

ODE revoked sponsorship authority from Ashe Cultural Center in 2011. Of Ashe’s eight schools, all but one received a D or F on the state report card, though the case for revocation focused on the organization’s lack of compliance with the department’s financial requirements for nonprofit sponsors. ODE temporarily took over sponsoring Ashe’s schools, which had two years to find a new sponsor. As of the 2012–13 school year, ODE maintained sponsorship of four of the schools.. The remaining three schools have since closed.

This is the first and only time ODE has exercised its revocation authority over other sponsors, but recent actions suggest it may begin doing so more often. In April 2014, ODE issued warnings to three sponsors, including Educational Resource Consultants of Ohio, Warren County ESC, and Kids Count of Dayton. In a letter addressed to charter school authorizing leadership, the executive director of the Office of Quality School Choice criticized these authorizers for lacking “not only the appropriate processes, but more importantly, the commitment of mission, expertise, and resources needed to be an effective charter sponsor.”⁴⁴

“I’m a big proponent of choice, but they have to be quality choices,” explains State Superintendent Richard Ross, adding, “I want to send the message that I want good authorizers out there.”⁴⁵

Analysis

Despite the multiple avenues for holding existing sponsors accountable for quality practices, they nonetheless fall short of what is necessary.

The first avenue for protecting against low-quality sponsors was the 2003 provision that gave ODE the authority to revoke any organization's sponsorship authority. This provision created a lever for promoting high-quality authorizing practices. However, eight years passed before ODE exercised this provision and it has only done so once, with Ashe Cultural Center (see Sidebar 1).

The second avenue is a limited application of the new screening processes described in the previous section. Sponsors that operate under contracts with ODE will be required to reapply through the new screening process when their contracts expire. However, only thirteen sponsors actually operate under contracts with ODE, and even those that *do* are not required to reapply until their current contracts expire. (Contracts last up to seven years.) In addition, contracts for sponsors ranked as effective or exemplary under the new rating system are automatically renewed on an annual basis, making the effectiveness of this accountability mechanism contingent on the effectiveness of the ranking system.⁴⁶

The third avenue is the creation of Pathway III in the new sponsor screening practices (see Figure 6), which allows sponsors that do not have contracts with ODE to voluntarily initiate them. This may sound like a hard sell; most entities are loath to volunteer for additional scrutiny. However, ODE is exploring a number of potential incentives. For example, sponsors approved through Pathway III and rated as exemplary could be rewarded with greater access to school facilities, operating grants

for new schools, or permission to open schools in a wider range of geographies. David Hansen, executive director of the Office for Quality School Choice at ODE, believes that this application process will create “a clear, steep slope of incentives for authorizer quality.”⁴⁷ Certainly, the potential incentives for Pathway III are promising, but they have not yet been confirmed and may not be sufficient incentive for the worst sponsors.

Sidebar 2: Evaluating Sponsor Adherence to “Quality Practices”

To measure each entity's adherence to quality practices, Ohio has developed a Quality of Community School Sponsor Practices Review (QSPR). The QSPR combines Ohio's sponsor requirements as defined by law with NACSA's quality principles of sponsorship.⁴⁸ The QSPR is qualitative in nature, relying on a team of independent reviewers who have been trained on the following quality practices of authorizing: 1) organizational commitment and capacity; 2) community school application process and decision making; 3) performance contracting; 4) oversight and evaluation of community schools; 5) contract termination and renewal decision making; and 6) technical assistance. Review teams will use a rubric to review each practice, with scores based on documents, a site visit, and interviews with sponsor administrators and board members.

This process has been developed with extensive input from experts and has been informed by pilots that took place during the 2012–13 school year. A total of fifty-one sponsors participated in the pilot of the compliance evaluations and three sponsors participated in a pilot of the QSPR.⁴⁹ Insights from these pilots have informed the final sponsor accountability framework.

The final avenue for holding existing sponsors accountable is the 2013 legislation that tasked ODE with implementing a sponsor-ranking system and spelled out the details of that system in the statute.

The creation of sponsor report cards promises to at least shed light on their practices. In particular, the alignment between the QSPR framework (see Sidebar 2) and NACSA's principles and standards of quality authorizing indicates the system is informed by best practices in other states. ODE has taken the practical step

of piloting the system with a subset of authorizers, which increases the likelihood that unforeseen complications or unintended consequences are identified and addressed before implementation at scale this coming January.

While sponsor report cards apply to *all* sponsors in the state, the consequences for ineffective sponsors are uneven. Any sponsor ranked ineffective through this process will be banned from sponsoring *additional* schools.⁵⁰ But only the thirteen sponsors under contract with ODE can have their authority revoked. Prohibiting ineffective sponsors from authorizing

Sidebar 3: The Role of ODE

Ohio legislators should be aware of the challenges inherent in relying on ODE for implementing sponsor accountability. As argued in "The State Education Agency: At the Helm, Not the Oar," SEAs frequently become the default agent for implementing new state policies, even if they are poorly suited to the task.⁵¹ A striking example of this in Ohio is the 2003 legislation that simultaneously slapped ODE's wrist for poor authorizing practices and granted it the authority to vet the authorizing practices of others. As Todd Ziebarth concludes, "There was no other logical entity to give it to."⁵²

But state departments of education are often not well positioned to do this work. ODE is no exception. First, ODE is an inherently political body. The state superintendent is appointed by the State Board of Education. The State Board of Education includes nineteen members, eleven elected and eight appointed by the governor. It's entirely possible that if the governorship and/or elected board members change parties, so too will the department. The whiplash could perpetuate the cycle of schizophrenic policymaking.

Second, as in most SEAs, existing staff have likely been acculturated in a context of compliance and monitoring. These individuals may not be good fits for offices designed to oversee a sector of schools intended to be autonomous. This is already evident, for example, in some of ODE's previous attempts at sponsor accountability—including compliance requirements like making sponsor board chairs sign off on each school's pre-opening documentation.⁵³ Burdensome processes like this one do little to address poor sponsoring practices but demonstrate the SEA's proclivity to draw from the compliance and monitoring toolbox.

Third, procurement for SEAs is often long and cumbersome—a process Ohio's own Office of State Procurement Services calls "intimidating to both the novice and the seasoned procurement professional."⁵⁴ This is problematic, especially given ODE's reliance on outside experts to assist with both the new sponsor application process and the QSPR.

In the short term, policymakers can take some steps to mitigate these challenges (see Recommended Changes below). In the long term, policymakers must be vigilant of the fidelity of implementation and be

willing to consider that the SEA may not be the best place to house these functions. If necessary, the Office of Quality School Choice could spin off into a separate entity. For instance, the Charter Schools Institute at the State University of New York is housed within the university and governed by the university's board of trustees; the Georgia Charter Schools Commission is a single-purpose entity with commissioners recommended by the Governor, state house of representatives, and state senate and appointed by the State Board of Education. Any state oversight entity will inevitably be influenced by politics, but an entity outside the ODE might be better positioned to manage them, hire the necessary staff, and secure the external capacity necessary to provide consistent, high-quality oversight of the community school sector.

new schools will help stem the proliferation of new, poorly-vetted schools, but it does little to address sponsor oversight of the many low-performing community schools currently in operation.

A great deal of authority was given to ODE in the 2013 legislation, and current ODE officials appear committed to energetically fulfilling these responsibilities. All indications suggest that ODE is working hard to improve sponsor accountability. Nonetheless, a change in political leadership could unravel recent progress, challenges in personnel or procurement will almost surely slow it down, and pressure from interest groups will build over time. State leaders should take these risks seriously and be wary of the challenges that could prevent ODE from implementing and sustaining quality practices (see Sidebar 3).

Recommended Changes

1. The Ohio legislature should give ODE the authority to require any active sponsor with a contract with ODE to reapply *immediately* under the new application process rather than waiting until current contracts expire.
2. The Ohio legislature should eliminate the special exemption that limits the closure of “ineffective” sponsors to those under contract with ODE and protects those sponsors that were active prior to 2003.
3. Reiterating the recommendations under Policy Issue 1, policymakers and ODE leadership should take steps to insulate the “authorizer of authorizer” function from political pressure. Transparency will be key. Each sponsor's report card should be posted in a clear and accessible format on the ODE website, including the data, information, and observations used to rank each sponsor on each measure (academic performance, quality practices, and compliance). In addition, ODE should publish annual lists of those sponsors rated as exemplary, effective, or ineffective; those prohibited from sponsoring new schools; and those subject to closure by ODE. Flexibility in staffing and contracting will also be essential to ensuring fidelity of implementation.

Policy Issue 3: Neutral Funding for Sponsors

Current Policy

Quality sponsoring depends not only on strong screening and accountability processes, but also on the incentives created by sponsor funding mechanisms. In Ohio, sponsors are funded through an “authorizing fee.” Ohio law states that a contract between an authorizer and a community school’s governing authority can stipulate “a fee for oversight and monitoring of the school that does not exceed three percent of the total amount of payments for operating expenses that the school receives from the state.”⁵⁵

This funding mechanism is not uncommon. Of the forty-two states (and Washington, D.C.) with charter school laws, fifteen enable authorizers to charge schools an authorizing fee that is a percentage of the school’s state funding.⁵⁶ Fifty-three percent of the nation’s authorizers receive at least some funding through authorizing fees.⁵⁷ However, Ohio law does not restrict how sponsors use this revenue; it can be comingled with the organization’s other revenue streams and used to support activities other than those associated with sponsoring community schools.

Moreover, in addition to the funding sponsors receive through authorizing fees, many also receive significant revenue from selling services to the community schools they oversee. While regulations prohibit sponsors from pressuring schools into purchasing their services, and service contracts are required to be separate from charter contracts,⁵⁸ the practice remains a common one. As Checker Finn, Terry Ryan, and Michael Lafferty have written, “Unfortunately, many sponsors in Ohio made—and today still make—their own ends meet by doing precisely that.”⁵⁹ Sponsors are

less likely to close a low-performing school if that school is also a revenue stream. Legislation has been introduced at least three times to prohibit sponsors from selling services to their schools—in 2006, 2007, and 2011.⁶⁰ None has garnered the necessary votes to become law.

Analysis

There are two key problems with Ohio’s funding mechanism for sponsors. First, deducting authorizer funding from school-level per-pupil allocations can adversely affect the programming community schools are able to provide; funds that would otherwise support a school’s activities are diverted to the sponsor.⁶¹ Funding, discussed in Policy Issue 8, has a meaningful influence on Ohio’s community schools, which already receive significantly less per-pupil funding than district schools.

In addition, any arrangement in which a sponsor receives funding from a school it oversees creates misaligned incentives. The ability to use authorizing fees to support other organizational activities can incentivize sponsors to act in ways counter to high-quality authorizing practices. The same goes for fee-for-service arrangements. Sponsors that receive funding from schools are likely to authorize more schools than they have the capacity to oversee well; authorize large e-schools, regardless of quality; and allow low-performing schools to continue operating.

Recommended Changes

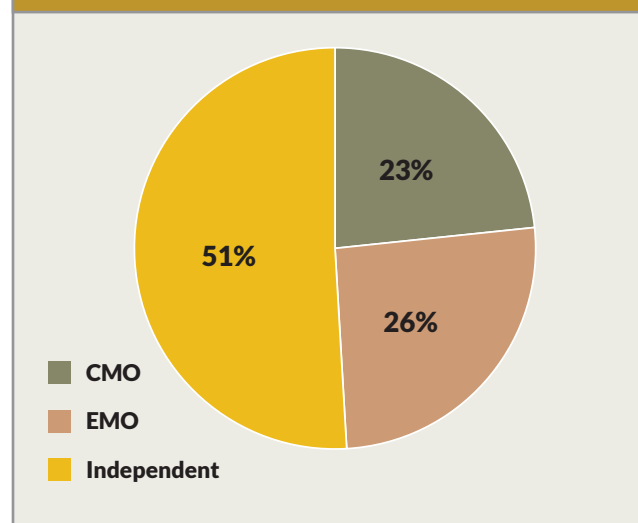
1. Ohio policymakers should prohibit sponsors from selling services to the community schools they oversee.
2. Policymakers should revise Ohio statute to require that sponsors use authorizing fees solely to support authorizing functions. Minnesota, the only other state in which nonprofit organizations serve as authorizers, evaluates authorizers based on the “degree [to which] the authorizer’s actual resource allocation [is] commensurate with its stated budget, needs, and responsibilities of authorizing.”⁶² In Ohio, this could be documented by the submission of a budget for the restricted funds at the beginning of every fiscal year and a statement of functional expenses at the end of every fiscal year, subject to audit by ODE. A provision to permit the carry-over of a portion of funds from year to year may also be included, though funds that go unused after two years should be returned to schools. This requirement should then be built into the compliance portion of the sponsor accountability system described under Policy Issue 2.
3. The Ohio legislature should create a new funding stream designed solely for sponsors. NACSA recommends implementing a hybrid funding mechanism through which authorizers receive a state-funded “base” dollar amount plus a percentage of per-pupil revenue from each authorized school.⁶³ This arrangement would balance the benefits and drawbacks of each approach: a lower authorizer fee could dilute the incentives for poor authorizing practices while ensuring authorizers have a stable base of funding each year. A state-funded allocation for authorizers, while subject to variation over time, would reduce the amount of funding diverted from community school operations.

Policy Issue 4: Management Company Accountability

Current Policy

Nearly half of Ohio’s charter schools are operated either by nonprofit charter-management organizations (CMOs) or for-profit education-management organizations (EMOs) (see Figure 8). Though few national CMOs operate in the state, Ohio has become home to a number of “home-grown” CMOs, including high-performing ones like Breakthrough Schools in Cleveland and the United Schools Network, which operates the Columbus Collegiate Academies. These and other CMOs operated 23 percent of charter schools in

Figure 8: Percent of Schools Operating as Part of a CMO, an EMO, or Independently, 2014–2015

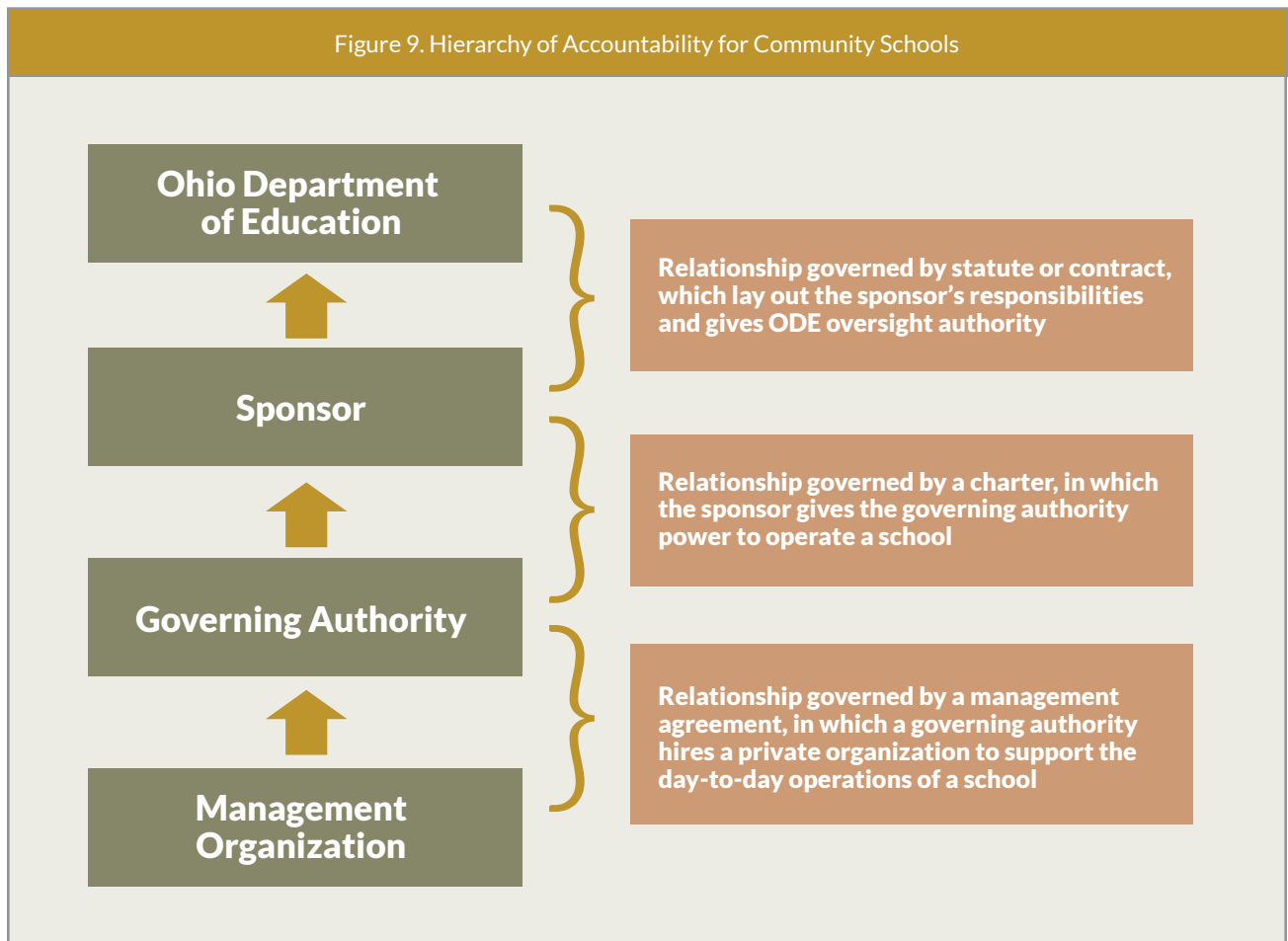


Ohio at the start of the 2014–15 school year. In addition, for-profit EMOs are particularly prevalent in Ohio. At the start of the 2014–15 school year, EMOs operated more than a quarter of all charter schools in the state.⁶⁴ This is double the national average of 12.3 percent.⁶⁵

The prevalence of schools operated by management companies in Ohio has important implications for accountability. As will be discussed in Policy Issue 5 below, a board of directors—called a “governing authority”—governs each community school in Ohio. It is the body legally responsible for the operational and academic performance of a charter school. In this role, a governing authority can choose to hire a management company to execute the day-to-day operations of the school.

Figure 9 depicts the ideal relationship between ODE, sponsors, governing authorities, and management companies.

A management agreement defines the delegation of responsibilities and expectations between a management organization and the board. Through these contracts, management companies often take control of major decisions for schools, including hiring and firing teachers, selecting and administering academic assessments, contracting with vendors, budgeting, developing curriculum, and providing classroom materials.⁶⁶ Despite the governing authority’s delegation of day-to-day operations, it remains the public entity that is legally accountable for a school’s academic, financial, and operational well-being.



Ohio's community school law includes a concerning provision that limits a governing authority's ability to hold a management company accountable. Legislation passed in 2006 states that, should a board seek to terminate its contract with a management company, the management company may appeal the decision to the school's sponsor. The law states that "upon appeal, the sponsor or state board shall determine whether the operator should continue to manage the school... If the sponsor or state board determines that the operator should continue to manage the school,

the sponsor shall remove the existing governing authority and the operator shall appoint a new governing authority for the school" (emphasis added).⁶⁷

Under this provision, if a governing authority were to pursue termination of its contract with the management company, the management company could take action via a sympathetic sponsor to push out the governing authority and replace it with a more amenable group.

Sidebar 4: Management Company Accountability

In 2013, ten schools sued White Hat Management, an EMO, over ownership of property purchased to run the schools.⁶⁸ Traditional boards of education must follow strict state laws whenever they transfer ownership of public property to a private entity, but community schools are exempted from these laws.⁶⁹

White Hat argues that it owns the property it bought with the school's management fee.⁷⁰ A 2013 appellate court ruling sided with White Hat, finding that, because of the contract that the boards signed with White Hat, the firm owns all the schools' property, including the desks, computers, books, and other items it bought with the state tax money.⁷¹ According to attorney Karen S. Hockstad, who represents the ten schools, the appeals court ruling means that once educational tax dollars pass to a private management company, those dollars are "no longer public, and [the firm] can do whatever it wants with the money, or nothing at all."⁷²

In early 2014, the schools asked the Ohio Supreme Court to settle this dispute. In its memorandum to the court, the schools stated, "When the General Assembly authorized schools to hire management companies, it could not have intended to enrich the management companies in this way, leaving community schools with no hard assets to actually operate a school."⁷³ They further argued that "deeming public funds to be private funds the moment they come into the possession and control of a private entity...threatens the public accountability that ordinarily accompanies the use of public funds."⁷⁴

The school boards had until August 25 to submit their final brief to the court; oral arguments were held on September 23.⁷⁵ No decisions have been rendered.

In the meantime, the last of White Hat's contracts with these schools expired on June 30, 2013. Two of the schools have closed. The boards of the remaining eight schools have moved their schools to new sites to be run by a new management company (Cambridge Education Group, started by a former White Hat employee). White Hat set up new schools in the buildings previously occupied by the suing schools.⁷⁶

Analysis

Even when delegating day-to-day operations of a school to a management company, boards should always have a finger on the pulse of school operations. When a management organization does not deliver and deficiencies are not remedied, the board must have the visibility to identify the problem and the authority to address it—if necessary, by terminating the management agreement. When that authority is limited, governing authorities can find themselves and their schools in difficult situations (see Sidebar 4).

Instead, Ohio law allows a management company to end-run the governing authority. This is problematic for at least three reasons. First, and most

obviously, it significantly weakens a governing authority's ability to hold an operator accountable if that operator fails to meet the expectations in the management agreement. Second, it weakens the governing authority's position across all negotiations by removing the credible threat of contract termination. Third, it allows an uncomfortably close relationship between the sponsor and the school operator, both of which have a financial interest in the school's operation. In summarizing the implications of this law, NACSA President and CEO Greg Richmond gave this provision "the award for the most breathtaking abuse in the nation."⁷⁷

Recommended Changes

1. Ohio policymakers should remove current statutory language that allows an EMO or CMO to appeal a governing authority's decision to terminate a management agreement.
2. Ohio policymakers should clearly define the responsibilities of sponsors and governing authorities, including the responsibilities that may be delegated to a management company (e.g., hiring teachers) and those that may not be delegated (e.g., approving a school's annual budget).
3. Given the high proportion of community schools that partner with EMOs or CMOs in Ohio, ODE should include management company accountability as a key principle for evaluating the quality sponsoring practices discussed under Policy Issue 2. ODE should evaluate sponsors on whether their new school applications and interviews address the governing authority's knowledge of the management company's track record, terms of the management agreement, and ability to hold the management company accountable.
4. ODE should consider developing report cards with aggregated student growth and performance data for each EMO or CMO that operates three or more schools in the state. This would provide transparency and allow governing authorities to access third-party information to evaluate potential operating partners.

Policy Issue 5: Governing Authority Independence

Current Policy

A governing authority, or board, through a charter agreement with a sponsor, is the main entity accountable for the governance, fiscal oversight, strategic planning, and performance of a community school. Because of these responsibilities, “charter school boards have a direct impact on the ultimate success or failure of charter schools.”⁷⁸ However, in order to exercise appropriate authority over its school and make decisions that reflect the best interests of the students they serve, it is essential that a school’s governing authority be truly independent.

A number of provisions in Ohio’s community school law affect the independence and autonomy of governing authorities. Recent legislation prohibited board members or their immediate relatives from working for a sponsor or school operator for one year after service on a governing authority.⁷⁹ The law also prohibits school-operator staff from sitting on a school’s board.⁸⁰ Both of these provisions mitigate potential conflicts of interest and help ensure that members of a community school governing authority will have the best interests of the school as their primary concern.

Four additional provisions are relevant to protecting a governing authority’s independence when that entity contracts with a management organization for the day-to-day operations of a school. First, the law allows a board member to be compensated up to \$425 per meeting, limited to \$5,000 per year across all boards on which he or she serves. Second, while the law requires that each community school have a designated fiscal officer (a licensed treasurer responsible for the

financial records of the school) it allows the fiscal officer to be an employee of the management company. Third, the law does not require governing authorities to have an independent legal counsel, which is critical when reviewing a school’s charter, management, or lease agreements.

Finally, the law appears to allow a management company to retain ownership of capital assets purchased on behalf of the school (such as desks, textbooks, and computers) and allows a management company or a subsidiary to own the school facility and lease it to the school. This can also affect board independence by making the board dependent on the school operator for critical resources. In some cases, the terms of management or lease agreements or restrictions on the allowable uses of federal funds can help govern asset ownership and facility use in the event of contract termination. However, this is a topic of ongoing litigation and forthcoming ruling from the Ohio Supreme Court (see Sidebar 4).

Analysis

Because a community school board is the ultimate entity accountable for the school’s performance, it ought to be independent of interests that could compete with the well-being of the children in the school.

Ohio’s legislation has put in place important measures to stem potential conflicts of interest. The prohibition of management-organization employees serving on governing authorities is essential; it helps ensure that the governing authority can hold the operator accountable for the terms in the management agreement. The one-year “cooling-off period” before a member of a governing authority or a family member can work for a sponsor or an operator is also a strength of Ohio law.

This helps prevent board members from making decisions influenced by the promise or potential of employment with other organizations in the school's accountability hierarchy. The latter provision would benefit, however, from a mechanism for enforcement.

To further strengthen and ensure governing authorities' independence, Ohio policymakers should consider several other adjustments. First, policy should prohibit board members from being compensated for their service on governing authorities. Andy Boy of the United Schools Network explains that individuals should decide to serve on governing authorities "because they're in line with the school's mission and vision," and not because they will get paid.⁸³

It is not unreasonable to want to remunerate board members for the time and effort required to fulfill their responsibilities. However, the risks to board independence are not trivial—especially when a school partners with a management organization.

Board member compensation can create a pay-to-play dynamic. In some circumstances, a group of community leaders decide to start a community school, form a board, and start looking for a suitable management organization to help with day-to-day operations. More often, however, these roles are reversed. CMOs and EMOs recruit community members to serve on the boards of new schools. This role reversal is not necessarily bad, but when combined with board compensation, it creates a dynamic in which management companies can promise financial compensation to individuals to sit on the boards of new schools with the understanding that those individuals will then vote to hire the management company. Second, separating from a management organization can create significant financial strain on a school—especially, as discussed below, if the management

organization retains ownership of the school's capital goods. Board members may have poor incentives to terminate a management agreement if they believe it will affect their compensation.

Terry Ryan, former vice president for Ohio Programs and Policy at the Thomas B. Fordham Institute, explains, "The governing board is supposed to own the school, but in part because [board members] were being compensated pretty well, the management organizations essentially 'owned' the boards and had a lot of influence over their decisions."⁸⁴

Second, Ohio law should specify not only that each school have a designated fiscal officer, but also that this individual be independent of the management organization and the sponsor. This applies to attorneys as well. It is essential that governing authorities are able to knowledgeably execute key governance functions, including financial oversight, the negotiation of a management and lease agreements, compliance requirements, and recourse against a management organization for deficiencies or breaches of contract.⁸⁵

Third, a management company's ownership of assets and the facility, common with EMOs, often reflects the infusion of private capital that EMOs provide to cover the start-up costs of a new school—including facility construction, renovation, and advance hiring of school staff. This capital is essential for new school launches, but it can become a threat to governing authority autonomy. When an operator retains ownership of capital assets, such as desks, computers, and textbooks, a governing authority that wishes to sever ties faces the additional challenge of finding funding to repurchase equipment to continue operating a school. Similarly, a governing authority may be unable to sever ties with an operator if it is dependent on that same organization for a school facility.

Ongoing litigation will yield a legal interpretation of this issue, but governing authorities can take steps to protect their independence in the meantime. Governing boards must advocate for the interest of the school during the negotiation of the management agreement and insist, if not on full ownership of these assets, on a provision to buy

them back from the management company at a discounted rate. Governing authorities might also negotiate a two- or three-year lease extension in the event that the management agreement is terminated—giving the school time to secure an alternate facility.

Recommended Changes

1. Policymakers should prohibit the compensation of members of schools' governing authorities.
2. Policymakers should require that fiscal officers be independent of schools' management companies and sponsors.
3. Policymakers should ensure that charter school board members annually disclose familial relationships and any potential conflicts of interest by requiring them to register as public officials with the secretary of state's office and submit annual conflict-of-interest statements.
4. Per recommendations under Policy Issue 4, legislators should require governing authorities to retain independent legal counsel to ensure that they understand their legal rights and responsibilities and negotiate and understand the terms of key legal documents, including management agreements, lease agreements, and charters.
5. Pending an opinion from Ohio's Supreme Court, governing authorities ought to negotiate for their autonomy through relevant contracts. In the management agreement, they should negotiate ownership of assets; in the lease, they should negotiate continued use of the school facility. Sponsors should build these elements of board independence into their application processes, and ODE should consider building them into the QSPR.

Policy Issue 6: Charter Termination and Nonrenewal

Current Policy

In addition to the accountability between a management company and a governing authority, the accountability between a school board and the sponsor is also crucial for managing the quality of the sector. A sponsor has the authority to close a community school by choosing either not to renew a school's charter at the end of its charter term or to terminate a school's charter prior to its expiration. Ohio law also provides sponsors with the option of putting a community school on probation for academic, financial, or compliance issues.

However, a governing authority in Ohio can often circumvent closure. In the case of termination, state law prohibits a community school from seeking a new sponsor once its contract is terminated: "Any community school whose contract is terminated...shall not enter into a contract with any other sponsor."⁸⁶ Theoretically, a community school that anticipates termination could seek a new sponsor *prior* to a termination decision, but the explicit language in the law makes this more difficult.

In the case of nonrenewal, however, a governing authority can wait until its contract expires and then find a different sponsor that is willing to take the school. In either case, given the wide variation in sponsoring practices in Ohio and the financial incentives that result from authorizing fees and fee-for-service arrangements, it is unsurprising that governing authorities have often been able to find an amenable sponsor.

Furthermore, statutory language governing ODE's own sponsorship activities can make it difficult for ODE to deny the application of a school that has been non-renewed. If ODE denies an application

for failure to satisfy the application requirements outlined in the statute, it is required to "grant the applicant thirty days to *correct the insufficiencies* in the application" (emphasis added).⁸⁷ While subsequent language affirms that ODE may deny an application from a non-renewed school,⁸⁸ the former provision, along with the kind of litigation described in Sidebar 5, could make it more difficult for ODE to exercise discretion in approving or denying applications.

Between the 2006–07 and 2012–13 school years, thirty-four schools switched sponsors. (This excludes the schools that switched sponsors in 2011 following the revocation of Ashe Cultural Center's sponsoring authority.)⁸⁹ Schools that have switched sponsors tend to be low performing: fourteen were rated in the bottom two categories of Ohio's school report cards (Academic Watch or Academic Emergency) and just five were rated in the top two categories (Effective or Excellent). Eleven were rated as Continuous Improvement, the middle category. The remaining four schools did not receive a rating in the year prior to switching sponsors.⁹⁰

Analysis

Authorizers are charged with holding schools accountable to high-quality academic, financial, and operational expectations. When a school persistently fails to meet these expectations, it should face credible consequences. This requires Ohio policymakers to address the ability of low-performing schools to remain open by "hopping" to a new sponsor.

In some cases, the preponderance of sponsors could be a good thing; it can allow a community school to select the sponsor it feels understands its school model and can provide the technical

assistance it needs. Andy Boy of the United Schools Network, a Columbus-based network which runs some of the state's highest-performing community schools, explains, "Having multiple options was a good thing. We could identify a sponsor that valued our beliefs around high expectations for academic and financial goals and provide us with the right amount of autonomy to do what we do best."⁹¹

In the worst of circumstances, however, having so many sponsors can dilute sponsoring standards and oversight. As NACSA vice president of policy and advocacy Alex Medler explains, "Having so many authorizers...can lead to schools just trying to find *somebody* who will say yes to *anybody*."⁹²

Three recent developments have promise for limiting sponsor hopping. First, in 2003 the Ohio legislature prohibited terminated community schools from seeking a new sponsor.⁹³ This provision was further strengthened in 2011, when the Ohio legislature required terminated community schools to close permanently at the end of the school year.⁹⁴ While it would be possible for a school to anticipate a termination decision and proactively seek a more amenable sponsor, this language is a significant step in the right direction.

Second, the Ohio Association of Charter School Authorizers (OACSA) has adopted a guiding principle stating that members will "[s]upport OACSA member's nonrenewal decisions"⁹⁵ by not agreeing to sponsor a school that another member has chosen to terminate or non-renew. Sponsors affiliated with OACSA have pledged not to adopt schools that other sponsors have slated for termination or nonrenewal. This kind of self-imposed discipline is encouraging, though there is at least one example of an OACSA-affiliated sponsor failing to live up to its commitment.⁹⁶

Third, the new sponsor report cards discussed in Policy Issue 2 may help limit this practice. Holding sponsors accountable for the academic performance of the schools in their portfolios de-incentivizes sponsors from adopting low-performing schools that other sponsors are moving to close. Dr. Darlene Chambers, the current president and CEO of the Ohio Alliance for Public Charter Schools, believes the practice of sponsor hopping may be starting to decline. She explains, "It's hard to close a school, but if your school isn't delivering on its promise, it's time to let it go. And I sense that more sponsors are starting to align on that kind of quality monitoring."⁹⁷

The Ohio Association of Charter School Authorizers is a membership organization formed to promote sponsor excellence and effectiveness in Ohio. It seeks to represent the best interests of all Ohio authorizers and to be a resource and support to authorizers across the state.

Nonetheless, these steps have not yet had the intended effect. Sponsor hopping has continued among poorly performing community schools. Seven schools changed sponsors between the 2011-12 and 2012-13 school years. Of these, four were in Academic Emergency, two were in Continuous Improvement, and one was unrated.⁹⁸ Furthermore, the language governing ODE's own review of nonrenewed community school applications could prevent ODE from exercising its judgment and discretion in school sponsorship and grants an awfully long rope to applicants who have already failed to demonstrate a track record of success.

Recommended Changes

1. Policymakers should revise the existing statute to ensure that if a sponsor decides not to renew a charter, the school is not able to seek a new charter from a different sponsor.
2. Policymakers should remove the requirement for ODE to provide school applicants with thirty days to correct deficiencies in their applications and provide ODE with the same discretion in approving charter applications as other sponsors.
3. Policymakers should revise the existing statute to ensure that only schools in good standing are able to seek new sponsors.

Sidebar 5: School Closure

In May 2014, Education Resource Consultants of Ohio decided not to renew its contract with Cincinnati community school VLT Academy due to academic and financial concerns.⁹⁹ While terminated schools are prohibited from seeking new sponsorship, Ohio law permits a *non-renewed* school to contract with a new sponsor.

VLT made several attempts to obtain a new sponsor. Perhaps because of tougher sponsor accountability provisions, other sponsors were reluctant and ultimately declined to sign a contract with VLT. ODE also warned several sponsors that taking on a low-performing school would be reflected in their sponsor ratings.¹⁰⁰

As a last resort, VLT requested that ODE sponsor the school; ODE denied VLT's request for sponsorship. VLT appealed ODE's decision, and, in an unprecedented decision, a Hamilton County Common Pleas Court judge required ODE to both sponsor the school and provide it nearly \$300,000 to ensure teachers and staff continue to get paid.¹⁰¹ The judge said ODE's actions in warning sponsors not to authorize the school unfairly prevented VLT from obtaining sponsorship, and that closing the school would cause harm to its students.

Ohio's First District Court of Appeals issued a stay on that decision, however, and the school has since closed.

Policy Issue 7: Community School Accountability & Automatic Closure

Current Policy

In 2006, Ohio implemented an automatic-closure law for persistently low-performing community schools.¹⁰² As of the end of the 2013–14 school year, twenty-four schools had been closed under this law.¹⁰³ Ohio is one of only eleven states with such provisions.¹⁰⁴

The automatic closure law was originally written based on an accountability system that assessed school performance on twenty-eight indicators and placed each school in a category: Academic Watch, Academic Emergency, Continuous Improvement, Effective, and Excellent. The state is in the process of transitioning to an A–F report card system. Beginning in the 2012–13 school year,

schools and districts now receive grades along five performance measures: annual measurable objectives, performance-index scores, performance indicators, graduation rates, and value-added progress.¹⁰⁵

Figure 10 outlines the automatic-closure criteria for schools based on the new A–F report cards.

Ohio has two types of charter schools that are exempt from the accountability system described above: dropout-recovery schools and special-education schools. As of the 2014–15 school year, dropout-recovery schools are subject to a different closure policy that uses alternative criteria (see Figure 11). Special-education schools do not have their own automatic-closure criteria. In addition, while e-schools are still subject

Figure 10: Statutory Criteria for Automatic Closure	
Schools Serving Mainstream Student Population ¹⁰⁶	
Schools serving no higher than grade 3	A school will be <i>automatically closed</i> if, for two of the past three years, it: <ul style="list-style-type: none"> • Has received an F in the K–3 literacy measure, or • Has received an overall grade of F (to be implemented in 2015–16)
Schools serving any grade 4–8, but no grade above 9	A school will be <i>automatically closed</i> if, for two of the past three years, it: <ul style="list-style-type: none"> • Has received an F for the performance-index score and an F for the value-added score, or • Has received an overall grade of F and an F for the value-added score.
Schools serving any grade 10–12	A school will be <i>automatically closed</i> if, for two of the past three years, it: <ul style="list-style-type: none"> • Has received an F for the performance-index score and has not met the annual measurable objectives; • Has received an overall grade of F and a grade of F for the value-added score (value-added scores for high schools are to be implemented in 2015–16).

to the same automatic closure laws as general-population community schools, the legislature has adopted additional operating standards for e-schools developed by the International Association for K-12 Online Learning (iNACOL). They have also required that when a sponsor approves a new e-school, the sponsor and e-school must jointly apply to ODE for final approval.¹⁰⁷

Analysis

The automatic-closure law, coupled with the continued emphasis on identifying low-performing schools, reflects the seriousness with which state policymakers are addressing the quality of Ohio’s community school sector and adapting those policies to the needs of unique student populations.

There are three risks associated with Ohio’s automatic-closure laws that bear mention. First, these laws can become watered down over time. And many education leaders in the state already be-

lieve the bar is far too low, with only five schools receiving an F in their overall grade and value-added on 2013–14 report cards (and, presumably, even fewer doing so in two out of three years). It will be essential for policymakers to maintain or increase the rigor of these standards, especially as Ohio transitions to a new accountability system, implements the Common Core State Standards, and begins participating in Common Core-aligned assessments.

The second risk is that they give community schools a false sense of security by introducing a double standard for school closure. When a school performs well enough to avoid automatic closure but falls short of its sponsor’s expectations, a governing authority may feel that a nonrenewal or termination decision is unfair or unwarranted. Lawmakers must make it crystal clear to operators and governing authorities that the automatic-closure law sets a *minimum* standard and that sponsors have the authority to raise the bar for schools in their portfolio.

Figure 11: Statutory Criteria for Automatic Closure—Dropout-Recovery Schools

Schools Serving a Dropout-Recovery/Prevention Student Population¹⁰⁸

A school is *subject to closure* if, for two of the past three years, it receives a designation of “does not meet standards.” A school is designated as “does not meet standards” based on the following criteria:

- Graduation rates: Four- to eight-year rates (30 percent of total calculation)
- Ohio High School Achievement Assessment: Percentage of grade 12 students and enrolled students within three months of their twenty-second birthday who passed all applicable state tests (20 percent of total calculation)
- Annual Measurable Objectives: Same as the AMO calculations for other community and traditional school districts (20 percent of total calculation)
- Student growth: The state is working to develop a growth model for dropout-recovery schools that would use reading and math results from a nationally norm-referenced assessment (30 percent of total calculation)¹⁰⁹

A school is guaranteed a rating of “meets standards” or above if it:

- Achieves a 10 percent increase in the first two metrics above (graduation rates and Ohio High School Achievement Assessment) for two consecutive years.

The third risk is the need to adapt accountability for specific types of community schools (e.g., dropout-recovery, special-education, and e-schools) while still maintaining a rigorous standard.

The 2006 automatic-closure law allowed dropout-recovery schools to apply for waivers from ODE, and a vast majority of dropout-recovery schools applied and received them.¹¹⁰ In 2012, legislation required that the State Board of Education develop a separate set of closure criteria for dropout-recovery schools. Waivers expired on July 1, 2014, and the new system is currently being phased in. Eighty-six dropout-recovery schools operated statewide in 2012–13, with widely varying performance. Ohio Graduation Test passage rates ranged from 8 percent to 100 percent,¹¹¹ and the four-year graduation rate for the class of 2012 ranged from 0 percent at two schools to 76 percent at another.¹¹²

Three elements of the dropout-recovery school automatic-closure policy are problematic. First, while the closure law for general-population schools requires automatic closure when criteria are met, for dropout-recovery schools it makes clear that they are only “subject to closure.”

Second, the dropout-recovery closure policy states that these schools are protected from closure if certain metrics improve by 10 percent for two consecutive years. A school with a 10 percent graduation rate, for instance, need only improve to an 11 percent graduation rate in year one and 13 percent in year two to be protected.

Third, LEAs are permitted to sponsor dropout-recovery community schools and then choose whether to include the schools’ scores in their accountability ranking. This creates a perverse incentive for districts to use dropout-recovery community schools as a strategy for removing

struggling students from their own testing data. In fact, of the seventy-one conversion schools sponsored by districts, thirty of them are dropout-recovery schools.¹¹³

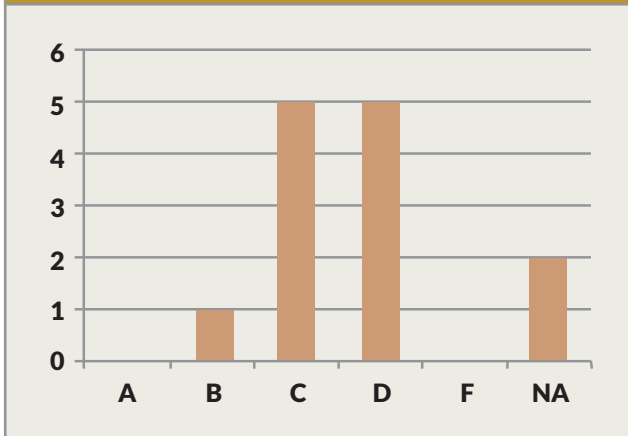
The 2006 automatic-closure law also exempted community schools that serve a majority special-education student population. During the 2012–13 school year, there were thirty-four schools in which at least 50 percent of students were on an Individualized Education Plan (IEP).¹¹⁴ On the new A–F rating system intended for general-population schools, two of these schools received a C on the performance index, twenty-seven received a D, and four received an F. However, no alternative system has been developed for these schools.

Accountability metrics for special-education schools should be adapted to their particular populations, but excluding them from an accountability system allows persistently low-performing schools to continue. In the worst-case scenario, it could even create perverse incentives by inadvertently encouraging schools to identify larger numbers of low-performing students as “special needs” as a way to *avoid* accountability.

Finally, e-schools have grown rapidly and currently enroll almost 40,000 students in Ohio—nearly one in three community school students. There is reason to be greatly concerned about their quality. In 2014, eleven out of twenty-five e-schools received performance-index grades on the state report card, and just one scored a B or above (see Figure 12).¹¹⁵

The new requirement that ODE review all applications for new e-schools is promising, but much more is needed to ensure existing e-schools are held accountable. In 2011, the state board of education failed to adopt e-school operating standards developed by the director of the Governor’s Office

Figure 12: 2014 E-school Performance Index Grades



of 21st Century Education and the superintendent of public education.¹¹⁶ A default set of standards written by the International Association for K-12 Online Learning (iNACOL) automatically became effective on January 1, 2013.¹¹⁷ It's unclear whether or how these standards are informing e-school accountability, but stronger implementation is necessary.

Recommended Changes

1. ODE should ensure that the bar community schools must reach to avoid automatic closure is high and not gradually lowered over time.
2. Policymakers should add language to the automatic-closure statute explicitly stating that sponsors have the legal authority to close a community school, even if that school surpasses the state's criteria for automatic closure.
3. ODE should include clear performance contracts in the QSPR framework for the sponsor-ranking system. Explicit expectations for school performance will help all parties involved (sponsor, governing authority, and management company) have a clear and consistent understanding of whether a school is passing muster.
4. The State Board of Education (SBOE) should revise the closure criteria for dropout-recovery schools to reflect high standards and strong accountability. In particular, the current language indicating that dropout-recovery schools are *subject to closure* should be replaced with *automatic closure*. In addition, the SBOE should remove the provision that exempts dropout-recovery schools from closure when they make marginal gains.
5. The legislature should require that the scores of students in district-sponsored dropout-recovery community schools count toward the accountability of that district instead of to the individual school. This will remove the incentive for districts to sponsor dropout-recovery schools as a way to divert these students from their rosters and test results.
6. The legislature should develop alternate criteria for schools that serve a majority-special-education student population.
7. The State Board of Education should incorporate into accountability mechanisms for e-schools the operating standards outlined by iNACOL. These should be embedded in the automatic-closure law or the QSPR framework for sponsors who oversee e-schools.

Policy Issue 8: Community School Funding

Current Policy

School funding is typically a shared responsibility between local and state governments. State funding is allocated through two mechanisms: 1) “foundation funding,” which is designated to cover the basic cost of education; and 2) “categorical funding,” which provides additional funds for certain students based on factors such as special needs and family income.¹¹⁸ Local funds are mostly generated through property taxes but can also include revenue from district-issued bonds and levies.

When a student chooses to enroll in a charter school instead of a district school, public funding follows them to the school of their choice. But in Ohio and many other states across the country *only state funds are transferred*. Districts retain locally generated per-pupil dollars.¹¹⁹ Ohio also has a state “guarantee” fund to compensate districts for decreases in funding, including those due to declines in enrollment.¹²⁰

As a result, there is a significant funding disparity between district and charter schools. The Ohio Alliance of Public Charter Schools cites a disparity of 29 percent.¹²¹ A report from the University of Arkansas based on FY2011 data found a disparity of approximately 22 percent, with Ohio districts receiving \$10,998 per pupil while community schools receive \$8,580.¹²² Community school funding is even lower in some cities. The University of Arkansas report found that Cleveland’s fifty community schools received nearly 46 percent less funding than district schools (\$8,523 vs. \$15,684). Dayton’s twenty-seven community schools received nearly 40 percent less funding than district schools (\$8,892 vs. \$14,732).¹²³

Analysis

Ron Adler, president of the Ohio Coalition for Quality Schools, believes that “disparities in funding are a significant barrier to community school quality.”¹²⁴ Low funding levels inhibit a community school’s ability to secure facilities, hire and retain the best leaders and teachers, and secure the materials and services necessary to provide a high-quality education. In some cases, low funding levels not only impede school quality but threaten their viability. Of the 110 independently operated community schools that have closed in the last five years, thirty-five have cited financial trouble.¹²⁵

Those schools that appear to be beating the odds may often rely on substantial nongovernment investment. As Ron Adler explains, “Some of the state’s specialty community schools...get funding from many different sources, including universities and national foundations. Most community schools don’t have the ability to attract that kind of funding.”¹²⁶

With the exception of KIPP, which operates a school in Columbus, CMOs with high-performing schools in other regions of the country have chosen not to expand into Ohio. These decisions are based on numerous factors, but funding is certainly one of them. In addition, EMOs may be more appealing partners because they can often draw on private capital to support the start-up costs for a new school. This may account for the high concentration of EMOs in Ohio.

Most of the funding inequity is due to community schools’ lack of access to local funding—including property taxes and district-issued bonds. Cleveland has pioneered a unique partnership with community schools in the city and shares some locally generated dollars (see Sidebar 6). Other

cities across Ohio should consider replicating this promising partnership. However, absent the good will demonstrated in this partnership, legislative action is needed to ensure that existing community schools have the financial resources necessary to operate a high-quality school and that Ohio is an attractive location for high-quality, out-of-state networks to consider replicating.

It's impossible to know how many low-quality schools would improve with more funding, or

whether some of the schools that have closed might have been successful if they'd been able to make ends meet. At the same time, starving community schools of money and then using the sector's poor performance as an argument to reduce funding even more is a catch-22 that policymakers must grapple with. Schools should absolutely be closed when they persistently fail to meet expectations, but promising schools should be given a fighting chance to improve options for kids.

Sidebar 6: Cleveland Plan for Transforming Schools

Cleveland offers a potentially promising arrangement that enables charter schools to access more equitable funding. The Cleveland Plan for Transforming Schools is an initiative led by Cleveland Mayor Frank Jackson along with leaders of the Cleveland Metropolitan School District, local philanthropies and charter networks, and national education thought leaders. It is grounded in the portfolio strategy and seeks to “ensure that every child in Cleveland attends a high-quality school and that every neighborhood has a multitude of great schools from which families can choose.”¹²⁷ As part of the Plan, the Cleveland Metropolitan School District (CMSD) has embraced high-quality charter operators and has agreed to authorize the transfer of some locally generated tax revenues to its Transformation Schools, which are charter-operated schools that are either sponsored by or have agreements with the district.¹²⁸

Recommended Changes

1. Policymakers must end the inequitable funding of community schools. There are two primary ways to address the disparity. Policymakers could revise the statute to require districts to distribute local per-pupil funding to charter schools on an equitable basis. While Ohio law does not require charters to receive any local funding, Colorado, New York, and North Carolina all provide charter schools with at least *some* local funding. Ohio should take a page from these states' statutes and even do one better by ensuring *all* local funding is shared equitably. Alternatively, the state could provide compensatory funding to charter schools to make up for locally generated funds that are not shared with charters by the district. Connecticut provides a separate allocation for some of its charter schools. However, this is an expensive and duplicative option. Given that Ohio already distributes guaranteed funds to districts to compensate for enrollment declines (some of which, but not all, might be due to charters), the state would essentially be paying *three* times for the education of each child in a charter school. As such, the first option, simply requiring that locally generated funds follow students to the school that educates them, is preferable.

2. Equitable funding would help encourage high-quality charter networks to replicate in Ohio. However, policymakers should strongly consider creating additional financial incentives to draw them to the Buckeye State. In particular, state policymakers should redouble efforts to secure funding from the U.S Department of Education through the Charter Schools Program for start-up schools and coordinate with local philanthropies to take advantage of auspicious circumstances like those in place with the Cleveland Plan. Finally, addressing the myriad policy issues throughout this report will create a more hospitable policy environment in Ohio and possibly attract investments from the national philanthropies that support high-quality CMO expansion in other states.

Policy Issue 9: Transportation

Current Policy

Ohio law requires school districts to provide transportation for community school students in grades K–8 who live more than two miles, but less than thirty minutes, from the school they attend.¹²⁹ Only seven other states require local districts to provide transportation to at least *some* charter-school students, so this is a stronger policy than is enjoyed by most charters across the country.¹³⁰ Nonetheless, there are two important shortcomings.

First, districts may refuse transportation if they deem a community school student “impractical to transport.” In these circumstances, the district is required to pay the parent or guardian “an amount that shall be not less than \$250, and not more than the amount determined by the department as the average cost of pupil transportation for the previous year.”¹³¹

In addition, community school boards may opt out of district transportation and choose to receive additional per-pupil funds and provide transportation themselves. The funding is far from equitable.¹³² For 2013–14, just fifteen community schools received transportation funds from the state. These payments ranged from \$19,087 at Great Expectations Elementary School (approximately \$110 per pupil) to \$175,504 at Eagle Academy (approximately \$336 per pupil).¹³³ Meanwhile,

ODE determined that the average statewide cost of pupil transportation for the 2012–13 school year was \$908.24 per pupil.¹³⁴

Analysis

Unless community schools are willing to take a significant financial hit, they are dependent on districts to transport their students to school. While not ideal, it is better than nothing. As Andy Boy of the United Schools Network explains, “We need to put it in perspective. The service isn’t perfect, but we’re fortunate to have any at all.”¹³⁵

Transportation nonetheless continues to present significant problems for schools while also limiting choices for families. In some cases, community schools are assigned inconvenient bus routes and timetables, with children arriving at school as late as 9:45 a.m. and leaving as late as 4:45 p.m. In other cases, geographic limitations or an “impracticality” designation can limit a family’s access to its school of choice. Ron Adler explains, “Community schools located in inner urban areas are totally dependent on bussing provided by district schools. It’s a continual problem and a disservice that impacts community schools, students, and parents.”¹³⁶

For the current policies to work for community schools, the cooperation and good will of districts is necessary.¹³⁷ Relationships between community schools and districts can vary widely. Without adequate alternative funding, however, community schools have few realistic options beyond a district partnership.

Recommended Changes

1. In the short term, community schools should be provided with equitable transportation funding. This will give community schools the option of contracting independently from district schools or at least provide them a better negotiating position with the district. This could also ease some of the tension in district-community school relationships, as community schools would no longer be dependent on districts, and districts would no longer feel burdened by the charter-transportation requirement.
2. An alternative short-term option could be for the state to provide incentives to encourage community schools to develop consortia through which resources could be pooled to acquire cost-effective transportation independent of the district.
3. In the longer term, state policymakers should think about incentivizing *cities* (not districts) to develop comprehensive plans that effectively and efficiently meet the transportation needs of all public-school students. Delegating this responsibility to the city would ensure that all public schools in its portfolio are accounted for in the transportation plan. It could both ensure that all students have transportation to the school of their choice and alleviate the burden on districts to manage transportation for some schools over which they have no control.

Policy Issue 10: Facilities

Current Policy

Ohio statute requires that community schools have the right of first refusal on district-owned properties that the district is seeking to sell or that have been unused for at least two years.¹³⁸ The property must be sold at or below market rate, according to an appraisal that has occurred within the past year.¹³⁹

Other facility policies can help community schools, but only marginally. The state provides up to \$100 per pupil in a facilities allowance for most community schools, funded through a \$7.5 million set-aside in state lottery revenue. Community schools can also participate in the Community School Facilities Loan Guarantee Program, which allows Ohio community schools to access credit to finance a building.¹⁴⁰

Analysis

Though favorable on the surface, the right-of-first-refusal policy has a number of shortcomings that have thwarted its intended impact. First, the law only applies to schools that currently exist and are located within the selling district. Schools planning to open in that district are not eligible, a significant disadvantage to start-up charters that are often the most financially strained and in need of a facility.¹⁴¹

Second, districts too rarely prove to be willing partners on facilities. An exception is Breakthrough Schools in Cleveland, which rents a school facility from the Cleveland School District, its authorizer. This is facilitated by a collaborative relationship between the district and the high-performing network. In many instances, however, districts

avoid making these facilities available. For example, when a prime Columbus property went up for charter school bids in 2010, the district's general counsel averred, "The district is under no obligation to accept any of the bids....If it rejects all bids, the district can enter into a contract sale at a negotiated price with any buyer."¹⁴²

Third, even when a district is willing to sell an unused facility to a community school, the community school must still pay for it, even though the facility has already been financed with public dollars. If repairs or remodeling are needed, a community school must fundraise separately to finance them.

The budget bill for fiscal years 2014 and 2015 included a \$100 per-pupil allocation for facilities costs.¹⁴³ While helpful, this assistance is far from adequate. Ron Adler explains, "The recently passed \$100-per-student aid for facilities is appreciated, but not nearly sufficient to cover facility costs. Community schools start with a third less funding than neighboring district schools and then have to divert much of this to obtaining an adequate facility."¹⁴⁴

The future growth of high-quality schools is hamstrung by the challenge of finding an adequate facility. Andy Boy explains that the major barriers to growing additional schools are "facilities and access to start-up funding."¹⁴⁵ Alan Roskamm, CEO of Breakthrough Schools in Cleveland, agrees: "The limited availability and capital cost for quality facilities is a major constraint on our ability to grow, and while rent does not appear on a district school's operating statement, it reduces the already limited dollars we have to spend on instruction."¹⁴⁶ Ohio policymakers must address community schools' facilities concerns if they hope to grow the number of high-performing community schools available to the state's children.

Recommended Changes

1. Close loopholes that allow districts to avoid making their un- or under-utilized buildings available to charter schools.
2. Revise the statute to extend the requirement to make un- or under-utilized facilities available not only to existing community schools but also new community schools that have been approved to open.
3. Include charter schools in the construction and renovation projects funded through the Ohio School Facilities Commission. This could look similar to Colorado's Building Excellent Schools Today (BEST) program, which prioritizes construction and renovation projects in poor communities and schools with the worst facilities, irrespective of whether a school is a charter school or district-operated.

KEY THEMES

The specific recommendations listed here can help improve community schooling in Ohio. But new challenges will certainly materialize in the years to come. Accordingly, we believe it is important for state policymakers to recognize four key lessons that emerge from this analysis and will continue to influence the quality of the community school sector.

First, incentives matter. In several cases, the community school statute incentivizes behavior that is counterproductive to building a high-quality sector. When sponsors can use authorizing fees to support activities other than oversight and sell services to schools in their portfolios, they are incentivized to authorize more schools and larger schools (like e-schools), while keeping low-performing schools open. When board members are compensated for their service, it can create a disincentive for holding a management organization accountable. When statute permits school districts to exclude a district-authorized community school from its own accountability scores, it creates an incentive for districts to authorize dropout-recovery community schools and counsel struggling students to enroll in them—regardless of whether the arrangement meets students’ needs.

Policymakers must address the misaligned incentives in current policy and be mindful of the incentives they create when altering policies in the future.

Second, foresight is not 20/20. Unintended consequences are an unavoidable externality of policy change. It is impossible to predict all of the indirect effects of a new policy. Perhaps the clearest example of unintended consequences in Ohio’s community school law is the decision to expand

sponsoring authority to ESCs, HEIs, and NFPs. Intended to “let a thousand flowers bloom,” this provision instead led to shoddy sponsoring practices and a proliferation of persistently low-performing community schools. Too few sponsors have provided effective oversight of the schools in their portfolios, and low-performing community schools have been able to remain open by hopping from one sponsor to the next.

Policymakers will never be able to predict all the effects of policy changes. However, they can mitigate negative effects by piloting new approaches before rolling them out statewide, by building review cycles into legislative language, or by delegating more policymaking to the State Board of Education, which is better positioned to make ongoing adjustments.

Third, special exemptions must be tailored to the interests of students. In some cases, special exemptions are logical and serve the interests of students. For instance, alternative accountability standards are appropriate for schools that serve a primarily dropout-recovery population. However, these exemptions too often benefit special interests rather than students. The “subject to closure” and “10 percent improvement” provisions for dropout-recovery schools⁴⁷ serve to protect schools from closure and protect management companies from losing business. They do little to ensure that students receive the services they need.

The same can be said of loopholes that allow districts to refuse facilities and transportation to community schools. These loopholes create obstacles to competition, protecting the district from declining enrollment but limiting families’ access to schools of their choice. Finally, the abil-

ity of management companies to appeal a contract termination to a school’s sponsor serves the interests of management companies, but does little to ensure that school options are high quality.

Whenever a proposed policy applies differently to various stakeholders, policymakers must closely examine whether the exemption serves special interests or student interests.

Fourth, community schools will not be regulated into quality. The three themes above advise policymakers on what *to do*, but it is also important to address what policymakers *should not* do. There is often a knee-jerk reaction in public K–12 education to address poor school performance by managing more aspects of school operations—from how a school evaluates teachers to how it communicates with families to how it uses student data to inform instruction. The temptation to address community school quality through additional regulation is strong. Policymakers must resist the urge to “fix” community schools by further regulating their operations.

Instead, they must renew the grand bargain between accountability and autonomy. By strengthening school accountability through the provisions listed here, policymakers will be better positioned to protect community schools from additional regulation and begin to peel back current regulations that are unnecessary.

CONCLUSION

Ohio's community schools educate 7 percent of students across the state, but far too often they provide those students with an education of lesser quality than that offered by district-operated schools. Numerous weaknesses in the community school statute enable and exacerbate this unfortunate situation. Some policy adjustments over the past two decades have been important steps forward, such as greater sponsor accountability and the automatic closure of persistently low-performing schools. Others have been steps backward, such as the provision allowing management companies to appeal contract termination and the exceedingly low bar for closing dropout-recovery schools.

Troublesome provisions continue to erode rather than support the growth of a high-quality community school sector. Addressing the ten policy issues discussed here will help strengthen good policies, undo those that are counterproductive, and build a hospitable policy environment for the growth of high-quality schools. As policymakers move forward, they must pay special attention to the incentives new provisions create, potential unintended consequences, and special exemptions that benefit interest groups rather than students.

With stronger policies in place and faithful implementation by ODE and others, the Buckeye State has great potential to prove that a struggling sector can be redeemed through strong accountability, good governance, and sufficient resources. If successful, Ohio will be a powerful proof point in the national charter school movement that poor performance need not be perpetual and that improvement is possible.

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