



Time to Change Course: Reclaiming the Potential of Texas Charter Schools

A State Case Study

June 2018

by
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Foreword

Since its founding some 25 years ago, the public charter school movement promised an opportunity for communities to address previously unmet student needs. To this end, public charter schools have been extremely successful and especially so in Texas, where some of the most effective and sought-after public charter systems were born. These range from KIPP and YES Prep in the late 1990s to IDEA Public Schools in the early 2000s. The increasing quality of Texas public charters has been documented in research by the Center for Research on Education Outcomes (CREDO) at Stanford University, showing that Texas charters produce more learning gains for their students in less time when compared to other public school students nearby.

At the same time, there is growing concern nationally that public charter schools are not able to expand quickly enough to meet parent demand.

Over the past four years, the annual rate of charter school growth declined precipitously across the nation, from a rate of 14 percent annual student enrollment growth in 2014 to 5 percent in 2017. CREDO's Texas study indicated similar trends in Texas, with 90 new charter campuses opened in 2012, 65 opened in 2013 and only 26 opened in 2014.

Why are public charter schools growing at slower rates if they have served communities so well? There are several probable answers to this question. For example, in many states, charter schools do not receive equitable financial support to procure and sustain school facilities.

Another possibility relates to the great difficulty charter school organizers must endure to be granted a charter in the first place. That is the focus of this paper. We specifically consider the history of charter school authorizing in Texas and its implications for the future of the public charter school movement. As we posit in this paper, it has never been more difficult to be granted a public charter in Texas than it is today.

Our organizations recommend a renewed intentionality when it comes to charter school authorizing, and as they note, there are promising signs that Texas is already headed in this direction. For example, Texas is the first state to ask for and be granted the flexibility to use federal Title I funds to expand the number of charter schools specifically for students who need them most. This is an exciting and bold first step for reimagining how public charter schools can be leveraged to expand opportunity. However, more can be done.

We encourage you to read this compelling case study and to consider how the Texas story might inform your thinking about the future of the charter school movement.

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Executive Summary

Texas is a pioneer in state public charter school authorization, with a program spanning over 20 years, since 1996. Its emphasis on state-driven school creation is unusual in a national landscape dominated by local and regional authorizing. One feature of the state authorizing practice is aggressive statewide expansion of high-performing public charter school networks, a reflection of the state leadership's commitment to maximizing the number of students enrolled in highly effective schools. Several nationally recognized charter management organizations, including KIPP, IDEA, Harmony, and Uplift, have emerged from this approach.

Nevertheless, state leaders can do more to use charter school authorizing powers as a tool for raising student achievement and incubating new school models that address the state's most persistent education challenges. These missed opportunities have, in part, been the result of a necessary focus on correction of authorizing mistakes from the early days of the state's chartering initiative.

In 2013, the Texas Legislature gave the state commissioner of education the broad statutory authority necessary to close poor performing public charter schools. Since then, the commissioner has vigorously exercised this new authority, preparing the way for the state to shift its resources away from enforcement and toward creation and support of new schools. To its credit, Texas is today unlikely to approve a charter organization that cannot competently educate students and uphold the requirement of prudent financial stewardship. However, the state's authorizing system represents an over-correction, putting too high a premium on risk aversion. The concept of public charter schools as innovative laboratories created to inform and inspire public educators has lost momentum in the process.

It has never been more difficult to be granted a public charter in Texas than it is today.

Consequently, Texas has not attracted the number of entrepreneurial education organizations warranted by the scale of its needs. This paper offers a brief history of how we arrived here, explores the opportunity costs of inertia and risk aversion, and offers a roadmap of policy recommendations for consideration for states across the nation that are motivated to use charter authorizing as a high-impact tool for improved achievement and innovation.

Key Points

- Texas is the birthplace of some of the nation's most effective and sought-after public charter schools. However, it has never been more difficult to be granted a public charter in Texas than it is today.
- The Texas Education Agency's (TEA) charter school application has become expensive, bureaucratic, unpredictable, and time-consuming, hindering new charter schools from successfully applying with TEA to start serving Texas students.
- Our organizations recommend a renewed intentionality when it comes to charter school authorizing. The TEA should remove barriers in the application process and adopt policies that will encourage the creation of new and excellent public charter schools.

I. History of the Texas Public Charter School Statute and Environment

In 1995, the Texas Legislature adopted a comprehensive rewrite of the Texas Education Code.¹ It was the first time the state had revisited its education laws in their entirety since modernizing its public education system in 1949. The new code reflected educators' concerns that the accumulation of statutory requirements over nearly 50 years left little room for local innovation. One of the Legislature's boldest answers to these concerns was Chapter 12 of the new code, containing the enabling legislation for public charter schools. Indeed, Texas lawmakers put charter schools front and center in their new statutory framework, proclaiming that "school districts *and charter schools* [emphasis added] created in accordance with the laws of this state have the primary responsibility for implementing the state's system of public education and ensuring student performance in accordance with this code."² Texas had embarked on what is now a 23-year-old experiment in regulatory freedom and public school choice.³

The original enabling legislation capped the number of state-authorized "open-enrollment" charter schools at 20. In Texas, an open-enrollment charter school is a local education agency that typically encompasses multiple campuses. This category of school is created outside the purview of an independent school district. The commissioner of education is empowered to authorize creation of an open-enrollment charter school by an institution of higher education, a nonprofit, or a government entity. The vast majority of these charters in Texas are operated by nonprofit entities. Although the Legislature enabled colleges and universities to operate public charter schools, they have not played a significant role in the growth of charter schools, nor have other governmental entities.⁴

Early Days: 1995-2000

The Texas Legislature originally designated the elected State Board of Education (SBOE)⁵ as the sole state-level authorizer, a role the SBOE played until 2013, when the Legislature transferred this authority to the commissioner of education. The Texas Education Agency (TEA), which provides staff support to the SBOE, began staffing its charter school office

in July 1996. The SBOE approved applications for all 20 of the available charters and the first 16 charter schools began operation in August 1996. This inaugural cohort ("Generation 1" in Texas charter nomenclature) submitted applications that averaged approximately 65 pages long. Their ranks include Uplift Education, originally The North Hills School, a luminary that has attracted national philanthropic support. Seven out of this original group have since ceased operations,⁶ either returning their charters voluntarily in the face of overwhelming obstacles or relinquishing the right after a state enforcement action (Figure I).

In 1997, just two years after limiting state-authorized charters to 20, the Legislature opened the door to an additional 100 state open-enrollment charters (Generation 2) and an *unlimited number* of public charter schools committed to a student population composed primarily (75 percent) of students at risk of dropping out of school. These 100 schools are referred to as "75% Charters" or more commonly, "At-

6 One of the original 20, Cypress Lodge, never opened its doors, and its charter was revoked in January 1998.

FIGURE I. The Texas Twenty: First Generation Charter Schools

SCHOOL	STATUS
American Youthworks	Revoked 8/22/14
Aristoi Classical Academy	Active
Cypress Lodge	Revoked – 1/16/98 (school never opened)
Dr. M.L. Garza-Gonzales Charter	Active
George Gervin Academy	Active
George I. Sanchez	Active
Girls and Boys Preparatory	Revoked – 8/21/15
Ignite Public Schools	Revoked – 8/21/15
Medical Center Charter	Revoked – 8/21/15
Pegasus School	Active
Por Vida Academy	Active
Raul Yzaguirre School for Success	Active
Renaissance Charter	Expired – 7/31/01
Seashore Learning Center	Consolidated – 7/1/11
Ser-Ninos Charter	Active
Texans Can Academies	Active
Texas Academy of Excellence	Revoked – 8/16/05
University of Houston Charter	Active
Uplift Education	Active
Waco Charter School	Active

Source: Texas Education Agency, Division of Charter Schools

1 Chapter 260 (SB 1), Acts of the 74th Texas Legislature, effective May 30, 1995.

2 Texas Education Code, Section 11.02.

3 Texas has one of the oldest charter school laws on the books, but Minnesota passed the first charter school law in 1991.

4 Since 1995, 325 charters have been awarded under the general open-enrollment provision (Subchapter D of the Education Code). Only six charters have been awarded under Subchapter E, reserved for colleges, universities, and junior colleges. This despite it being far easier to have a charter authorized under the higher education provisions.

5 The SBOE is comprised of 15 members elected in single-member districts across the state. The average SBOE member represents about 2.5 times the number of constituents of the average member of Congress.

Risk Charters.”⁷ The state’s Generation 2, solicited in the fall of 1997 and awarded in March 1998, reflects the tension between the dramatic increase in chartering capacity on the one hand and the TEA’s interest in standardizing—and controlling—the authorizing process. TEA introduced a scoring rubric and budget template and applicants were required, for instance, to make explicit commitments to operate in a non-discriminatory manner, abide by open government requirements, and ensure that eligible employees were enabled to participate in the Teacher Retirement System. However, if the quality control measures introduced by TEA staff were designed to produce more deliberate decisions by the SBOE, then those measures did not have the intended effect. The SBOE approved all 41 charters presented to them—a number indicating an ambitious, but not overly aggressive, growth agenda. Not all these charters were up to the task: only 24 of them are still operating. But Generation 2 did produce some schools that would have an enormous influence on the charter movement, including the nation’s first Knowledge is Power Program (KIPP) school—which shortly thereafter launched the equally successful spin-off YES Prep—and other Texas success stories including NYOS and Rapoport Academy.

A Crucial Mistake: Growing Pains

The Texas SBOE solicited and awarded its third round of applicants over the course of the summer and fall of 1998, taking full advantage of the ample number of charters remaining available for award provided by the 1997 legislation. In Generation 3, the SBOE awarded *109 charters*, an action contrary to the recommendations of TEA staff. In TEA’s defense, staff had continued to refine the application process, applying a thoughtful and deliberative scoring rubric that ranked applications by quality and, presumably, probability of success.⁸ But SBOE had little incentive to deny any entity a charter. The SBOE took the best and the worst. Generation 3 included some of the poorest performing charter organizations in the nation. Of the 109 charters authorized, 74 of them no longer exist, and many were closed by state action.⁹

Generation 3 was followed by *three* different authorizing rounds all taking place in 2000.¹⁰ Although the numbers of charters awarded in Generations 4, 5, and 6 were relatively

7 Most of the At-Risk Charters also took advantage of the state’s alternative accountability system, a less rigorous version of state accountability.

8 Generally, this held true. There is not a full research study on the educational outcomes of Generation 3, but there is a reasonable correlation between the initial TEA staff ranking and the relative success (failure) of the Generation 3 charters.

9 Some of these charters were consolidated and remain in operation under another entity.

10 Since 2000, the state has never veered from the “one application round per year” rule.

modest, and the quality much improved over Generation 3, the cumulative impact of the fast-paced growth left TEA scrambling to keep up. Charters are typically thought of as campuses. However, each open-enrollment charter awarded creates a new local education agency (LEA) in the state. To a regulatory agency, a charter has more in common with a district. For every new charter, TEA takes on a new set of funding, regulatory, audit, data collection, performance monitoring, governance, and accountability responsibilities attached to the new LEA.

The repercussions of the SBOE’s authorizing decisions began playing out in communities—and on the front pages of newspapers¹¹—across the state. Legislators demanded that TEA staff act quickly to “clean up the mess,” not recognizing that the new charter law had not adequately equipped the agency with the enforcement tools necessary to shut down even the most obvious academic failures and scofflaws. Of course, other legislators whose constituents had, for better or worse, become attached to such schools berated agency staff for the turmoil associated with the extended closure process.

The impact of these early chartering decisions persists. Although 74 of the 109 Generation 3 public charter schools have since closed or been consolidated, many low-performing schools managed to operate for a decade or more before new laws enabled their closure. Consequently, state administrators rationally associated chartering with risk and behaved accordingly. It would require strong leadership and legislative change to reset the chartering enterprise and reclaim its promise. The fallout from Generation 3 arguably set the Texas public charter school movement back a decade.

Regulatory Era: 2001-2012

Since 2001, the state has authorized 115 charters, averaging seven per year. This change in course is primarily the result of HB 6, comprehensive legislation adopted in 2001 to respond to the state’s early charter experience.¹² HB 6 repealed the 1997 provision permitting an unlimited number of charter schools aiming to serve at-risk students and imposed a new cap of 215 on all open-enrollment charters, excepting college and university charters, which were left uncapped.¹³ HB 6 also imposed an array of standard public sector requirements on both new and existing

11 Houston was home to the most high-profile newspaper and television coverage of charter school abuses, including investigative reports on Alphonso Crutch’s Life Support Center, Prepared Table, and Gulf Shores Academy, which at one point owed the state over \$7 million.

12 Chapter 1504 (House Bill 6), Acts of the 77th Texas Legislature, effective Sept 1, 2001.

13 The risks posed by college and university charters were not the Legislature’s concern, nor was that concern warranted.

public charter schools. While it understandably attempted to address concerns such as nepotism, conflicts of interest, procurement standards, and governance, some of its provisions swung the pendulum back to a more highly regulated environment.

The following decade witnessed the slow but steady refinement of the state's charter school portfolio, as TEA persuaded or compelled closure of poor performers while generally improving (with some high-profile exceptions) the basic quality of schools authorized.

The scale of the challenges and desire to avoid any further charter school scandals during this period—as well as opposition to charter schools from some sectors—led TEA to systematize its approach to every aspect of charter administration. The passage of HB 6 was complemented with a raft of commissioner's rules detailing governance, administrative, and operational requirements. Similarly, the charter application and authorization processes were routinized for ease of planning and elimination of discretionary decision points that would put the agency in political crosshairs should a bad actor make it through the process. With each cycle, the process and application documents were complicated with new requirements that have over the years resulted in a rigid and cumbersome system. Far from being laboratories for innovation, the public charter schools produced through this authorizing system tended to follow familiar, well-worn educational paths.

During this period, the charter application grew to hundreds of pages, making it very difficult for lean start-up teams to apply. The scoring rubric, review procedures, reviewer pool, and reviewer training support proceeded on autopilot despite concerns expressed by applicants and stakeholders. The application process became an unduly burdensome and expensive, once-per-year, high-stakes event with unpredictable results—hardly a magnet for talented “edu-preneurs.”

From the perspective of TEA leadership, mission one was to avert public crises and protect basic educational services for students. This defensive posture played a role in draining the chartering opportunity of its original promise as an engine for innovative solutions and pipeline for new talent. Conceptually, the chartering enterprise had been booted from the state's research and development wing and consigned to oversight by the office of risk management.

“Good Government” Era: 2013-2018

The Legislature deserves credit for recognizing that it was time to revisit the charter system's enabling legislation in 2013, given that the last comprehensive update came in 2001. The resulting legislation, SB 2,¹⁴ introduced a host of refinements aimed at taming the forces that had contributed to dysfunction. Confident that these changes were sufficient to preempt excesses of bad actors, legislators accompanied them with a moderate increase in the charter cap.

The Commissioner Takes the Reins. The SBOE had served as the state's authorizing body for almost 20 years before SB 2 shifted that power to the commissioner of education, a gubernatorial appointee. The commissioner now authorizes new charter schools subject to SBOE veto. The veto provision's primary political purpose was to win the votes necessary to shift authorizing power from the SBOE to the commissioner. This shift continued a trend that had begun after the 1995 education code rewrite, in which the powers of the elected SBOE have been incrementally transferred to the appointed commissioner. Chartering was one of the few substantial powers remaining with the board. In practice, the shift in authority has meant the commissioner vets charter applicants via an application and external scoring process, selects among those meeting a predetermined cut score, and presents a selected few to the SBOE for review. Between 2013 and 2017, the SBOE vetoed the commissioner's selection of applicants on three occasions,

¹⁴ Chapter 1140 (SB 2), Acts of the 83rd Texas Legislature, effective Sept 1, 2013.

The State Governance of Public Charters

Texas has an inelegant state governance structure over public education. The governance of charter schools—and all school districts—in Texas is the responsibility of the commissioner of education, a direct appointee of the governor and the chief executive of the Texas Education Agency. The commissioner is an independent actor.

The State Board of Education is not the governing board of the TEA. That relationship was severed by the Legislature in 1995, part of an evolution toward a more cabinet-like executive branch. The SBOE does however exercise authority over curriculum standards, graduation requirements, textbook adoption and serves as constitutional fiduciary over the Texas Permanent School Fund. They have no direct responsibility for charter schools, other than the ability to veto applications, an occasionally awkward state of affairs.

angering charter advocates.¹⁵ This transfer of power rationalizes the state’s authorizing regime by consolidating authority with responsibility. The commissioner has always been charged with the responsibility for monitoring the performance and compliance of state-authorized public charter schools. Until the adoption of SB 2, this division of powers meant that the SBOE had sole authority over the public charter school gate but no responsibility to monitor the charters it had approved.

The Closure Machine. Fast forward 15 years and many chronically low-performing schools created in 1998 remained in operation, despite efforts.

SB 2 sought to address this by removing the commissioner’s discretion and statutorily *mandating* closure under a “three-strikes” policy. In exchange for a moderate increase in the charter cap, many charter advocates agreed to automatic closure of any public charter school failing to meet state academic or financial accountability standards for three consecutive years.¹⁶ SB 2 also expedited closure proceedings and set a high bar for appeal. Closures are no longer judgment calls by the commissioner, but an automatic process with reduced political pressure. Naturally, charter operators are nervous about a process that leaves little room for contextual considerations and charter proponents report that the new law has had an unintended chilling effect on innovation and outreach to the most challenging student populations. Regardless of the educational mission of a charter management organization (CMO), to invest heavily in a struggling neighborhood where students are academically behind by multiple grade levels is a poor *business decision*. Such an investment would include a multi-year facility lease or real estate acquisition and recruitment of talented staff experienced working with academically fragile populations. From day one, such an effort would be in jeopardy of losing their charter if students could not meet state standards within three years. School districts are not faced with such closures. The risks attached to missing state academic or financial targets are often perceived to be too great. Indeed, since passage of SB 2, the commissioner has increased the rate of charter revocation by a factor of six, accumulating 21 revocations in the past five years (compared to only 15

Table 1. Texas Charter caps and charters authorized, 2017-2019

Effective Date	Charter Cap	Charters Authorized
September 1, 2017	270	175
September 1, 2018	285	TBD
September 1, 2019	305	TBD

Source: Texas Education Agency, Division of Charter Schools

achieved between 1998 and 2012).¹⁷ Some of the revocations since 2013 have been of Generation 3 charters that have underperformed for over a decade.

Guardrails for Growth. SB 2 included reforms aimed at increasing transparency and strengthening independent governance in the public charter school arena. The legislation required public charter schools to post the CEO’s salary, the school’s financial statement, and governing board members on the school’s website and applied the same nepotism prohibitions applicable to school districts. Further, the bill addressed the disposition of property purchased with public funds upon closure of a public charter school. These safeguards, combined with the automated closure process, gave legislators sufficient confidence in the regulatory infrastructure to increase the cap incrementally over six years from the 215 previously permitted to an aggregate 305 in 2019. The Legislature matched this new capacity with a provision intended to attract proven, high-performing operators to Texas. The new provision, in combination with HB 2414, passed during the same legislative session, provided the opportunity for an accelerated application process for charter management organizations (CMOs) entering Texas along with greater flexibility to create governance structures and processes that facilitate replication in Texas while ensuring fidelity to the home organization’s model.¹⁸ Despite these reforms and the accompanying increase in the cap, charter growth has decelerated, even from relatively modest 2001-2012 levels. The commissioner has thus far awarded only 17 charters in the four years following SB 2, resulting in 175 active charters, well below the state mandated cap. The current environment clearly inhibits growth and innovation in a state with a charter waiting list that exceeds 141,000 students.¹⁹

Table 1 reflects the statutory cap for charters over the next three years. The statutory cap is no longer an impediment to charter growth.²⁰

15 Great Hearts Dallas in 2013, Athlos Academy in 2015, and Athlos Denton in 2016 were all vetoed by the SBOE after being recommended to the commissioner by TEA staff. Commissioner Michael Williams granted Great Hearts Dallas through an administrative action despite the SBOE veto: <https://www.texastribune.org/2014/07/02/tea-chief-goes-around-state-board-charter-school-v/>

16 This would include an *Improvement Required* rating in the state accountability system, determined by student test scores, dropout rates, growth and achievement gap ratings across four domains established by TEA or failure to meet an acceptable rating on the Financial Integrity Rating System of Texas (FIRST).

17 TEA provides an updated summary of all charter awards and closures that can be found here: <https://tea.texas.gov/WorkArea/DownloadAsset.aspx?id=2147485098>.

18 HB 2414, 83rd Texas Legislature.

19 Texas Charter Schools Association, 2015-16 member survey.

20 Note that the commissioner could approve 109 charters—Generation 3 style—between now and 2019 and still not reach the statutory cap of 305.

II. The Texas Application and Authorizing Process

Completing today’s Texas open-enrollment application is a monumental task.

More specifically, it is the design, process, and management of the application by TEA that creates an undue burden.

Examples of those burdens are:

Inefficient Application Format

- The application is in PDF format. The size of the document makes it difficult to use and easy for applicants to accidentally skip sections.
- Like most federal grant applications, the application should be online and organized by sections, allowing the applicant to know what sections are completed or incomplete before submitting the final document to TEA.

Additional Time Burdens

- The application must be submitted with certified mail receipts.
- According to the FAQ by TEA, “applicants must send a Statement of Impact and Application Coversheet to the President of the Board of Trustees of each traditional school district and public charter school from which the proposed school intends to draw students and to each member of the Texas Legislature that represents the geographic area to be served by the proposed school and the State Board of Education member that represents the geographic area to be served by the proposed school. See §12.101 and 19 TAC §100.1005.”
- These certified letters cost on average \$7 per letter and depending on the size of the geographical areas the process can be labor intensive and time consuming.
- The application process should allow for documents to be emailed with required receipts.
- It is also recommended that applicants host a webinar available to all the required recipients that TEA requires an applicant to notify.

Requirement of multiple hard copies in addition to electronic

- An applicant is required to submit *one* original copy of the application and *five* hard copies of the application (so in total six hard copies).
- The agency also requires the applicant to scan a hard copy and submit an electronic version before submitting the hard copies.
- This needless and sometimes expensive task can be removed.

Expense of Community Meetings

- Another expense of several hundred dollars is the published community meetings requirement.
- The requirement is the meetings be posted in the local circulated newspaper for each proposed area.
- Free marketing technology by email or social media is not counted as circulation.
- An application is deemed incomplete if it is not posted in a general circulation newspaper serving the geographic boundaries of all school districts impacted by the proposed charter.
- The application process should allow for an online notice requirement in place of the newspaper publication.

Figure II. Open-Enrollment Charters Awarded

Subchapter D. Open-Enrollment Charters Awarded	
Generation	Total Awards
First Generation (1996)	20
Second Generation (1997)	41
Third Generation (1998-99)	109
Fourth Generation (2000)	19
Fifth Generation (2000)	5
Sixth Generation (2000)	16
Seventh Generation (2001)	13
Eighth Generation (2002)	2
Ninth Generation (2003)	6
Tenth Generation (2004)	5
Eleventh Generation (2005)	13
Twelfth Generation (2006)	11
Thirteenth Generation (2007)	13
Fourteenth Generation (2008)	9
Fifteenth Generation (2010)	7
Sixteenth Generation (2011)	8
Seventeenth Generation (2012)	8
Eighteenth Generation (2013)	3
Nineteenth Generation (2014)	5
Twentieth Generation (2015)	5
Twenty-first Generation (2016)	2
Twenty-second Generation (2017)	5
TOTAL	325

Source: Texas Education Agency, Division of Charter School Administration *Summary of Charter Awards and Closures* October 9, 2017

Figure III. Public Charter School Applications by Stage of the Application Process

	Gen 18 2013	Gen 19 2014	Gen 20 2015	Gen 21 2016	Gen 22 2017	Total
Submitted	32	27	32	26	34	151
Deemed Complete	20	17	29	21	27	114
Percent Complete	63%	63%	91%	81%	79%	75%
Sent to SBOE	4	5	6	3	9	27
Approved by SBOE	3	5	5	2	5	20
Percent of Total	9.4%	18.5%	15.6%	7.7%	14.7%	13.2%

Source: Texas Education Agency, Division of Charter Schools

In the past, if an applicant used the wrong ink color to sign, the application was deemed incomplete. There now exists effective and efficient ways of using modern technology to lessen the burden and expense for an applicant. All the extra requirements take time, time not spent on the application, but on technicalities.

When vetting a potential provider of public education services, it's hard to argue with the risk mitigation inherent in the Texas requirements. Indeed, the National Association of Charter School Authorizers recognizes the required information in the Texas application as the standard for charter school authorizers. In that sense, Texas is a best practice state. But 20 years of iterations in the authorizing process have seldom gone in the direction of making it easier on the applicants.

When Tom Torkelson, founder of IDEA Public Schools, applied for a Generation 4 charter in 2000, the substantive program description in his application amounted to around 50 pages. This was toward the end of the state's deregulated era.²¹ Torkelson described the application effort as largely the work of himself and a collaborator at a total cost of "sweat equity." Compare this effort to the current process, which results in applications that exceed 400 pages. Better yet, compare it to IDEA's recent application in Louisiana. In an application process similar to Texas, IDEA spent between \$50,000 and \$60,000 in consultant fees to assure compliance with the requirements. According to Torkelson: "The applications have gotten longer and longer, but I have no idea why anyone thinks that would necessarily lead to higher quality charter schools." Mr. Torkelson remains convinced that IDEA would be approved again in today's environment.²² But despite IDEA's stellar reputation,²³ the

21 Slight digression, but IDEA received an assist from Chris Barbic, founder of YES Prep. Addressing the SBOE before IDEA appeared on the agenda, unprompted, Barbic encouraged the members to take a close look at IDEA and consider the underserved populations in the Rio Grande Valley. Torkelson is convinced that these comments helped win the vote.

22 Tom Torkelson, interview with Amanda List and Adam Jones, March 23, 2018.

23 IDEA currently serves 36,000 students.

odds are not encouraging, especially for a start-up with few resources such as IDEA circa 2000: it has never been more difficult to be granted a charter in Texas than it is today.

The Legislature authored SB 2 with the intent of incentivizing charter growth in an environment of common sense reforms and stringent accountability for poor performers. The combination of a tightly prescriptive application process and the risks posed by the accountability system has slowed charter approval to a trickle. Several historical factors—some intentional and some not—contribute to the current state.

The SBOE Application Process: A Brief History

Between 1995 and 2013, the charter application process followed the same general format. The first step was required attendance at a mandatory information session by the Texas Education Agency (TEA). At this meeting, one governing board member was required to attend for the application to be deemed complete. The mandatory meeting allowed the new charter applicant to understand the application process, the application timeline, and to ask questions. The second step was to complete the application and submit the application on time, then wait to hear if the application is deemed complete by TEA. In the next step, external reviewers evaluate the application to determine justification for proceeding. If approved, a face-to-face interview with the State Board of Education (SBOE) was scheduled. This interview provides the SBOE board members the opportunity to ask detailed questions about the applicant's budget, governance structure, a deep dive into the curriculum, and the alignment to the state standards, Texas Essential Knowledge and Skills, as well as the educational model used to teach Texas students. TEA attended all interviews as the administrative arm of the SBOE. From these interviews, the SBOE Committee on School Initiatives selected the charters that met their standards and submitted this list to the full board for discussion and a vote. However, if a charter was not approved by this committee but had a SBOE member

that would support their application, the applicant could bypass the Committee on School Initiatives and have the SBOE member bring their charter up during the full board meeting. An applicant still had a chance up to the point of the full board vote, if the applicant could get enough support from other members to approve the application.

Another Crucial Mistake: Not Ready for Prime Time in 2011

The charter approval process in Texas gained unwanted national attention when the SBOE awarded a charter to a management group headed by former NFL star Deion Sanders in September of 2011.²⁴ In 2012, Prime Prep Academy opened its doors. It was soon plagued by scandals, lawsuits, federal and state investigations of wrongdoing, and financial mismanagement. TEA closed the school and revoked the charter in early 2015. From the initial interview with Prime Prep until TEA closed the doors, this school was under constant scrutiny.²⁵ A single bad actor—whose charter was revoked relatively quickly by the TEA—brought constant headlines casting charter schools in a poor light by the time the 2013 legislative session convened.

Authorization in the Age of the Commissioner

Early drafts of SB 2 included language to allow an authorizing commission to be appointed to oversee the authorization of charters in Texas. That idea was considered too radical a departure from current policy and never gained ground. Instead, the final language stripped the SBOE of their authorizing authority and gave it to the commissioner. The SBOE could only approve—or veto—the charters the commissioner granted.

Today, the responsibility for charter approval is entirely on the TEA staff, including conducting the face-to-face interviews and asking questions of applicants. SBOE members are still invited to attend the interviews—and some do—but the absolute control of the application is in the hands of the agency. For Generation 23, issued in 2018, the five-phase process looks like this:²⁶

1. **Completion Check:** This is a “non-substantive” technical review to determine whether an application is complete and has been filed on time. The completion check is pass/fail and determines if an application can ad-

vance. There is no appeal. Without an iterative process to allow for error correction, this stage eliminates roughly a quarter of the applications (**Figure III**).²⁷

2. **External Review:** This is an evaluation and appraisal of each application by an external review panel. TEA selects the reviewers by issuing a Request for Qualifications, identifying experts in the field: education, school finance, school operations, charter governance, and key stakeholders in the charter community. The reviewers file their reviews electronically using a standard TEA scoring rubric. Each application receives five reviews, but those reviews are not from the same five reviewers across applications; the reviewers are assigned randomly. An application must receive a minimum cut-off score of 85 percent to proceed.²⁸ This phase eliminates most applicants.
3. **Internal Agency Review:** All applicants that meet the external review cut-off are reviewed by various divisions of the agency to ensure the application meets criteria in all areas evaluated.
4. **Applicant Interviews:** The commissioner, agency staff, and SBOE members review applications, the comments of external and internal reviewers into consideration, and ask questions of the applicants.
5. **Proposal for Authorization:** The commissioner will formally propose charters for authorization. These recommendations are provided to the SBOE, who may exercise veto authority.

Completing the phases is arduous, highly proscriptive, and inflexible. The depth of the task required by Phase 1 can't be understated. These applications are upward of 400 pages, costing applicants thousands of dollars, and an incomplete application results in failure before the process even starts. To ensure the state is capturing all quality applicants, we recommend the agency consider a resubmission window for applicants during this phase.

The external review is problematic because applications are not evaluated by a consistent set of reviewers.²⁹ While it is frequent practice in grant review to permit different reviewers across applications, the practice inserts a random

²⁴ SBOE Approves Charter School for Deion 'Prime Time' Sanders: Former Dallas Cowboys cornerback Deion Sanders' charter school application was among eight approved by the Texas State Board of Education Today. Texas Tribune, September 16, 2011 <https://www.texastribune.org/2011/09/16/texas-approves-charter-school-deion-sanders/>

²⁵ The Spectacular Collapse of Deion Sanders' Prime Prep Academy. Dallas News, February 2016 <https://www.dallasnews.com/news/news/2016/02/02/the-spectacular-collapse-of-prime-prep-academy>

²⁶ This process is governed by Commissioner Rule: 19 Texas Administrative Code 100.1015

²⁷ For 2018, in the current Generation 23, 7 of the 21 applications failed to advance. This process has created a cottage industry for charter application consultants.

²⁸ The 85 percent cutoff score is defined in Commissioner Rule. A new amendment to the process for 2018 allows an applicant an appeal if the application is within five points of the 85 percent cutoff. The application is then reviewed by a 6th reviewer.

²⁹ The agency recently rejected a request for the names and qualifications of the current reviewers, turning the request over to the attorney general for an opinion on the agency's obligation under the Public Information Act.

Figure IV. Examples of Actual Applicant External Review Scores

Applicant	Score 1	Score 2	Score 3	Score 4	Score 5	5 score average	3 score average
Charter X	97	55	96	72	80	80.0	82.7
Charter Y	90	95	61	77	65	77.6	77.3

Source: Texas Education Agency, Division of Charter Schools

element into the consideration of potential LEAs (covered in detail in the next section). In addition, the commissioner binds his or her own hands regarding the external reviewers as any applicant failing the cut score is not eligible for commissioner consideration. There is no holistic review of potential interviewees beyond the single external review score. Even high-stakes government procurements are more flexible than this standard—judging applicants relative to the field, as opposed to setting an arbitrary cut score.

The result is that very few applications are ever considered in the post SB 2 era.³⁰ While it is possible only a handful of applications merit consideration each year, a deeper dive into the applications would find several proven organizations have failed to advance through the process, including several successful CMOs from outside the state.

The Unintended Consequences of External Review

Of the current phases of applicant review, none is more dangerous to an applicant than the external review process. All applicants are reviewed by five external reviewers chosen by TEA. The make-up of the review panel is not consistent across applications. In other words, an applicant could have five sympathetic reviewers, five hard graders or—as the law of averages would dictate—something in between. TEA mitigates against scoring variance by discarding the highest and lowest rankings. That is a statistically specious accom-

³⁰ The number of applicants put forward between 2013 and 2016: Four applicants in 2013, five applicants in 2014, six applicants in 2015 and three applicants in 2016.

modation: it assumes an outlier on both sides of the review spectrum.

Figure IV gives an example from Generation 22 (2017).

These are *actual applicant* external review scores. Charter X above is a well-regarded, out-of-state CMO. Charter Y is also a proven educational entity with a management team that currently operates successful Texas charters. None of the matched scores above came from the same external reviewer.

In both cases, the applicants failed to meet the 85 percent threshold required to advance in the process. But the variance across scores is troubling. The difference between Charter X's high and low scores are an astonishing 42 points on a 100-point scale. That could be explained if reviewers specialized in their areas of expertise. For example, if one reviewer was charged with reviewing curriculum and another finance, then those readers could come to very different conclusions about the quality of an application. However, that's not how external review works: all reviewers work across all criteria.

For Charter X, the good news is that the extreme outlier (55 percent) is eliminated. The bad news is that the strongest score is also eliminated, *even though the high score does not exhibit extreme variance in relation to the other four scores*. Had only the true outlier score been eliminated Charter X

Out of State? Need not apply...

No single category of applicants has been less successful in this post-SB 2 process than out-of-state operators. All three of the charters targeted for SBOE veto have been out-of-state operators. Some of the applicants applying for a Texas open-enrollment charter have been from successful organizations outside of Texas with proven records of student success, applications that SB 2 incentivizes. Nevertheless, some SBOE members believe a model not home-grown in Texas has no place there, despite extensive vetting and the commissioner's seal of approval. There have been no charter school management organizations (CMO) from out-of-state approved since the new authorizing process. The last few generations of charters approved have been home grown with most of the schools serving small numbers of students, as opposed to established CMO applicants applying to serve thousands of students and open multiple campuses across the state.

would have scored 86.25 and met the threshold for external review approval.

The Charter Y applicants swallow an even more bitter pill. There is no clear outlier score to be explained away. The reviewer scores here result in a bi-modal distribution where the average of the two high scores (92.5 percent) and the average of the two low scores (63.5 percent) vary by 29 points on a 100-point scale. It's as if the reviewers were reading completely different applications. For Charter Y, the scores are so arbitrary as to almost be meaningless.

In response to some of these criticisms, the TEA did change one provision of the external review process. If an applicant is within five points of the threshold, then it may appeal the score (this would apply to Charter X in the above example). However, the appeal is not a review by TEA staff and a recommendation to the commissioner. The appeal results instead in a sixth reviewer being appointed, which simply provides another random data point in a process already full of them. The final—and fatal—flaw in the external review process is that the commissioner has no visibility into any of the applications that fail external review. In this case, random experts, randomly assigned, outweigh the discretion and judgment of the state's ranking education official. Note that *external* review happens prior to *internal* review. It is recommended the commissioner consider reversing these two phases, giving his own staff more weight in the consideration process.

Who Does Get Approved?

Although fewer charters have been authorized in the post-SB 2 era, it is instructive to review recent charters that have been awarded in Texas. There is no pattern of what type of charters get approved, but to TEA's credit, all of them submit quality applications and are vetted to the extreme. Looking at the Generation 22 approvals from 2017, there are a few moderately innovative or targeted educational models coming to the fore, although the brief list does make one wonder what ideas have not made the cut in the last five years:

Bridgeway Preparatory Academy will locate in the Carrollton/Farmers Branch area of Dallas and eventually expand to Tarrant county with an initial PreK4 – 2nd grade enrollment of 286 and a maximum PreK3 – 5th grade enrollment of 1,560. Bridgeway plans to use the Universal Design for Learning (UDL) instructional model to provide individualized instructional approaches to all students with an emphasis on students with unique learning needs.

Etoile Academy will open in Harris County/Southwest Houston and eventually grow to two campuses with an

initial grade 5 enrollment of 150 and a maximum 5th – 8th grade enrollment of 1,500. Etoile will focus on a rigorous, college preparatory curriculum focused on first-time college goers and educationally disadvantaged students.

Legacy: The School of Sport Sciences will start with one campus in North Houston and eventually add an additional campus in Southwest Houston with an initial 6th – 10th grade enrollment of 550 and a maximum 6th – 12th grade enrollment of 2,400. Legacy will offer a unique instructional approach that will feature a rigorous curriculum based on all aspects of the worldwide sports industry, athletics, and sports technology.

Valor Public Schools will begin with one campus in the Austin area and eventually operate three campuses in Travis County with an initial K – 9th grade enrollment of 574 and a maximum K – 12th grade enrollment of 4,200. Valor will offer a curriculum that combines classical education with a technology-infused, STEM-based instructional approach.

Yellowstone College Prep will operate one campus in Houston with an initial 5th – 8th grade enrollment of 240 and a maximum 5th – 12th grade enrollment of 1,000. Yellowstone will share facilities with the existing Yellowstone Academy and will offer a rigorous college preparatory education to students living in Houston's historic Third Ward.

III. Analysis and Recommendations

The foregoing overview of the history and current mode of Texas authorizing gives rise to three observations:

- State leadership has permitted risk aversion, parochialism, and agency workload limitations to shape the authorizing process;
- The charter concept has not been reexamined for additional utility since its introduction nearly 25 years ago; and
- There are significant opportunity costs associated with the current state of chartering in Texas and beyond.

The remainder of this paper addresses the missed opportunities that warrant reconsideration of the Texas chartering initiative, the short- and longer-term recommendations that should guide that effort, and, finally, reflections on ways the Texas experience should inform the national charter conversation.

Missed Opportunities

A Failed Bargain

The state's response to the early charter process played out on two fronts. First, as described in the preceding section, the state loaded up the application process with new

hurdles. Second, in 2001, the Legislature imposed a series of new constraints on the charter schools operating at that time. These new requirements, which included prohibitions against nepotistic relationships and conflicts of interest, are relevant to this analysis of authorizing practices because they were sold to charter advocates as the foundation necessary for large-scale charter expansion. By agreeing to a raft of safeguards, charter advocates believed that they were, in the eyes of skeptics, making the world sufficiently safe for more aggressive charter growth. The new statutory framework, they reasoned, would prevent the problems that came with many of the first-wave charter schools. In keeping with this bargain, advocates expected that administrative hurdles erected to prevent entry of poor applicants would be relaxed in recognition of the legal guardrails that would now keep operators on the straight and narrow.

The expectation of charter expansion was not realized. This policy phenomenon played out again in 2013. This time charter advocates bargained that by strengthening the power of the state to revoke poor performers, they would at last set conditions for robust charter expansion. Indeed, this time the terms of the bargain were even more explicit. The same bill that created the “closure machine” described in Section I above raised the cap on available charters to a maximum of 305. Still, however, as outlined above, the state continues to require that applicants submit upward of 400 pages. The failed attempts of advocates to change the authorizing dynamic by agreeing to heavier regulation on the operating environment has resulted in a doubly discouraging landscape for potential charter operators. The Lone Star State now has in place both formidable barriers on the front end *and* challenging operating conditions once authorized.

The implications of this environment for the Texas applicant pool have not been empirically measured. Nevertheless, preliminary conclusions can be drawn both from analogous proven phenomena in other fields and the reported experiences of applicants. One can look to the literature on market dynamics, for instance, for compelling evidence that lean start-up organizations are disproportionately affected by barriers to new markets as well as the regulatory regimes that govern operation once in a market. It’s not a far stretch to surmise that Texas entry barriers and operating burdens have prevented Texas educators with strong track records from magnifying their impact via the charter tool. Even a proven, relatively well-resourced operator can be deterred by the Texas regulatory regime. The Rocketship experience is a case in point. The first Rocketship charter application was tossed out in the first round of review due to low scores assigned by an external review panel. Rocketship leaders applied a second time and, having revamped their appli-

cation to speak more convincingly to a Texas audience, were advanced to the interview phase of the process. At the same time, however, Rocketship was experiencing growing pains and concluded that prudence dictated that they slow the pace of expansion. Texas was one of several states the California-based operator selected as expansion territories. When it became necessary to hit pause on one of these territories, Texas was chosen, reportedly on the reasoning that the tortuous application process was indicative of the state’s inhospitable charter climate. Although there were doubtless many factors that led to the hiatus in Texas, the fact that the operator’s narrative emphasized its experience with the state’s authorizing practices is cause for worry that the story, widely circulated among national charter circles, has prevented other proven charter operators from choosing Texas as their next frontier.

The Chance to Attract Proven Operators

If the Rocketship story has not dissuaded successful operators from including Texas in their expansion plans, the bias displayed by some members of the veto-wielding State Board of Education against entrants from other states and the bifurcation of the application process into “Texas” and “Out-of-State” applicant channels, has. In a state that prides itself on a business climate that frequently lures high-flying enterprises from other states, the antipathy voiced by a segment of the SBOE is perplexing. At least one SBOE member has explicitly stated that he will not vote for a charter school organization not founded in Texas. Often, moreover, even relatively open-minded SBOE members mistreat out-of-state applicants with respect to their provenance and level of familiarity with Texas curriculum standards.

This sentiment is particularly troubling since charter organizations seeking to migrate to Texas from other states bring with them a track record by which to judge the strength of their program. Indeed, the Legislature recognized this advantage when it created the option for a streamlined authorizing path for charter organizations with a record of high performance. Unfortunately, the Texas Education Agency has not implemented this option in a way that either accelerates or eases the process for operators with strong track records. To be clear, staff at TEA do not intentionally add impediments to the application process of out-of-state applicants. Rather, they are merely continuing the well-worn administrative path that has largely served the agency well with respect to risk management. As discussed further below, it is up to the commissioner of education to set a new direction.

If the authorizing process is daunting to Texas-based organizations, out-of-state operators evaluate the consider-

able investment required for submission with even greater trepidation. Again, the question arises, how many top-tier charter school networks have passed over Texas in their expansion plans despite the great need.

The Chance for Bold Action

The vast majority of applicants in the current authorizing process are rejected because scores assigned by the external review team have not met a predetermined cut score. The current process maintains a veneer of objectivity (though range of scores often suggests a more complicated picture), requiring the commissioner to exercise discretion to a minimal extent. Rather than serve as a valuable effort to weed out poor applicants, the current process largely serves as a means of discouraging educational innovation. The harm done to innovation could be avoided with a less burdensome evaluation process. For instance, the order of operations could be reversed, with staff (perhaps with the assistance of a stable panel of highly credentialed experts) conducting the main review and forwarding selected applicants for peer review as a secondary safeguard.

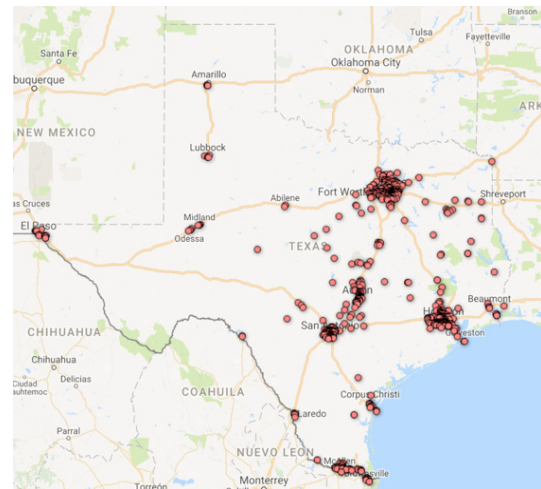
The decision to place the bulk of responsibility for authorizing decisions on a pool of external scorers is a symptom of the more fundamental weakness with the Texas approach to chartering. In sum, this approach has not evolved from the early days of the charter movement and reflects the rather defensive posture of that era. In practice, this means the agency defaults to a formalistic, uniformly applied authorizing process that leaves very little room for discretion. A premium is placed on ensuring that the process is legally and politically defensible rather than on promoting educational opportunity for Texas school children.

It is time to evaluate this approach in relation to its opportunity costs. Would a stronger and more diverse charter portfolio be a more probable outcome if state leadership took an active design role rather than treating calls for charters as a vanilla procurement exercise? Would the educational programs proposed by charter applicants provide greater utility in terms of accelerating the progress of English language learners or generating new talent pipelines if a request for proposal (RFP) focused on such needs in the manner of a grand challenge? These possibilities can only be explored if the commissioner is willing to bear public (and potentially greater legal) responsibility for the award of charters.

Reclaiming the Potential of the Charter Initiative

For all the reasons outlined above, Texas has barely begun to tap the potential of charter schools as a policy lever. Despite enabling legislation that provides the commissioner (and formerly the SBOE) a great deal of flexibility to shape

Figure V. Texas Charter School Geography



Source: TX Charter School Association

the state's charter strategy, it has remained remarkably static. The Legislature permits the commissioner to grant a charter “that meets any financial, governing, educational and operational standards adopted by the commissioner.”³¹ Yet, the annual requests for charter applications have simply been generic calls for proposals that do not correlate to the many pressing educational needs over this period. Moreover, the authorizing system does not reflect two of the statutory purposes identified by the Legislature when it conducted its first comprehensive review of the charter school statute in 2001. In addition to expressing more general intentions to improve student learning, increase choice of learning opportunities, and establish a new form of accountability, the Legislature specifically directs that charter schools “create professional opportunities that will attract new teachers to the public school system” and “encourage different and innovative learning methods.”³² In this section, we explore more fully leveraging the potential of charter authorization as a tool for school improvement.

Targeting Competitions to Statutory Purposes and State Needs

Historically, the state's approach to authorizing has focused on basic capacity to operate a school. The state charter application introduced in 2017 represents an improvement in that it addresses innovation more explicitly than past versions. The commissioner should consider variety not only with respect to “innovative programs” and instructional settings but also factors relating to the mission of charters, as well as commissioner priorities for the state. Targeted needs could include anything from modernizing human capital practices, developing effective strategies for accelerating progress of English language learners, creating innovation

³¹ Texas Education Code, Section 12.101(b).

³² Texas Education Code, Section 12.001.

in blended learning, connecting students to careers through internship opportunities and any other worthwhile initiative. SB 2 offered the opportunity for the commissioner to use charters *strategically* in service of achievement goals—especially in an environment where the agency is no longer dependent on the SBOE and has an opportunity to shape the impact of charters on the larger system.

As an example, the commissioner has an opportunity to use the charter mechanism to address the need for expanded learning opportunities in rural communities. Rural charters are beneficial to students in other states, but barely exist in Texas (one of the most rural states in the nation). In Texas, even charters that would be considered “remote” are located in small cities, not true rural areas (**Figure V**).³³ Under the current charter authorizing framework, the commissioner could put out a call for small, blended learning rural schools acting as a complement to existing rural districts: located in libraries, community centers, museums, or at a community college branch.³⁴ Or a business could host a micro-school like the 15 learning centers of [GPS Education Partners](#), which partners with 35 eastern Wisconsin districts to provide a two-year blended and applied high school program.³⁵ Rural micro-schools could be operated by either a nonprofit network under contract with local districts or a statewide charter network. The point is that the commissioner has an opportunity to cultivate networks of schools built to partner with school districts to fill gaps and bring innovation to Texas that exists in other states.

One current constraint on this strategy relates to limitations on the ability of Texas charter schools to target highest-need students in their enrollment practices. Fortunately, federal law now provides significant flexibility in this regard. Previously, states receiving federal charter school support funds could not permit the use of weighted lotteries favoring disadvantaged students unless explicitly enabled by state law. The federal Every Student Succeeds Act, however, permits the use of weighted lotteries as long as the practice is not prohibited by state law.³⁶ Texas law does not prohibit weighted lotteries.³⁷ The Texas Education Agency, however, has been perplexingly slow to take advantage of this new opportunity, continuing to prohibit charter schools from prioritizing enrollment of low-income students even when doing so would clearly advance the objectives of the charter.

33 The exception is a handful of rural charters in east Texas.

34 Quest in Humble, Texas, is an example of this model: <http://www.gettingsmart.com/2015/01/quest-aa-degree-high-school/>.

35 Access a PDF copy of this case study: www.gettingsmart.com/wp-content/uploads/2016/01/Next-Generation-Career-Pathways-A-Manufacturing-Case-Study-LoRes_Web_FINAL1.pdf

36 20 U.S.C. 7221b(c)(3)(A)

37 See Texas Education Code, Section 12.117(a)(2)

Design and Build an Ecosystem that Generates New Models

For all the reasons outlined above, Texas has not been a hospitable environment for greenfield work (the kind of ground-breaking that generated KIPP, Uplift, IDEA, and others) in many years. State leaders have determined that the risks associated with unproven ideas and operators are simply too great. Consequently, the authorizing process, and the state agency’s disposition toward risk mitigation in selecting among those that make it to its desk, have throttled the pipeline of ambitiously innovative models.

The commissioner could instead design systems for incubating new charter concepts. For example, the commissioner could leverage district chartering authority in a new way by creating, in collaboration with the SBOE, a Special Purpose District (SPD) designed to incubate niche campus charter schools under Subchapter C of Chapter 12, which operate under a school-level charter in contrast to Subchapter D open-enrollment charters that create entirely new LEAs. The board of the SPD would be selected for its authorizing expertise.

The arrangement should be negotiated with the independent school district (ISD) in which the incubated school is located. If the new school is successful, it could be transferred to the ISD for continuation, expanded and replicated within the district and/or replicated statewide under the auspices of either the host ISD or the Special Purpose District (TEC Section 11.167 permits districts to operate campuses outside their geographic boundaries). If the school is unsuccessful, the expert board would quickly close it and ensure that any students are carefully transitioned back to the ISD. It is a simpler matter for a district to close a campus than for the state to close an LEA via the charter revocation process (the new “closure machine” notwithstanding). This approach has the added benefit of providing an alternative to the ongoing proliferation of LEAs (and the attendant state administrative burden) under the state’s current authorization model.

Continue Leveraging District Authorizing Powers

SB 2 and subsequent legislation evince a newfound attention to chartering at the *district level*. It is surprising that this attention has been so long in coming in a state so committed to local control. Unlike many other states, the action in Texas charter authorization has happened at the state level. This is in part because, prior to SB 2, a school district’s authority to grant a charter to an existing campus had been dependent on receipt of a petition from a majority of parents and teachers at a campus. It was only with SB 2 in 2013 that a district could convert a campus to charter status on its own volition. In 2017, the Legislature doubled down on the local chartering option by permitting districts to reap

the benefits of a quirk in the state's charter school funding system. Since 2001, state-authorized charter schools have been funded based on the statewide average of all per student district funding. As large CMOs have developed, they have reaped the benefit of this averaging procedure. KIPP Houston, for instance, earns more per student than Houston ISD.

SB 1882³⁸ leverages this anomaly to stimulate partnerships between charter schools and districts by permitting districts that partner with charters to opt into the more advantageous charter funding formula for campuses within the partnership. The impact is significant. A campus in Houston ISD operating under an SB 1882 partnership would, in some cases, generate over \$1,700 more per student than other campuses in the district. SB 1882 further incentivizes partnerships by exempting chronically low-performing campuses from state accountability consequences (which can include campus closure or even district takeover) for up to two years if they enter into a partnership with a charter school operator. Not surprisingly, school districts all over the state are stepping up to harness this opportunity. The impact is not yet ripe for evaluation. However, it is a path to charter growth through district authorization at a time when growth is relatively depressed at the state authorizer level. For that, Texas should be commended.

Most recently, Texas broke new ground by seeking federal approval to use a portion of the 7 percent of Title 1 funds it sets aside for school improvement for the creation of new schools, including charter schools, dedicated to serving students previously enrolled at low-performing schools. Historically, federal school improvement funds could only be used for efforts to turnaround existing schools, typically with disappointing results. On March 26, 2018, U.S. Secretary of Education Betsy DeVos announced approval of the Texas plan. This announcement opens the door for the state to use approximately \$40,000,000 in the upcoming Title funding cycle for competitive grants supporting new school creation.

Still, however, there are opportunities to use district authorizing powers to greater effect. Historically, the state has played no role in encouraging and supporting district authorizing beyond extending eligibility for federal charter school start-up funds to district-authorized charters, as required by federal law. To his credit, the current commissioner has breathed new life into the local chartering provisions of the state Education Code. Unfortunately, though, administration of funding opportunities and technical assistance for state and local charter innovation remains

fragmented. It is time for state leaders to integrate policy planning with respect to state-authorized charter schools, district-authorized charter schools, and traditional school district structures. It is time for the state to articulate and execute its mission with a holistic view of a unitary state public education system.

Shift to Holistic Policy Making

Texas charter schools began their life envisioned as spurs to district improvement. Many philanthropists and policymakers continue to place their bets on the tipping point theory of reform, *i.e.*, that a critical mass of high-performing state-authorized charter schools in a given geography will create conditions that force district improvement. This possibility has been diluted by the many average to low-performing charter schools that have persisted in the state. Further, this theory of change can only drive improvement so far. At some point, it must be recognized that the alarming gap between the knowledge and skills required for economic opportunity and post-secondary attainment in the state will not be answered by incremental improvement in the system of locally governed school districts that will, and should, continue as the foundation of the state's public education system. It is time to retool the system.

The current commissioner of education has begun that process. The following are suggestions for accelerating its progress:

- **Articulate and broadly disseminate a coherent theory of state action.** State leaders have recently doubled down on governance innovation as a key driver of student outcome gains, recognizing that only new structures and system linkages can move public education beyond incremental improvement.³⁹ History has made it clear that improvements in educational practice neither scale nor sustain unless they are embedded in structures designed to nourish and grow them. The commissioner's System of Great Schools, Transformation Zone and State/District Charter School Replication Grant along with the SB 1882 implementation policies provide the infrastructure for rapidly and continuously improving instructional practices. Unless one is an avid consumer of the literature on school system governance, however, the relationship between the novel governance features of these initiatives and the commissioner's equally bold efforts to improve teaching and learning at the classroom level is not evident. State

³⁹ State policymakers have long dabbled in governance innovations. Examples include the following: special purpose districts; site-based, decision-making mandates; home-rule, campus, and open-enrollment charter school legislation; juvenile justice alternative education programs; and jointly-governed early college high schools.

³⁸ Ch. 953 (S.B. 1882), Acts of the 85th Texas Legislature, effective June 15, 2017.

agency staff require that school improvement plans and grant applications articulate logic models. The commissioner should be held to the same standard.

- **Reduce friction between school districts and state-authorized charter schools.** Again, state leaders have made progress here. SB 1882, along with the initiatives referenced above, have incentivized charter-district partnerships. There remain, however, some key old-school strategies for reducing friction that the state has for too long ignored. One of the highest-leverage steps the commissioner could take in this regard is to finally and definitively put an end to the “push-out” practices of a few bad actors in the charter world. “Push-out” means counseling students out of the school. A simple analysis of withdrawal trends, focusing on statistically unexpected spikes before state testing dates, accompanied by appropriate enforcement actions would go a long way toward addressing this problem—one of the biggest sources of school district frustration with charter schools.
- **Adjust state leadership capacity.** Many of the recommendations highlighted in this paper require a different staffing plan for the parts of the state education agency engaged in governance innovation. At a minimum, the charter school office will need to shift capacity to make good on the strategies recommended. Further, state leaders must more deeply engage regional education service center staff, practitioner associations, educator and leadership preparation providers, and policymakers at all levels if the commissioner’s exciting plans for the future are to take hold.

Summary of Recommendations

The Texas system boasts many strengths. The state charter statute provides room for charter growth, further encouraged by a newly revised and bolder district/charter partnership law. The Legislature has provided a straightforward path to authorization at the state level and broad authority for the commissioner of education to use charter authorization as a lever for improving system performance. Still, there is more room for innovation in the sector than the state takes advantage of. The TEA has the statutory authority to address poor performers and bad actors. If anything, the accountability standards for charter schools are too stringent and inflexible. Regardless, it is increasingly difficult to hide if you are an underperforming charter school. The state application process is thorough and mature, although with some underlying flaws that we believe inhibit charter growth. We would respectfully submit the following:

Short-Term Administrative Improvements

Generally, the current authorizing process does not take advantage of SB 2’s shift to commissioner approval. Previously, the agency’s primary opportunity to ensure quality was to rigidly control the application process since approval authority lay with the SBOE. Now that approval authority lies with the commissioner, the agency should pursue a different approach.

- **Offer flexibility in providing completion check.** The commissioner should provide applicants an opportunity to “cure” omissions within a tight timeframe after completion review. Currently, the national charter field sees the Texas application process as high-risk in part because a clerical oversight could result in exclusion from the process (and thus a year delay in approval). Prior to SB 2, the completeness check was one of the most potent tools for the agency to control the quality of applications that went to the SBOE. Now that the approval power lies with the commissioner, there is not the need for such a mechanistic review process. A “correction” period after review could be sufficiently short so as (1) not to delay the application review process and (2) to exclude applicants that don’t have the expertise and motivation to supply the missing or incorrect material quickly.
- **Revisit current external review panel process.** The commissioner should not defer entirely to external scores with respect to applications that go to him for consideration. In the short term, the process should rely less on the external score such that it is not a controlling factor in determining which applications he considers. In addition, the randomly assigned reviewers build an arbitrary and sometimes statistically indefensible anomaly into an otherwise straightforward process. External review should be conducted by a consistent panel that remains intact across all applications.
- **Provide a flexible school opening date.** Now that the cap has been raised, there is less reason to require that charter holders open within one year. In fact, the state should eagerly accommodate charter holders that prefer to plan carefully with an 18- to 24-month ramp up period. Like other recommendations, this flexibility would lower the risk considerations of organizations that would like to operate schools in Texas.
- **Enable staged submission of charter applications.** Currently, applicants must submit hundreds of pages of materials in one high-stakes, annual event. Instead, the state authorizing office could both facilitate more strategic proposals and ease the application burden by

permitting applicants to first submit the core components of their educational plans (i.e., analysis of state or regional need to be addressed, governance and administrative structures, instructional plan and talent plan) for expert review (either internal or contracted). If the proposal promises sufficient value to the state's educational system, the applicant would then be asked to complete a more comprehensive proposal. If the proposal does not meet this standard, applicants would be asked to go back to the drawing board.

- **Provide a streamlined process for proven performers.** SB 2, adopted in 2013, enabled the commissioner to provide an alternative streamlined process for school operators with robust performance records. The state should take advantage of this opportunity to attract proven charter networks to the state.
- **Shift to an online application with a fatal edit feature.** Currently applicants must submit six hard copies of an application and have no prior notice that an application is incomplete; rather, they are notified concurrently with their rejection.

Statutory Changes

- **Remove the State Board of Education veto policy over charter applications.** The SBOE veto has become an additional restraining influence in a system already bound by restraints that the statute does not necessarily contemplate. The veto authority has had a specifically deleterious effect on the opportunities for high-performing out-of-state charters. On balance, the SBOE veto does not lead to better outcomes in charter authorization and increases the risk for any charter organization to try to operate in Texas. However, such a change in statute should not be considered in isolation. *We would not recommend removing the SBOE veto authority in the absence of the numerous administrative changes noted above.* The Legislature must have full faith in the executive branch's approach—and statutory interpretation—of the charter authorizing statute to maintain a proper separation of powers between the two branches.
- **Amend the “three strikes” accountability requirement.** Although this provision greatly helped to eliminate poor performers in Texas, the most difficult to educate populations sometimes require more than a three-year window to improve, especially if a school

builds by cohort. *The Legislature should consider an initial start-up year, free from accountability consequences, for charter schools.* There is precedent for this in the Texas statute.

Charter Authorization as a Policy Lever

- **Target competitions to statutory purposes and state needs.** Apply design thinking to fundamentally revamp and differentiate authorizing processes. Take advantage of ESSA flexibility regarding weighted lotteries.
- **Cultivate new models.** Use incubation techniques to spark greenfield work while minimizing risk.
- **Build on current charter-district partnership initiatives.** Cultivate networks of schools built to partner with school districts in filling gaps and attract innovators to Texas from other states.
- **Shift to holistic policy making.** Articulate and set the policy conditions for a public education delivery system that is both differentiated and integrated.

Conclusion

Texas leaders could advance their policy goals much more effectively via the charter authorizing process. Principles of design thinking should be brought to bear in developing differentiated processes customized to explicitly articulated educational goals. This is not to say that there should not be a place for more organically determined models. Without a doubt there are highly promising concepts that will be generated by open calls and this practice should continue. The point is leaders leave opportunities on the table by limiting the authorizing process to generic calls only, when they could be stimulating breakthroughs to critical educational challenges by offering specific calls for specific purposes. Just as state leaders should apply design principles to the authorizing process, they should also rethink the principles on which the state articulates and organizes its oversight and planning functions with respect to charter schools and other governance innovations.

Texas once led the nation as a state applying powerful policy levers to advance each student's achievement and thereby expand opportunities for all. Not since they pioneered the use of disaggregated achievement data have state leaders been so bold. Each of the authors of this paper is the beneficiary of the Texas public education system. We offer these recommendations with the conviction that Texas policy innovations will once again set the pace for the nation. ★

About the Authors

ADAM JONES served from 2003-2012 as the deputy commissioner of finance and administration and the chief operating officer of the Texas Education Agency. He left state service to build and run the state government and Austin advisory practice for Weaver, LLP, the largest independent CPA firm in Texas and the Southwest. Currently an independent management consultant, he has an extensive background in education policy in Texas serving clients including the National Math and Science Initiative, Texans for Education Reform, Rice University, the Flippen Group, Data Recognition Corporation, and the education and charter school consulting firm Safal Partners. Jones is a former director of the Texas Senate Education Committee. In 2014, the Texas Public Finance Commission appointed Jones as a director of the Texas Charter School Finance Corporation.

AMANDA LIST served as the first director of advocacy for the Texas Charter Schools Association from 2008-2015, where she advocated for charter school policy in Texas and Washington, D.C. She founded the association's grassroots network and has been a champion of the regulatory and legislative reforms necessary to help charter schools flourish. She has served as liaison to a myriad of statewide advocacy coalitions and the Texas State Board of Education (SBOE). Through nine years of Texas Education Agency/SBOE-conducted charter interview observations, she has developed a strong understanding of the interview process and the charter climate in Texas. List has assisted many charter development clients prepare for submission of their charter applications and their SBOE/TEA interviews. She now practices as an independent consultant, allowing her to continue to assist public charter schools and help advocate for education reform.

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