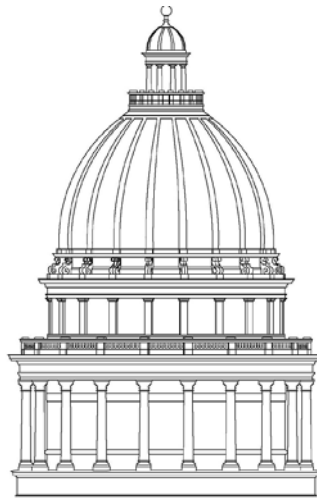


REPORT TO THE
UTAH LEGISLATURE

Number 2021-09



**A Performance Audit of Utah's
Charter School Governance Structure**

June 2021

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah



STATE OF UTAH

Office of the Legislative Auditor General

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KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

June 15, 2021

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Utah's Charter School Governance Structure** (Report #2021-09). An audit summary is found at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "Kade minchey".

Kade R. Minchey, CIA, CFE
Auditor General



PERFORMANCE AUDIT

▶ AUDIT REQUEST

This is the third of six public education audits our office will be releasing.

This audit report addresses the state-level governance structure for charter schools, the practices of charter school authorizers, and the accountability practices for local charter school governing boards.

▶ BACKGROUND

In its August 2019 meeting, the Legislative Audit Subcommittee prioritized a "... comprehensive audit of the performance outcomes of the public education system."

Because of the essential nature of governance, this audit, combined with our audits released in December 2020 and April 2021, serves as a foundation for additional audits to follow in 2021 and 2022.

Future audits will be conducted in the following areas:

- Teacher retention
- Student performance
- Administrative overhead in traditional and charter schools

Charter School Governance



KEY FINDINGS

- ✓ The governance of charter schools is unclear due to two state-level boards and one public education system.
- ✓ The governance structure of charter schools is a policy decision for the Legislature to consider.
- ✓ Utah is the only state in the nation that does not require charter schools to renew agreements.
- ✓ Required training for local governing boards could improve charter school accountability.



RECOMMENDATIONS

To improve charter school accountability the Legislature should

- ✓ Consider the policy options contained in Chapter III for deliberations on the state-level governance structure for charter schools.
- ✓ Consider adding a section to Utah Code that requires charter school authorizers to produce an annual report on the performance of the schools they authorize.
- ✓ Consider adding a formal renewal requirement to state statute for charter schools to renew agreements with their authorizers.
- ✓ Consider requiring local charter governing boards to be trained annually, and setting standards for membership on local governing boards.

The USBE and SCSB should

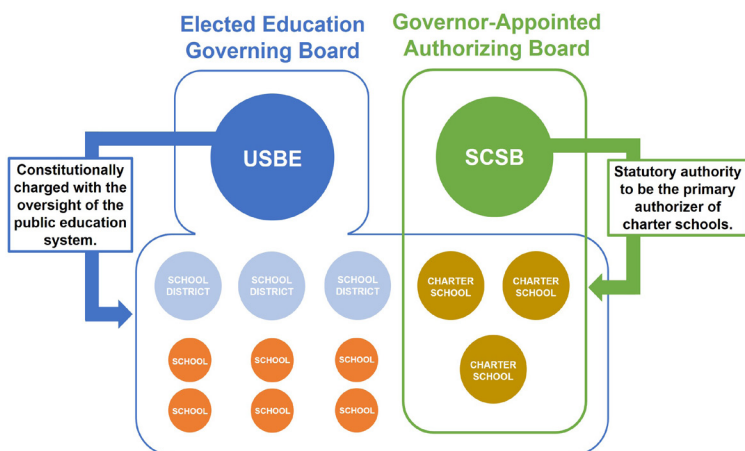
- ✓ Finalize a Memorandum of Understanding (MOU) between the two state-level boards for internal clarification between the two staffs.



REPORT SUMMARY

Charter School Oversight is Unclear Due to Two State Boards and One Public Education System

The Utah State Board of Education (USBE) is an elected, fifteen-member board that is constitutionally charged with overseeing public education. The State Charter School Board (SCSB) is a seven-member, Governor-appointed board that was created in 2004 to be the primary authorizer of most of the state’s charter schools.



Unclear boundaries between USBE and SCSB have resulted in confusion over accountability lines, responsibilities for staff, and for education stakeholders.

A Formal Charter Renewal Policy Should be Considered in Utah Law

Utah is unique nationally because it is the only state where the charter school system does not have a charter renewal process specified in state law.

A charter contract is permanently in effect when approved by one of the state’s three authorizers. These are referred to as “evergreen” charters. Because of evergreen charters, authorizers have little influence in whether charter agreements are being met.

A Lack of Local Board Standards Can Contribute to Weak Charter Accountability

There are no standards established for charter governing boards. As a result, charter boards are all different in their size, expertise, time of service, and frequency of meetings.

Utah charter schools’ governing boards have limited training requirements related to their specific job duties.

Both of these lacking requirements may lead to risks of limited accountability provided by local charter boards.

Charter School State-Level Governance Structure Is a Policy Decision for the Legislature

This report contains three options for policymakers’ consideration, all of which could improve charter school accountability. The options discussed are:

- *Designate the SCSB as a hybrid local education agency (LEA) in statute*
- *Establish the SCSB as an independent government entity without ties to USBE*
- *Define the SCSB as a state agency within USBE’s supervision*

REPORT TO THE UTAH LEGISLATURE

Report No. 2021-09

A Performance Audit of Utah's Charter School Governance Structure

June 2021

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Chapter I

Introduction

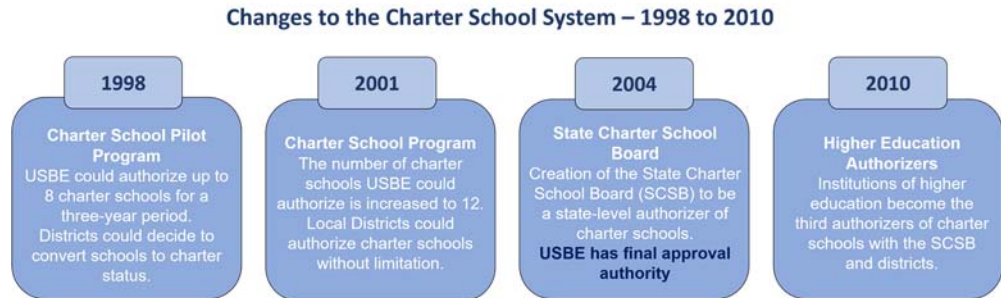
The governance and accountability structure of charter schools¹ was heavily debated as the Utah Legislature was considering the creation of a charter school program. Proposed governance originally seemed to favor local school districts to be the primary authorizer of charter schools during the initial pilot program; however, charter school authorization was relegated to the Utah State Board of Education (USB E). Six years later, the Legislature created a State Charter School Board (SCSB) to be a state-level authorizer of charter schools after the pilot program was created. All charter agreements were transferred from USB E to SCSB after its creation. In 2010, higher education insitutions became the third type of authorizer for charter schools.

Utah's charter school system is unique compared to nationwide authorizing practices. For example, school districts are the most common authorizers of charter schools in the United States, whereas the SCSB is by far the largest authorizer in Utah. However, we found that some nearby states also utilize a state-level authorizing board as their largest, primary authorizer. The governance structure for Utah charter schools has changed many times in the years since its inception as a pilot program in 1998. Figure 1.1 shows some of the major governance changes to Utah's charter school system.

Utah's charter school system is unique compared to nationwide practices.

¹ Charter schools are public schools within the Utah public education system. They have a statutory purpose that includes continuing to improve student learning, encouraging the use of different and innovative teaching methods, and increasing choice of learning opportunities for students.

Figure 1.1 Charter School System Changes. USBE was the sole authorizer of new charter schools during the pilot program in 1998. Local districts could convert schools to charter status during the pilot program and could authorize new charter schools as of 2001.



Source: Auditor generated

The Accountability of Charter Schools Was a Concern From the Program’s Inception

The creation of a charter school program in Utah was debated in both a 1997 legislative task force and in the subsequent 1998 Legislative General Session. One of policymakers’ primary concerns was establishing an appropriate system of accountability for the charter school program. Following recommendations from the charter school task force, the Legislature created a charter school pilot program.

The Legislature Created a Charter School Task Force in 1997

The Legislature created the Centennial Charter Schools Task Force (task force) in 1997 to study the possibility of a charter school program in Utah after six nearby states had, or were in the process of, authorizing their own charter school programs.² The task force was made up of legislators, state and local school administrators, teachers, parents, and business interests.

The task force debated the governance structure necessary for charter schools in Utah. One of the primary topics studied by the group was charter school accountability. Some of the pertinent questions raised about the potential charter school system included:

- Who should authorize charter schools?

² This included Colorado and New Mexico (1993), Arizona (1994), Wyoming (1995), Nevada (1997), and Idaho (1998).

The Legislature created a task force in 1997 to study the possibility of a charter school program.

The 1997 task force debated and studied the potential governance structure and accountability for charter schools.

- How many schools should be authorized and for how long?
- To whom would charter schools be accountable?
- What governance standards should be required?

One of the key areas considered by the task force was which body would be the authorizer of charter schools in Utah. An authorizer is an entity that approves a charter, or contract, with a school. Authorizers hold the school accountable to the terms of the contract and are responsible for the portfolio of schools for which it holds charter agreements.

Three governance models with potential authorizers were introduced at the task force for consideration. The models outlined possible structures for charters and to what authorizer they might be held accountable. Figure 1.2 summarizes the specific accountability measures of each proposed option.

Figure 1.2 Three Governance Options Were Introduced at the 1997 Charter Task Force. Each model provided for a different level of oversight from the authorizers.

USBE AUTHORIZER OPTION	<ul style="list-style-type: none"> • USBE would be the sole authorizer of charter schools. • Funding would flow directly from USBE to charter schools. • Authority would be granted to charters from the state. • USBE would not provide direct oversight, but schools would report to USBE.
USBE & LOCAL DISTRICT AUTHORIZER OPTION	<ul style="list-style-type: none"> • USBE and local districts could authorize charter schools. • Funding would flow directly from USBE to charter schools. • The authorizers would be required to provide direct oversight for accountability.
LOCAL DISTRICT AUTHORIZER OPTION	<ul style="list-style-type: none"> • Local districts would be the sole authorizers of charter schools. • Funding would flow from to the school district to the charter school. • Local school boards would determine the amount of authority to allow the charter school.

Source: Auditor generated

As Figure 1.2 shows, local school districts were originally considered to be a primary authorizer of charter schools in two of the three options. Some argued for this system because districts had experience with daily school operations and the expertise to hold charter schools accountable. There were others who advocated for a separate entity to authorize charter schools because school districts may place unagreeable requirements on charter schools. The task force eventually recommended the creation of a pilot program that would allow a

One of the key areas considered by the task force was which body would be the authorizers of charter schools in Utah.

limited number of charter schools for a three-year period. However, the task force did not reach an agreement on what entity would be the authorizer of charter schools.

The Charter School Pilot Program Began in 1998

House Bill (H.B.) 145 was introduced in the 1998 Legislative General Session to create a charter school pilot program. Similar to the prior task force, opinions about the governance and accountability structures of charter schools were divided among legislators. For example, debate about the bill in the House Education Committee resulted in a close vote in favor of the bill.³ Debate continued during the session as some legislators felt charter schools would provide school choice and allow charter schools greater flexibility in the delivery of innovative education methods to students. Others felt charter schools would lack accountability if they did not answer to a local school board.

Eventually the Legislature approved a three-year pilot program for charter schools. The final bill allowed eight schools to be authorized by USBE and allowed local school districts to convert schools to charter status if they desired. By 2000, the allowable eight charter schools were eventually approved in the pilot program. The original sponsor of the pilot program stated that the legislative preference was for local school districts to be the authorizing entity.

School Districts Were Intended to Be the Primary Authorizers of Charter Schools

Laws governing the charter schools pilot program allowed both USBE and local school districts to authorize charter schools. In 2001, the creation of a permanent charter program limited the amount of charter schools USBE could authorize. However, local school districts were permitted to create charter schools without limitations. Yet, in the following years, very few charter schools were established by local districts. This prompted the Legislature to create the State Charter

³ The committee recorded five “yes” votes and four “no” votes; three members were absent from voting.

H.B. 145 was introduced in the 1998 Legislative General Session to create a three-year charter school pilot program.

The Legislature allowed eight schools to be authorized by USBE during the pilot program.

School Board in 2004 to be the primary authorizer of charter schools. Higher education institutions became the third authorizer in 2010.

Early Charter Laws Did Not Limit the Number Of Charter Schools a Local District Could Authorize

After the three-year pilot program, the Legislature passed Senate Bill (S.B.) 169 in 2001 to establish a permanent charter school program. The new law expanded the total number of charter schools USBE could authorize from a systemwide total of eight to twelve in the 2001-02 school year. USBE could increase up to four new schools in the 2002-03 school year. No further increases were to be approved until the charter program could be evaluated by USBE and recommendations could be made to the Legislature.

A key element of S.B. 169 was that it allowed local school districts to authorize or convert charter schools without limit. Charter schools authorized by local school districts would not count toward the twelve that could be approved by the USBE. A year later, the Legislature passed S.B. 138 to increase the number of charter schools that USBE could authorize up to 16 per year. This bill maintained the same provision as the previous one that local school districts could authorize or convert charter schools without limit. Even so, it appears local school districts were not supportive of authorizing charter schools as very few charter schools were approved, and some districts denied approval. For example, in 2001 three potential charter schools were denied approval by local school districts.⁴ The schools appealed to the USBE and were later approved.

The Legislature Established the State Charter School Board to Authorize Charter Schools

In 2004 the Legislature passed H.B. 152 creating the State Charter School Board (SCSB). The SCSB is a seven-member board appointed by the Governor. The powers granted to the SCSB in the original legislation included "...authoriz[ing] and promot[ing] the establishment of charter schools, subject to approval of the State Board of Education; and to hold charter schools accountable for their performance." Additionally, the law required that all charter

⁴ Alpine School District denied two charter schools; the Cache School District denied one charter school.

After the three-year pilot program, the Legislature passed S.B. 169 to establish a permanent charter school program.

S.B. 169 allowed local school districts to authorize or convert charter schools without limit. Even so, it appears local school districts were not supportive of authorizing charter schools.

In 2004 the Legislature created the State Charter School Board (SCSB) to authorize and promote the establishment of charter schools in Utah.

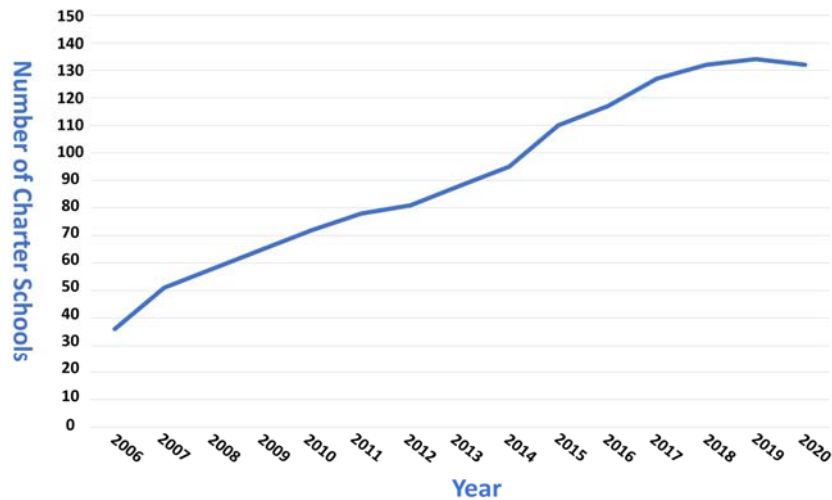
agreements approved by USBE in previous years be transferred to the SCSB.

The creation of the SCSB significantly changed the charter school program by allowing potential charter schools to apply to a state-level board with specific authorization duties. However, the statute stipulated that USBE had final approval authority of charter school applications. As such, the USBE had the power to approve or deny an application that the SCSB favorably approved.

In addition, the influence of the SCSB greatly increased in 2005 when the Legislature removed the limit on the number of charter schools that could be authorized by the board. As a result, new charter school applicants that sought approval and were authorized by the SCSB increased substantially. This led to a significant increase to the number of charter schools in subsequent years. Figure 1.3 details the growth of charter schools from 2006 to 2020.

In 2005 the Legislature removed the limit on the number of charter schools that could be authorized by the SCSB. This led to a significant increase in the number of charter schools.

Figure 1.3 Charter Schools Increased Significantly Since the Introduction of the SCSB. The most pronounced growth in charter schools occurred from 2006 to 2007 and from 2014 to 2017.



Utah Authorizer	Number of Schools (2020)	Total Charter School Student Enrollment (2020-21)
The State Charter School Board (SCSB)	123	76,026
Local School Districts	10	2,818
Higher Education Institutions	2	223
TOTAL	135	79,067

Source: SCSB Annual Reports (2006-2020) and USBE enrollment data

As displayed by Figure 1.3, the establishment of the SCSB greatly increased charter school numbers over the years. In 2006 the SCSB reports that there were 36 operating charter schools. According to the SCSB's 2021 Annual Report, there are now 135 operating charter schools in Utah. The SCSB is the authorizer of 123 of these charter schools, or 91 percent. As a comparison, in 2021 there are six local school district authorizers that have ten charter schools and two charter schools authorized by two higher education institutions.

Institutions of Higher Education Became An Authorizer of Charter Schools in 2010

Higher education institutions became the third authorizer of charter schools along with local districts and the SCSB with the passage of S.B. 55 in the 2010 General Session. Under this bill, a board of trustees could authorize a charter school subject to final approval of USBE.

The intent of the bill was to provide more influence to higher education institutions in charter schools approvals. A few different charter schools were housed on university and college campuses but were authorized by a different entity. As such, the bill was meant to provide an association between K-12 and higher education. As of 2021, only two charter schools have been authorized by higher education institutions. There are some charter schools that maintain partnerships with universities with a local school district authorizer. However, this is a rare situation, and these schools were often approved before higher education institutions were given the authorizer authority. More detail on these agreements is found in Chapter IV.

Governance Practices of Utah Charter Schools are Unique Compared with Those of Charter School Practices Nationally

Utah charter school laws and practices have been modified several times since the charter school program's inception. Recent legislative changes have established a probation period for new schools and required charter school authorizers to create criteria for approving charter school applications.

There were 36 operating charter schools in 2006. That number has increased to 135 in 2021, with 123 authorized by the SCSB.

Higher education institutions became a charter school authorizer with the passage of S.B. 55 in the 2010 Legislative General Session.

As of 2021, only two charter schools have been authorized by higher education institutions.

We found that charter school governance practices vary across the United States. For example, Utah utilizes a state-level authorizing board as the primary authorizer, while nationwide most charter schools are authorized by local school districts.

Utah’s Charter School Governance Law Has Been Modified Several Times in Recent Years

The laws, rules, and practices in Utah have changed as charter schools have become more prevalent in the public education system. Along with the introduction of the SCSB discussed previously, the laws that govern all charter school authorizers in the state have been modified in more recent years.

For example, the 2005 removal of the cap on the number of charter schools the SCSB could authorize greatly increased new charter start-ups in the years that followed. In 2014 the Legislature required all authorizers (SCSB, districts, and higher education institutions) to produce criteria for evaluating charter school applications. Prior to this change, state law did not require authorizers to utilize determined criteria for assessing the quality of charter school applicants.

In 2018 the Legislature passed H.B. 313 – Public School Revisions. The bill made two notable changes related to charter school governance and policy. First, it required all authorizers to report the process they utilize for charter applications and approvals to USBE. Part of this required USBE to create *Administrative Rule* to govern authorization processes. Second, the bill removed the final approval authority of USBE to approve or deny SCSB recommended charter schools. As a result, USBE can review the process the SCSB used to approve a charter school application, but it does not have authority to approve or deny the school.

Most recently, H.B. 242 passed in the 2020 Legislative General Session. This bill was the result of a USBE task force that reviewed charter school governance. One of the key provisions of this bill is that all new charter schools would now have a probationary period for the initial three years of operation. A review would be conducted on the viability of the school after the three-year timeframe. However, this probation period only applies to charter schools authorized after May 2020. All previously operating charter schools were not placed under a

The laws, rules, and practices in Utah have changed as charter schools became more prolific in the public education system.

In 2014 and 2018 the Legislature required charter school authorizers to produce criteria and processes for evaluating new charter school applicants.

three-year review process. A summary of the major policy changes to the Utah charter school system is found in Figure 1.4.

Figure 1.4 Summary of Major Policy and Practice Changes to Charter Schools since 2005. The gray boxes highlight some of the major modifications to charter school governance practices.

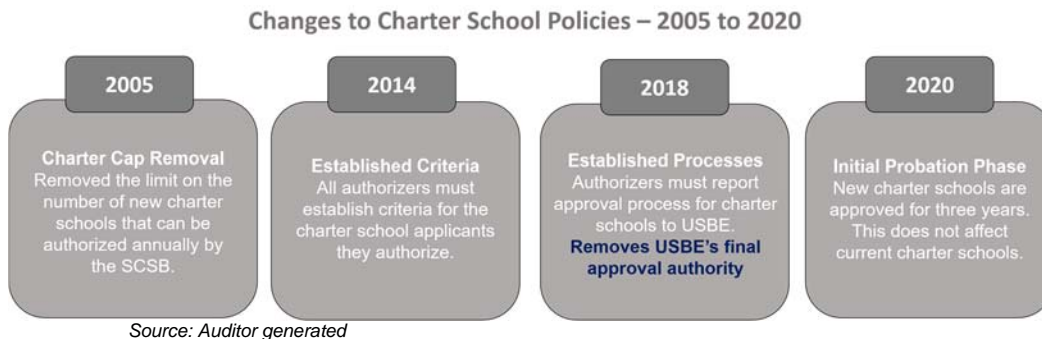


Figure 1.4 shows that some of the changes to authorizer practices have occurred in recent years. Specifically, changes in both 2014 and 2018 required authorizers to create criteria it wished to use as well as the process followed when approving charter schools.

Local School Districts Are the Most Common Authorizer of Charter Schools in the United States

Utah is one of only a few states that utilize a state-level, independent charter board to authorize most of its charter schools. Some nearby states such as Arizona, Nevada, and Idaho also have state-level authorizing boards that oversee most of their charter schools. However, local school districts are the most prolific authorizers of charter schools nationwide. Nearly half (49 percent) of all charter school enrollment in the United States is authorized by local school districts. Other authorizers include the state education agency, higher education, and nonprofit organizations. Figure 1.5 displays the percentage of national charter school student enrollment according to each authorizer.

Utah is one of only a few states that utilize a state-level charter board to authorize most of its charter schools. Nearly half of all charter school enrollment in the United States is authorized by local school districts.

Figure 1.5 National Charter Enrollment by Authorizer Type. Local school districts authorize close to 50 percent of all charter school enrollment in the United States. Utah local districts account for about 4 percent of charter school enrollment in the state.

Type of Authorizer	Number of Authorizers (2020)	Percentage of Charter Student Enrollment
National Authorizers by Type and Charter Enrollment		
Local Education Agency (districts)	863	49%
State Education Agency (ex: USBE)	21	22%
Independent Charter Board (ex: SCSB)	18	15%
Higher Education Institutions	44	10%
Non-Education Government Entity	2	1%
Nonprofit Organization	15	3%
Utah Authorizers by Charter Enrollment		
Utah’s Independent Charter Board – the SCSB	1	~96%
Utah Local District Authorizers	6	~4%
Utah Higher District Authorizers	2	0.3%

Source: National Alliance for Public Charter Schools and USBE enrollment data.

State charter boards, such as the SCSB, authorize about 15 percent of charter school enrollment nationwide. However, the SCSB authorizes about 96 percent of charter school enrollment in Utah.

Independent state charter boards, such as the SCSB, authorize about 15 percent of enrollment in charter schools nationwide. However, the SCSB authorizes about 96 percent of charter school enrollment in Utah. It should be noted that many states allow more than one type of authorizer by law but may have a large primary authorizer of charter schools.

Regardless of the type of authorizer, other states and national charter organizations, such as the National Association of Charter School Authorizers (NACSA), report that the accountability of schools provided by the authorizing entity is instrumental in the success of the charter school movement.

This Report Is the Third in a Series of Public Education Governance Audit Reports

In its August 2019 meeting, the Legislative Audit Subcommittee prioritized a “...comprehensive audit of the performance outcomes of the public education system.” Although governance issues were not specifically mentioned in the audit request letter, establishing the soundness of the overall governance of public education is essential to answering the remainder of the questions. We could not have fully

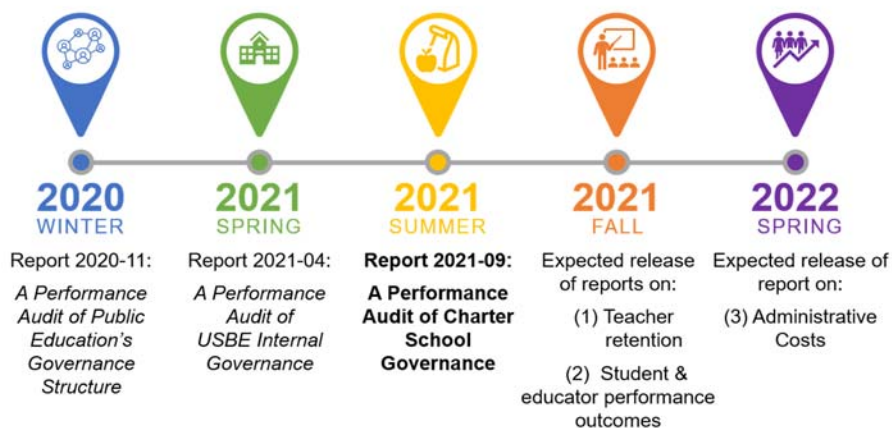
responded to the other issues without examining governance. This is the third report in the public education governance series and covers charter school governance. Areas specifically requested by Legislative leadership will follow these foundational governance audits.

This report discusses the governance model for charter schools in Utah and makes recommendations to clarify roles and improve accountability. Charter school funding and administrative funding are not covered in this report. A future report on administrative costs and funds will be conducted to address some of these areas. In addition, other public education audits will be released in 2021 and 2022. Areas include:

- Teacher retention
- Student performance
- Administrative overhead in traditional and charter schools

Figure 1.6 provides a summary of completed and projected audit reports related to this request.

Figure 1.6 Three Public Education Audits Have Been Completed, With Three More Expected by Spring 2022. We expect to release a total of six reports addressing the audit areas requested by the subcommittee. The first three address governance, and the last three will address performance outcomes.



Audit Scope and Objectives

The purpose of this report is to examine the overall governance and accountability structure of charter schools in Utah. It seeks to provide recommendations to clarify the roles of the state institutions

This report discusses the governance model for charter schools in Utah and makes recommendations to clarify roles and improve accountability.

that authorize or oversee charter schools. This review of the charter school governance structure resulted in answers to the following questions:

- Chapter II: Are the roles and responsibilities of USBE and the SCSB over charter schools clear enough to provide state level accountability?
- Chapter III: Is there a state-level governance structure that could enhance charter school accountability?
- Chapter IV: Are the policies and practices of charter school authorizers in Utah sufficient to provide accountability for charter schools?
- Chapter V: Are there enough requirements of local governing boards to ensure their role in overseeing the performance of the charters they govern?

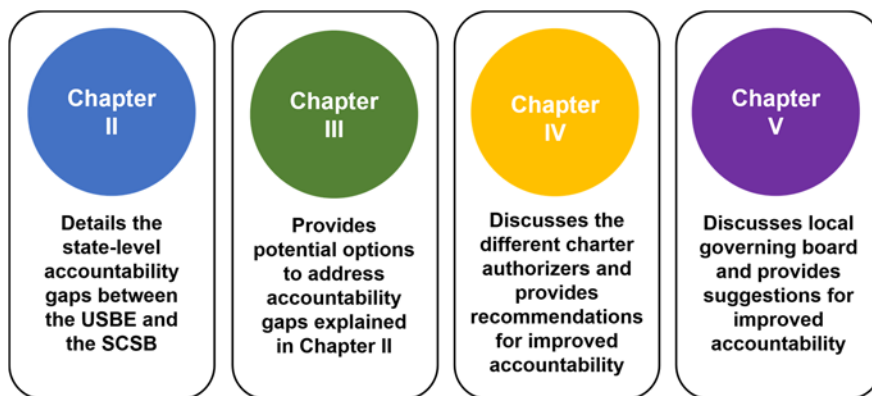
Chapter II

Governance Roles Are Unclear Between Two State-Level Education Boards

The state-level governance and oversight roles for charter schools are unclear because of shared responsibilities between the Utah State Board of Education (USBE) and the State Charter School Board (SCSB). Both boards' statutory roles mention overlapping responsibilities, causing confusion over which body oversees charter schools at the state level. The Legislature clarified some practices of the SCSB and charter schools in 2020. However, the governance roles of the SCSB and USBE have not been adequately addressed or resolved. Because of this, charter school accountability is confusing and needs to be clarified and improved.

The governance of charter schools within the public education system is a policy decision for lawmakers to deliberate and determine. This audit report is intended to provide a line of accountability from the state level, then to the authorizer level, and finally to the local governing board level. Figure 2.1 shows the outline of this report.

Figure 2.1 Report Outline. The chapters discuss charter school accountability from the state-level to the local governing board level.



This chapter details the gaps in oversight that currently exist between the two state-level boards. Chapter III provides three potential options that could address the accountability issues discussed in this chapter.

The state-level governance and oversight roles for charter schools are unclear because of shared responsibilities between USBE and SCSB.

The governance of charter schools within the public education system is a policy decision for lawmakers to deliberate and determine.

Charter School Oversight Is Unclear Due to Two State Boards and One Public Education System

Unclear boundaries between the two state boards have resulted in confusion over accountability lines, responsibilities for staff, and for education stakeholders. The roles and responsibilities of USBE and SCSB are laid out in the *Utah Constitution*, state statute, and *Administrative Rule*. USBE has constitutional authority over public education. The SCSB is the largest authorizer of charter schools and has some oversight duties for most charter schools in Utah. The SCSB is not designated as a division of USBE, nor is it designated as an independent entity that has complete oversight over charter schools in the public education system.⁵ This has resulted in confusion among local education agencies (LEAs) and staff at USBE and SCSB as to who has authority over charter schools.

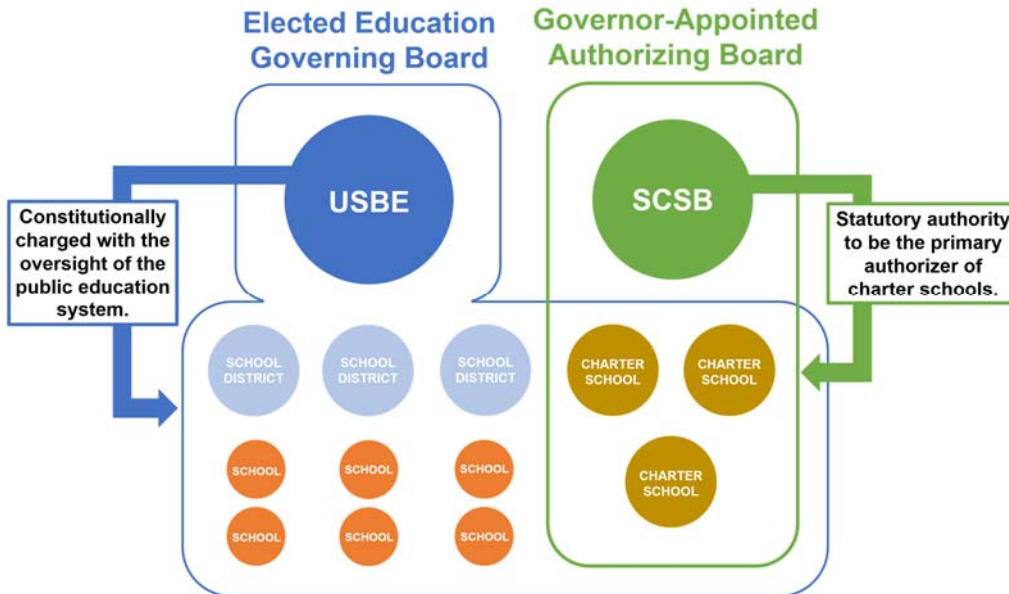
Constitutional Responsibility over Public Education Is Vested in USBE, but the SCSB Has Statutory Authority

The existence of the two state boards (USBE and the SCSB) has resulted in an ill-defined boundary between who oversees charter schools in the public education system. USBE is an elected, fifteen-member board that is constitutionally charged with overseeing public education in Utah. The SCSB is a seven-member, Governor-appointed board that was created in 2004 to be the primary authorizer of the state's charter schools. Due to the differences in governance structure and appointment, the SCSB is not answerable to USBE. As such, it is difficult to determine which body is ultimately responsible for charter schools, because USBE's role is to oversee all public schools and the SCSB's role as the authorizer is to establish public charter schools within the system. Figure 2.2 is a visual representation of the current state-level governance structure over both charter schools and traditional schools in Utah.

The existence of two state boards has resulted in an ill-defined boundary between who oversees charter schools in the public education system.

⁵ Although SCSB members are appointed by the Governor as detailed in *Utah Code* 53G-5-201, the SCSB operates under USBE's rulemaking authority. USBE also maintains statutory authority over the SCSB's funding allocation and the appointment/removal of SCSB's executive director.

Figure 2.2 The State-Level Governance Structure Causes Overlapping Responsibilities for Charter Schools. USBE’s responsibility over all public schools includes those authorized by the SCSB.



Source: Auditor generated

Both charter schools and traditional schools are part of the public education system. As such, USBE is the governing board over both types of LEAs. However, the SCSB is the primary authorizer⁶ of charter schools and maintains the contract agreement with most of the state’s charter schools. The specific roles and responsibilities of USBE and SCSB for charter schools are detailed in the *Utah Constitution*, state statute, and *Administrative Rule*. Figure 2.3 summarizes the authority and some of the responsibilities required of each entity.

USBE is the governing board over both charter schools and traditional schools. However, the SCSB is the primary authorizer and maintains contract agreements with most of the states’ charter schools.

⁶ A charter school authorizer is an entity that establishes charter schools and maintains a contract agreement with each school it approves. The agreement with the authorizer details specific goals, methods, and expectations of the school.

Figure 2.3 USBE and SCSB Have Overlapping Responsibilities for Charter Schools. Both state-level governing boards have responsibilities for charter schools in *Utah Code* and *Administrative Rule*.

USBE	SCSB
CONSTITUTIONAL AUTHORITY	STATUTORY AUTHORITY
"General control and supervision of public education shall be vested in a State Board of Education."	"Authorize and promote the establishment of charter schools."
FINANCIAL RESPONSIBILITY IN STATUTE	FINANCIAL RESPONSIBILITY IN RULE
<p>"The State Board shall distribute funds for charter school students directly to the charter school."</p> <p>"The State Board may audit the use of state funds by an education entity that receives those state funds as a distribution from the state board."</p> <p>The state board may:</p> <ul style="list-style-type: none"> • Require corrective action agreements, <ul style="list-style-type: none"> • Withhold state funds, • Require a penalty payment, • Require reimbursement from the education entity. 	<p>"An authorizer shall annually review, and document matters specific to effective charter school operations including:</p> <ul style="list-style-type: none"> • Financial performance, • Academic performance, <ul style="list-style-type: none"> • Enrollment, • Governing board performance."
	MONITORING RESPONSIBILITY IN RULE
	"An authorizer shall conduct and document a comprehensive review of governing board performance and review the charter agreement at least once every five years."

Source: Auditor analysis of *Utah Code* and *Administrative Rule*

USBE and SCSB have different roles related to the oversight of charter schools. This has resulted in unclear expectations and practices between the two state boards.

Most of the specific responsibilities for the SCSB are found in *Administrative Rule*. Because the SCSB is not designated as a division of USBE or an independent state agency, *Administrative Rules* governing the SCSB have been initiated by legislation rather than by USBE. Although the responsibilities of the SCSB and USBE have specific language in both code and board rule, we found that the two boards were uncertain on what actions were necessary for addressing some of these responsibilities. For example, Figure 2.3 shows that USBE and the SCSB have different roles related to the monitoring and oversight of charter school funds. This has resulted in unclear expectations and practices between the two state boards.

Statutes and Practices Are Unclear as to Whether the SCSB Is a Division of USBE or an Independent Entity

Statutory language sets forth unclear boundaries between the two boards. Specifically, statute establishes that the SCSB has the authority to approve and remove an executive director, with the consent of the state superintendent. The executive director is accountable to the SCSB board members. Statute does not require the SCSB's executive director to be accountable to USBE, but the executive director reports

State statute is unclear on the boundaries between the two boards' staff. The SCSB must seek the state superintendent's approval for its executive director.

that the SCSB uses USBE internal financial and HR platforms, which requires SCSB to seek USBE's approval on areas such as staff hiring.

This topic was deliberated by a previous USBE charter task force in 2016. The task force discussed the responsibilities and roles between SCSB and USBE employees, questioning whether SCSB employees were also considered USBE employees. The task force recommended that statute be amended to clarify that the SCSB is not a division of USBE, and that the superintendent's approval is not necessary for the appointment of SCSB's executive director. However, this recommendation was not implemented, and the state superintendent maintains approval authority over SCSB's director.

Additionally, the 2016 task force recommended that the two boards create a memorandum of understanding (MOU) to internally clarify the roles of employees. Although the boards have attempted to create an MOU in recent years, an official MOU has yet to be formalized. A draft MOU agreement attempts to clarify roles for charter school administrative staff, the SCSB's authority over its executive director, and charter school funding. However, a consensus has not yet been reached on the terms for a final MOU. We believe a finalized MOU – barring other Legislative action – could act as an important guide for the two boards, particularly while policymakers determine whether changes are necessary in response to this report.

As part of our audit process to better understand the relationship between the two boards, we conducted multiple interviews of administrative staff at USBE and SCSB, contacted previous education advisors for the Governor's Office, and listened to public meeting comments. We found a great deal of uncertainty about whether USBE or SCSB is the oversight body of charter schools at the state level. Some of those that voiced uncertainty regarding the boundaries of the two boards include:

- Chair and Vice-Chair of the SCSB
- Executive Director of the SCSB
- Chair of the USBE
- USBE Superintendency
- Former Governor's Education Advisor
- State Auditor in a public meeting
- Various legislators

A 2016 charter task force questioned whether SCSB employees were also considered USBE employees.

The task force recommended the two boards create an MOU to internally clarify roles. An official MOU has yet to be formalized.

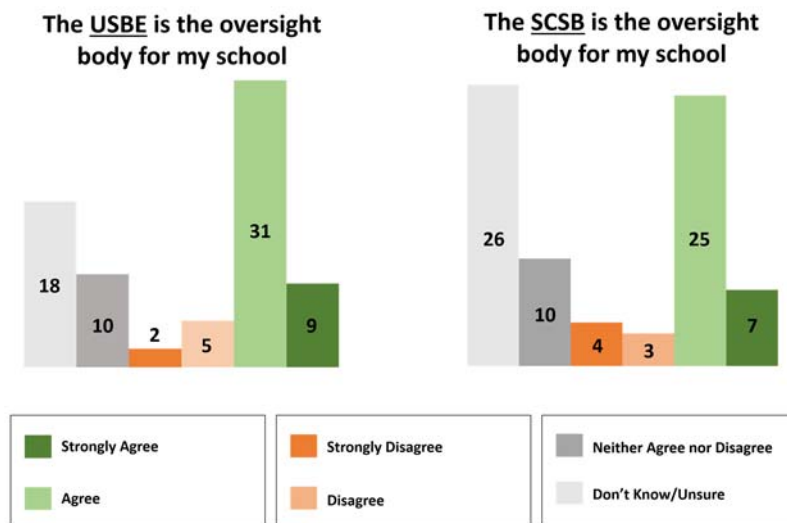
Multiple interviews of education professionals showed a great deal of uncertainty about whether USBE or SCSB is the oversight body of charter schools at the state level.

A survey of charter school administrators showed mixed opinions about which governing entity provided oversight for their schools.

A Survey Shows Confusion About Which State Board Has Authority Over Charter Schools

Results from two employee surveys that we conducted as part of the audit demonstrate confusion among staff regarding the roles of the two state boards. The first was an anonymous survey to administrators from 115 charter schools.⁷ Survey respondents indicate mixed opinions about which governing entity provided oversight for their schools. The second survey, which was specific to USBE and SCSB employees, showed similar results. Figure 2.4 displays the results of the school administrator survey, showing that respondents were closely divided in their opinion of whether USBE or SCSB is the state-level oversight body for charter schools.

Figure 2.4 Charter School Employees Displayed Mixed Opinions about State-Level Oversight. Administrators showed mixed responses when asked if USBE or SCSB was the oversight entity for their school. This demonstrates the need for greater clarity about charter school governance.



Source: Auditor generated

Of the 75 total charter school administrators who responded to these questions, 43 percent (32 respondents) agreed or strongly agreed that the SCSB was the oversight body. Conversely, 53 percent (40 respondents) agreed or strongly agreed it was USBE. Other respondents to this question showed they were simply unsure.

⁷ 104 of the 115 responding administrators were from charter schools that were authorized by the SCSB.

The survey of USBE and SCSB staff showed that nearly half (47 percent) of respondents indicated that the SCSB is the oversight body for charter schools, while 43 percent considered USBE to be the oversight body for charter schools. In response to an open-ended question, one respondent expressed confusion between the two boards:

The only unclear area of governance is between USBE and the SCSB... is the SCSB subject to the USBE or not? Does the funding that the USBE receives belong to the SCSB or not? Are SCSB personnel subject to both the USBE policies and the internal policies of the office or not?

A Lack of Defined Oversight Roles Has Resulted in Inconsistent Performance

The overall performance and financial management of charter schools are inconsistent. Charter schools are public schools and were originally created to be an innovative, competitive method of public education, but charter schools have a disproportionate percentage of schools that perform in the top and bottom 10 percent of all schools.⁸ Additionally, some charter schools have displayed a mismanagement of funds due to the lack of accountability at the state level and by their governing boards.⁹

Stronger Accountability May Improve Some Charter Schools' Performance

Charter schools were originally created to improve student learning, provide parents with choice and options for involvement, and encourage innovative teaching and learning models. Charter schools have autonomy to allow them to create new, innovative ways to educate students. As such, charter schools have freedom from some state rules and regulations required of traditional schools. These rules and regulations are replaced by a contract agreement with an

⁸ This finding is based on USBE School Rankings Data for school year 2019. Schools are ranked according to their performance on statewide assessments.

⁹ Information about charter school governing boards is found in Chapter V.

A second survey of USBE and SCSB staff showed about 47% of respondents thought the SCSB is the oversight body for charter schools, while 43% thought it was USBE.

Charter schools were originally created to be innovative and competitive. Yet, the overall performance and financial management of charter schools are inconsistent.

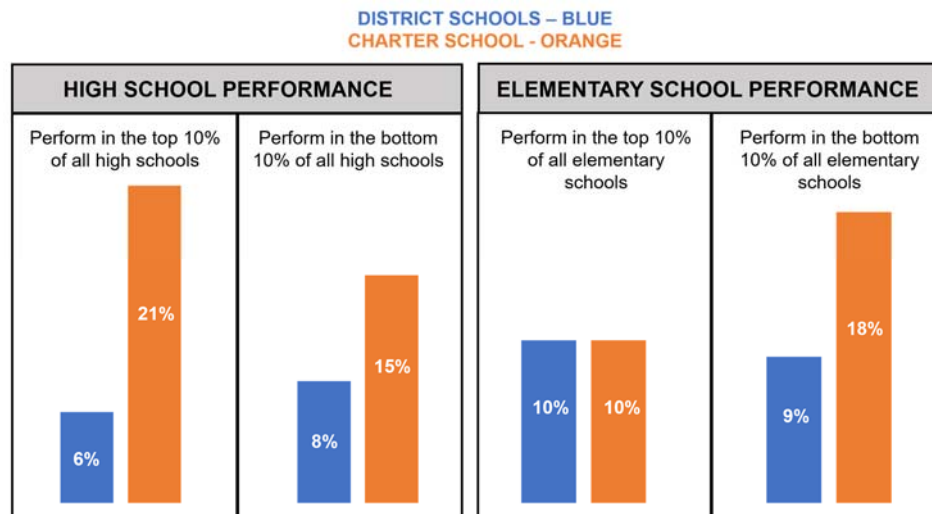
authorizer detailing specific goals, methods, and expectations of the school.

We found that despite the contracts, a better-defined governance structure between USBE and the SCSB might contribute to improving expected outcomes among some charter schools. While some charter schools perform well regardless of a lack of defined state oversight, others are not consistently held accountable by their governing bodies to meet goals or their statutory purpose.

USBE data shows that charter school outcomes are inconsistent and often account for a disproportionate amount of both high- and low- performing schools. For example, charter high schools have a higher percentage of schools in the top 10 percent than traditional high schools. However, the opposite is also true as charter high schools have a higher percentage of schools in the lowest 10 percent, compared with the rankings of traditional high schools. Charter elementary schools are equal with traditional district elementary schools in the highest 10 percent but are double the percentage in the lowest 10 percent. As such, the data indicate that some charter schools are operating more on the borders of performance standards. Figure 2.5 shows an overview of charter school performance relative to that of traditional schools.

USBE data shows that a higher ratio of charter schools operate on the borders of performance standards.

Figure 2.5 Charter Schools Are Disproportionately on the Borders of Performance. Charter high schools have a higher percentage of school in both the bottom and top 10 percent compared to district schools. Charter elementary schools have a higher percentage of schools in the bottom 10 percent.



Source: Auditor generated from USBE School Ranking data for school year 2019

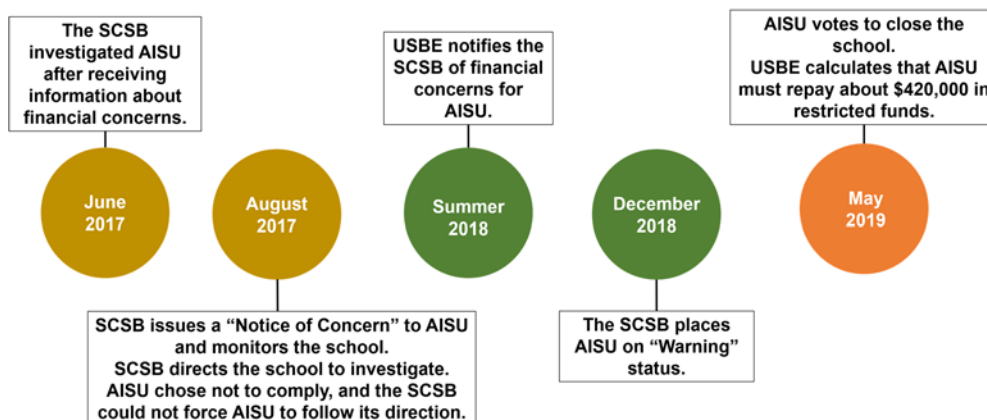
Slow Action Was Taken on Mismanaged Funding for Some Charter Schools

Because of unclear governance roles, there is often uncertainty as to which state board is accountable for financial matters. State statute specifies that USBE distributes charter school funding directly to the charter schools but is not a charter school authorizer. USBE is also the pass-through entity for federal education funding. *Administrative Rule* states that the SCSB has the responsibility to review charter schools for their financial performance. Yet, other than limited new school startup funding, the SCSB does not distribute funding to charter schools and cannot withhold funds or require reimbursement of funds.

We recognize that some charter schools maintain strong financial controls and perform well in this area. However, some charter schools have displayed financial accountability risks that could be mitigated with better-defined accountability at the state level. The risks of uncertainty about financial accountability for charter schools—both potential and realized—is that the state could lose state education funding or be held liable for federal funding repayment.

For example, the high-profile closure of a charter school—the American International School of Utah (AISU)—highlights some of the confusion over financial oversight. Figure 2.6 shows the timeline of events before AISU closed in 2019.

Figure 2.6 Timeline of the AISU Closure. As early as 2017, the SCSB was aware of financial concerns with AISU, including being approximately \$1.1 million in debt. The SCSB monitored the school’s activities until it closed in 2019.



Source: Auditor generated

Because of unclear governance roles, there is often uncertainty as to which state board is accountable for financial matters.

The 2019 closure of the AISU charter school highlights some of the confusion over financial oversight.

After AISU closed, it was required to repay about \$420,000 in state and federal restricted funds.

The SCSB was the authorizer of AISU but does not have the authority to request repayment. USBE can request repayment but does not conduct periodic reviews of a school's financial viability.

If the lines of accountability were more clearly defined, it is possible that USBE or SCSB might have been able to take earlier action to prevent the loss of funds.

After AISU closed, USBE calculated that AISU was required to repay about \$420,000 in state and federal restricted funds.

The SCSB does not have the authority to request repayment or withhold funding. It was reported to us by both SCSB board members and staff that they had made the AISU administration aware of its financial noncompliance but were not taken seriously.

Conversely, USBE was not the authorizer of AISU and did not have specific monitoring duties over the charter school. While USBE has the authority to request repayment or withhold funding, it is not required to conduct regular, periodic reviews of a charter school's financial viability. As such, it was unclear to some if AISU was accountable to USBE as the funding distributor, or to the SCSB as the authorizer.

If the lines of accountability were more clearly defined, it is possible that USBE or the SCSB might have been able to take earlier action to prevent the loss of funds. In addition to AISU, other charter schools were displaying financial mismanagement around this time, as summarized below.

- October 2019—USBE questioned special education costs from the Lumen Scholar Institute from 2016 to 2018, totaling approximately \$29,600.
- October 2019—the SCSB considered closing the St. George Academy because it had only six days of unrestricted cash on hand and believed the school would run out of money or try to use restricted funds. However, in November the SCSB decided to place the school on probation rather than recommend closure because the school displayed strong financial improvements.
- February to September 2020—USBE conducted an audit of the American Preparatory Academy. The audit resulted in USBE requesting repayment of \$2.78 million in special education funding for disallowed expenditures.

These examples illustrate ongoing financial risks presented by some charter schools.

Statute and Recent Legislation Failed to Clarify The Relationship between the Two Boards




Although the Legislature and a USBE task force have made efforts in the last few years to clarify the relationship between USBE and the SCSB, the governance roles of these two boards remain murky enough to cause confusion. Although recommendations from a charter school task force resulted in some changes, the issue of board roles was recognized as important, but remained unaddressed.

The Legislature Clarified Some Powers of the SCSB, but Governance between the Two Boards Is Still Vague

USBE conducted a charter school task force in 2019 to address ambiguous areas related to charter school governance. The final report did not include recommendations for clarifying the state-level governance roles between USBE and SCSB. Although the topic was on the initial agenda for the task force meetings, time expired before it could be adequately considered. Figure 2.7 shows the recommendations from USBE’s 2019 task force and the Legislature’s response in House Bill (H.B.) 242.

A 2019 charter school task force made some recommendations to the Legislature. However, the task force’s final report did not include recommendations to clarify governance roles.

Figure 2.7 The USBE Charter School Task Force Did Not Recommend Changes to the Governance Structure. The task force did not have sufficient time to address this issue.

TASK FORCE DISCUSSION: Which accounting standard should charter schools use for financial reports?	Recommend that all LEAs, including charter schools use Governmental Accounting Standard Board (GASB) for their accounting standards.	 Addressed in H.B. 242
TASK FORCE DISCUSSION: Should charter schools be required to renew contracts?	Recommend that new charter schools given initial approval of 3-5 years. An authorizer may then allow the charter school to become “evergreen” after this time at the discretion of the authorizer.	 Addressed in H.B. 242
TASK FORCE DISCUSSION: Could clarity be provided for the overlapping roles of USBE and SCSB?	Considered proposals to resolve overlap and provide clarity between USBE and SCSB. It ran out of time and did not reach a consensus on a recommendation for statute changes.	 No Recommendation Provided

Source: Auditor generated

The State Auditor commented in a public meeting that state-level governance of charter schools will continue to have issues until the Legislature addresses this policy decision.

Prior to 2018, all charter school applications approved by authorizers had to receive final approval from USBE. The Legislature removed USBE's final approval authority in the 2018.

Difficulties between the two boards arose in January 2020 as three satellite campuses were approved by the SCSB. Some of the schools had existing campuses performing lower than the state average.

As seen in Figure 2.7, the task force did not recommend actions to clarify the governance issues between USBE and the SCSB. The importance of this omission was recognized by some members of the task force. For example, the USBE chair recognized in the House Education Committee that the bill did not address governance concerns. Additionally, the state auditor commented that (A) the bill does not address the significant gap in governance between the two boards, (B) confusion exists because the contract is with the authorizer (SCSB), but the funding flows through USBE, and (C) the state-level governance of charter schools will continue to have issues until the Legislature addresses this policy decision.

The Removal of USBE's Authority for Final Charter School Approval Has Resulted in State-Level Governance Problems

The Legislature modified the charter school approval processes in the 2018 Legislative General Session with the passage of H.B. 313. Prior to 2018, all charter applications approved by charter authorizers had to receive final approval from USBE. As such, USBE had the authority to ultimately approve or deny a charter school applicant that was previously approved by an authorizer.

H.B. 313 modified the approval process by removing USBE's authority to approve or reject applications. The bill requires authorizers to submit their individual approval process for charter schools to USBE, along with the criteria they wish to use for approval. USBE then establishes the authorizer processes in *Administrative Rule* and subsequently holds the authorizer accountable to its own approval process.¹⁰ This new process means that USBE can no longer approve or deny a charter school that has been approved by an authorizer if the process was met according to the rule.

This change has resulted in some difficulties between USBE and the SCSB. For example, in January 2020, the SCSB approved three charter school satellite requests. Each of the three schools was currently operating and was requesting additional satellite campuses. However, two of the schools had operating campuses that were performing lower than the state average. One applicant had two existing campuses whose performance was among the lowest 10 percent in the state.

¹⁰ More information on this process is discussed in Chapter IV.

USBE board members were concerned about the SCSB's approval of additional campuses for these low-performing schools. However, due to the process change in 2018, USBE no longer had authority for final approval or denial. As a result, USBE directed the SCSB to reconsider its actions according to the approval criteria established in *Administrative Rule* in its March 2020 board meeting. The SCSB responded to USBE that the approval of the schools would be upheld. USBE again asked the SCSB to reconsider its process for approvals in its April meeting.

The confusion over the process led to further discussions between the two boards. Consensus was eventually reached between the two boards in the summer of 2020, and the process for the charter school satellite campuses was approved.¹¹ The SCSB reported that one of the causes of the confusion was that it had submitted a process for the approval of satellite campuses to USBE, but the process had not yet been approved. The SCSB reports that it assumed it was still within its authority to approve the satellite campuses. The SCSB's process and criteria for approving the expansion of charter schools have since been approved by USBE.

Recommendation

Primary recommendations for this chapter are found in Chapter III. One recommendation addressing coordination between USBE and the SCSB is included below.

1. We recommend that the Utah State Board of Education and the State Charter School Board finalize a memorandum of understanding (MOU) to clarify the current roles of the two staffs.

¹¹ One of the approved schools delayed its expansion plans due to Covid-19.

USBE was concerned about the SCSB's approval of additional campuses for some low-performing schools.

The confusion over the satellite campuses led to further discussions between the two boards, eventually reaching consensus in the summer of 2020.



Chapter III

The Charter School State-Level Governance Structure Is a Policy Decision for the Legislature

Chapter II of this report details some of the confusion about governance roles and lack of accountability between the Utah State Board of Education (USBE) and the State Charter School Board (SCSB). This companion chapter outlines three potential options to define the relationship between the two boards and clarify each board's governance roles for charter schools. The three options, which are intended for policymakers' consideration to improve charter school accountability at the state level, are summarized below:

1. Designate the SCSB as a hybrid local education agency (LEA) in statute and provide specific authority.
2. Establish the SCSB as an independent government entity without ties to USBE.
3. Define the SCSB as a state agency within USBE's supervision.

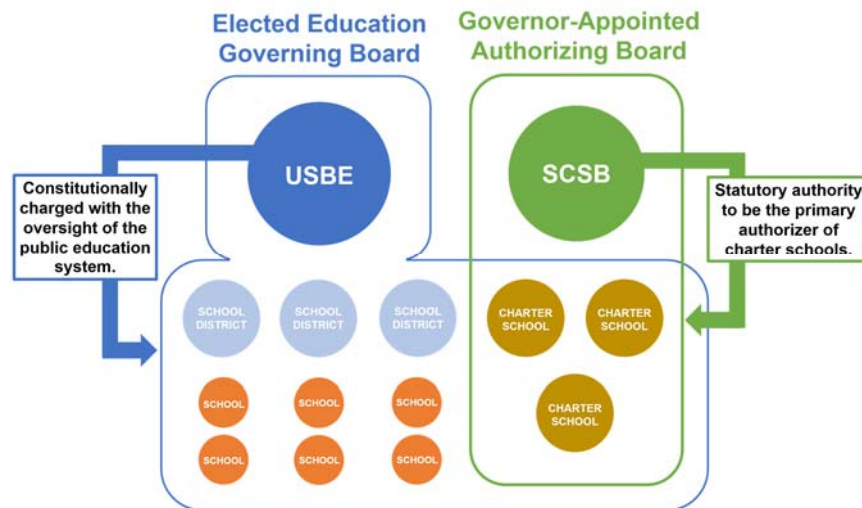
It should be noted that each option presented is meant to provide a brief overview of some systems seen in other states or current education models in Utah. Overarching considerations for each option are also presented. Detailed considerations of the overall structure will need to be examined by policymakers if a decision is made to modify the state's charter school governance model.

Charter school governance is a policy question for the Legislature. These options could reduce confusion and enhance accountability between the two state boards. As such, we offer suggestions for consideration, any of which could help to clarify roles between the two state boards and establish increased accountability. However, we acknowledge there is no single, correct charter school governance structure and that different states utilize various governance models. As a comparison to the options that will be presented in this chapter, Figure 3.1 show the current governance model.

This chapter outlines three potential options to define the relationship between USBE and SCSB and clarify each board's governance roles for charter schools.

Charter school governance is a policy question for the Legislature. These options could reduce confusion and enhance accountability between the two state boards.

Figure 3.1 The Current Governance Structure of Charter Schools in Utah. This displays the governance model Utah currently utilizes for charter schools. This is detailed in Chapter II.



Source: Auditor generated

Some States Have Enacted Policies to Clarify Their Charter School Governance Structure

We reviewed five nearby states and found that some have recently changed their governance system for charter schools. They explained that the growth of charter schools in recent years has pushed policymakers to act on the state-level governance structures. We provide examples from some surrounding states.

Some nearby states have changed their governance structure as charter school growth has pushed policymakers to act on state-level governance.



Nevada created a state-level charter board in 2011 and designated it as an LEA to clarify roles for financial performance. Specifically, state and federal grant funding (e.g., special education funding) is distributed by Nevada’s state-level charter board, which holds charter schools accountable for their usage of federal funds. Nevada’s governance structure serves as a reference for the first option discussed in this chapter.



Idaho has a state-level authorizing board similar to Utah’s SCSB. This has resulted in a similar oversight problem due to the existence of two state governing bodies—a state department of education and a state-level board that authorizes most of its charter schools. Policymakers in Idaho recently passed a bill that provided the state-level authorizing board greater internal independence by defining it as an agency under

the supervision of the state board of education. A similar approach is outlined in the third option discussed in this chapter.



New Mexico also reported that policy discussions related to charter school governance have been of interest in recent years. The New Mexico state charter board has a confusing relationship with the New Mexico department of education. The role and policies related to having two state governing agencies have been discussed by policymakers in recent years. An education professional from New Mexico reported that the charter governance confusion will continue in their state unless it is addressed.

We also conducted an interview with staff at the National Association of Charter School Authorizers (NACSA), an organization that conducts national research on the best practices of authorizers and charter school accountability. They reported that policy discussions regarding the state-level governance of charter schools are becoming increasingly necessary as charter schools continue to grow nationally. Utah’s charter school growth might require policymakers to exercise urgency in examining the governance structure between USBE and the SCSB as the largest charter school authorizer. Additionally, both USBE and SCSB leadership have reported that the state-level governance structure needs further clarification.

Option 1 Establishing the SCSB as a Hybrid LEA Could Improve the Oversight of Charter Schools

Designating the SCSB as a type of LEA could better define the roles of the board and USBE. This option would allow the SCSB to distribute state and federal funds. The SCSB could then hold charter schools accountable for financial performance. Due to the various ways this option could be structured, it would likely require a comprehensive study to determine areas such as the operational structure, school funding practices, necessary number of staff, and other details.

The National Association of Charter School Authorizers reports that policy decisions regarding state-level governance of charter schools is becoming increasingly necessary as charter schools continue to grow.

Option 1: designate the SCSB as a type of LEA and allow it to distribute funds and hold charter schools accountable for financial performance.

Both local school districts and individual charter schools are classified as LEAs in Utah's public education system.

By designating the SCSB as an LEA in statute, it could report to USBE like local school districts. This structure would create more defined roles at the state level.

The SCSB would likely need to be structured as a different type of LEA than local districts so charter schools could maintain autonomy to fulfill their statutory purpose of innovation.

Designating the SCSB as a Hybrid LEA Could Provide Improved Accountability for Charter Schools

Both local school districts and charter schools are classified as LEAs in Utah's public education system. Yet, in most cases, school districts and charter schools are structurally different. Most charter schools are individual schools with a volunteer governing board and in-house administrators (or an external management company).¹² These charter schools are designated as LEAs, regardless of size. Local school districts are structured differently because they have an elected school board and oversight of multiple schools. They maintain staff at the district level to establish curriculum and policies and to monitor the financial compliance of their schools. This is true of large and small district offices.

Currently, each charter school is responsible for its own finances and for providing educational outcomes to USBE. In contrast, traditional schools can defer those responsibilities to the district office. Under a hybrid LEA model, the SCSB could assume some of the responsibilities for the schools it authorizes, while other responsibilities could be maintained at the local charter school level.

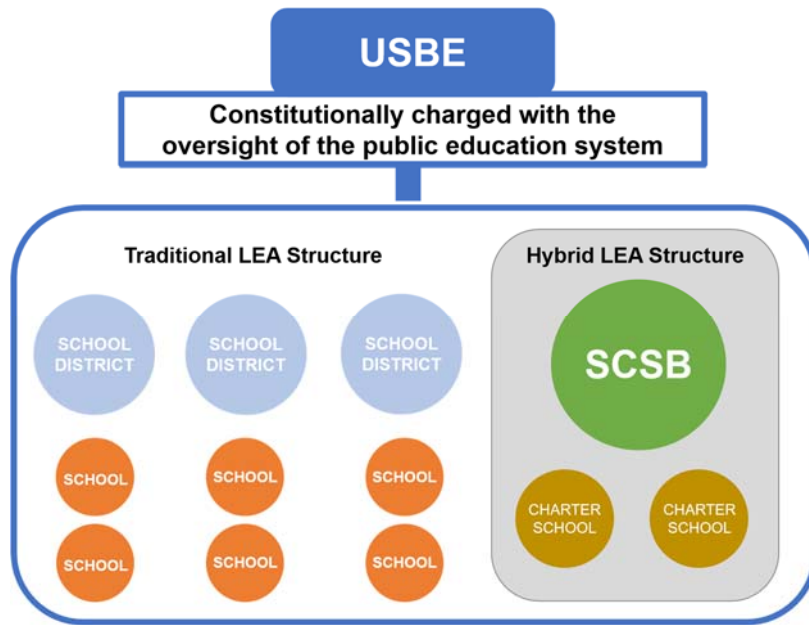
This option could improve accountability for charter schools by designating the largest authorizer, the SCSB, as an LEA in state statute. The SCSB would become a hybrid LEA and report to USBE, like local school districts that USBE oversees. This structure could create more defined roles at the state level between USBE and the SCSB and would allow USBE to maintain its constitutional authority to oversee public education, including charter schools and districts.

However, the SCSB would likely need to be structured as a different type of LEA than local districts. While local districts provide a multitude of services for their schools, charter schools would need to maintain their autonomy and innovative methods to fulfill their statutory purpose. As such, the SCSB would adopt a hybrid LEA structure designed to focus on accountability but would not direct charter schools to utilize specific curriculum, policies, or practices. Charter school professionals report that a balance is needed between

¹² There are a few Utah charter schools that utilize a central office with staff that oversee multiple locations. However, most charter schools are independent schools with a local governing board and in-house administrators and teachers.

LEA-level accountability and allowing charter school flexibility with this kind of hybrid structure. Figure 3.2 shows a potential structure for the SCSB as a hybrid LEA.

Figure 3.2 Option 1: Proposes a Hybrid LEA Structure for the SCSB. The SCSB would become an LEA in statute and report to USBE but would continue to allow charter school autonomy.



Source: Auditor generated

An LEA option for the SCSB was discussed at a USBE charter school task force meeting in 2016. Questions were raised about the ramifications if the SCSB were designated as an LEA. However, the task force did not produce any formal recommendations on the LEA option or any other potential governance model.

Designating the SCSB as an LEA Could Provide More Clarity for Charter School Finances and Outcomes

As discussed in Chapter II, one of the most significant areas of confusion between USBE and SCSB is related to finances: Which board oversees financial compliance? USBE distributes charter school funding, but the SCSB reviews the financial performance of its schools. This has resulted in delayed action being taken for mismanaged funding. Designating the SCSB as an LEA could allow the largest authorizer to be the distributor of funding to the charter schools it authorizes. The SCSB would be the acting LEA with regard to the financial distribution and compliance of its schools. USBE

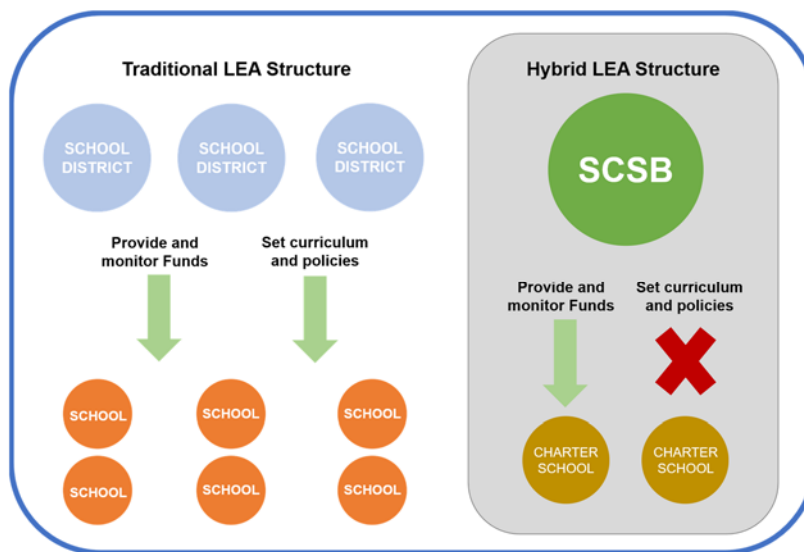
Designating the SCSB as an LEA would allow the largest authorizer to be the distributor of funds to the charter schools it authorizes.

A hybrid LEA structure could provide increased authority to the SCSB by allowing it to request repayment, withhold funds, and better monitor the use of restricted funding.

would distribute funding to the SCSB, which would then provide funds to the charter schools. This would allow the SCSB to monitor and hold charter schools accountable for their financial performance.

A hybrid LEA structure could provide increased authority to the SCSB as the financial distributor, allowing the board to request repayment, withhold funds, and better monitor the use of restricted funding by its charter schools. Similarly, these changes could reduce confusion due to individual charter schools having a better understanding of accountability, since they would be answerable to the SCSB for financial performance and management. Figure 3.3 details how the SCSB could have specific duties over the distribution and monitoring of charter school funding under a hybrid LEA structure.

Figure 3.3 There Are Differences between the Traditional LEA Model and the Potential Funding Structure of an SCSB LEA. A possible model would allow the SCSB to distribute and monitor funding to its charter schools. But it would not decide on curriculum or policies.¹³



Source: Auditor generated

The SCSB would not need to possess authority over curriculum, policies, or other areas of a charter school's unique mission.

As mentioned, if the SCSB adopted a hybrid LEA governance structure, it would not need to possess authority over the curriculum, policies, or other areas that would hinder a charter schools' unique mission. However, specific duties for the distribution and

¹³ Local school district and higher education authorizers are not included in this potential model because they have different governance structures than the SCSB. More information on the other types of authorizers is found in Chapter IV.

accountability of funds may improve the financial accountability of charter schools.

Nevada’s State-Level Charter School Board Is a Large Authorizer Designated as an LEA



Nevada’s State Public Charter School Authority (SPCSA), a state-level authorizing entity, is designated as an LEA in state statute. Statute allows the SPCSA to direct a share of any money available from federal and state categorical grant programs to charter schools and requires the SPCSA to monitor the funding. More specifically, federal grant money, such as special education funding, is distributed by the SPCSA to charter schools. The SPCSA monitors and holds schools accountable for their use of these federal funds.

Nevada’s model is a type of hybrid LEA, with the SPCSA reporting to the Nevada Department of Education, similar to school districts. However, the state’s department of education still maintains other oversight duties over charter schools. As such, the SPCSA does not require the number of staff needed at a district level office. For example, the SPCSA reports that they have roughly 20 full-time staff to oversee approximately 58,000 charter school students.¹⁴ Each school maintains a local governing board and has autonomy over things like curriculum. An education official at the Nevada SPCSA reported that this arrangement provides more defined roles over charter school finances at the state level for charter schools.

USBE staff report that the hybrid LEA option for charter school finances could provide better oversight over funding. They recognize that a change of this magnitude would require a multiyear approach, and that it is likely that additional funding and staff at the SCSB would be necessary for proper implementation. This option would likely require a comprehensive study by policymakers and education professionals to determine the operational structure, school funding practices, necessary number of staff, and other details needed for a hybrid LEA structure that would give the SCSB specific authority over charter school funding.

¹⁴ By way of comparison, as of 2021, Utah’s SCSB has 12 employees, serving approximately 79,000 charter school students.

Nevada’s state-level authorizing entity is designated as an LEA in statute. It allows it to direct a share of money from federal and state grants to its charter schools.

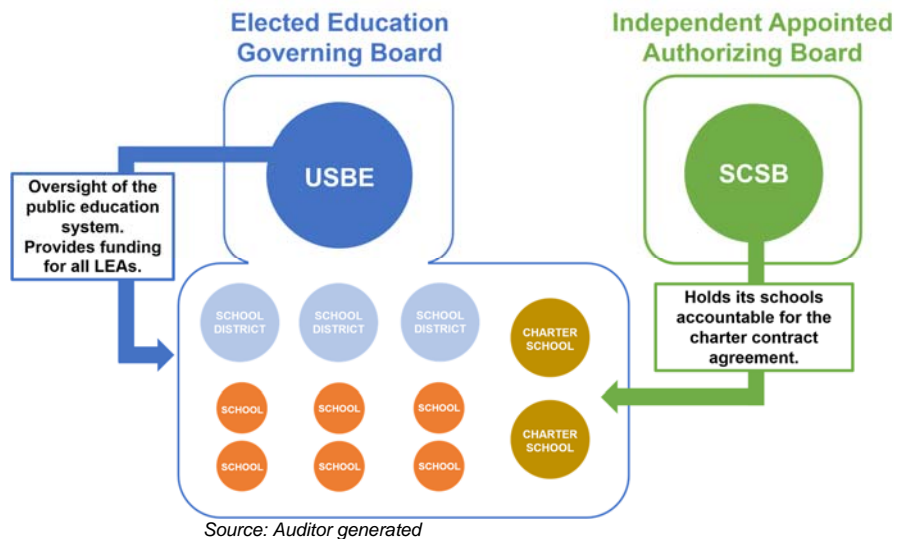
USBE staff report that the LEA option could provide better oversight over funding but would require a multiyear approach for implementation.

Option 2: Establish the SCSB as an independent entity by modifying statute to remove connections to USBE.

Option 2 Establishing the SCSB as an Independent Entity by Removing Connections to USBE

Modifications to statute could clarify the role of the SCSB by addressing the state-level position of the organization, staffing, and control over its allocation. One such option is to make the SCSB more independent. Currently, there is a lack of clarity regarding the SCSB’s funding allocation. Recent changes to law allow the SCSB to have more autonomy over its allocation, but USBE maintains approval of the annual budget and expenditure of the SCSB. Furthermore, the state superintendent’s approval is necessary to appoint an executive director for the SCSB. Establishing the SCSB as an independent board in statute could allow it to focus on its mission to promote and authorize charter schools and could result in less ambiguity between the two boards. Figure 3.4 shows a potential structure for this option.

Figure 3.4 Option 2: Independent SCSB Option. Statute could be modified to separate the SCSB from USBE and provide the board with more autonomy.



In this option, the SCSB would be responsible to hold charter schools accountable to their contracts. USBE would maintain authority over financial distribution and monitoring.

In this option, the SCSB would be responsible to hold the charter schools it authorizes accountable to their contracts.¹⁵ The SCSB would not be responsible for financial distribution or compliance. Rather,

¹⁵ The contract agreements made between charter schools and authorizers are further detailed in Chapter IV.

USBE would have full authority over financial distribution and monitoring of all charter schools. Statutory considerations that may need to be addressed for this option include:

- Additional statutory language would be needed to specify that SCSB is an independent entity and not a division within USBE.
- Revised statutory language would be needed so that the superintendent of public instruction would no longer have authority to approve the appointment of the executive director of the SCSB.
- Additional statutory language would be needed to establish that the SCSB be provided its own allocation rather than be subject to USBE as the pass-through entity.

This option could create a more defined line of accountability for charter schools to know which board maintains specific responsibilities. Charter schools could better understand that they are accountable to USBE as the financial entity, and to the SCSB as the authorizer and holder of the charter agreement. Providing the SCSB authority over its own staff, allocation, and practices may help it focus on holding charter schools accountable for their performance, according to charter agreements.

Because this option allows the SCSB more autonomy, its powers would need to be specified in statute. An independent SCSB could create new public charter schools, but USBE is still the constitutional authority over public schools. As such, statutory language would need to be specific, and the two state entities would need to maintain a strong relationship. It is likely that a formal memorandum of understanding (MOU) between the two entities would be necessary with this option. (See our recommendation in Chapter II.) Other possible considerations of this option may include providing an independent SCSB rulemaking authority or allowing the SCSB autonomy to establish practices for its own governance and funding.



Arizona utilizes an independent state charter school board that includes members appointed by the state department of education, the governor, and the state legislature. The board has statutory authority to exercise general supervision over the charter schools it sponsors, recommend legislation, and adopt rules

This option could create a more defined line of accountability for charter schools to know which state board maintains specific responsibilities.

This option would require specific statutory language on the roles of the two boards as USBE still has constitutional authority over public education.

and policies it deems necessary. Funding still flows to charter schools through the Arizona Department of Education. An education official from Arizona reported that this structure requires a strong relationship between the state charter board and the department of education.

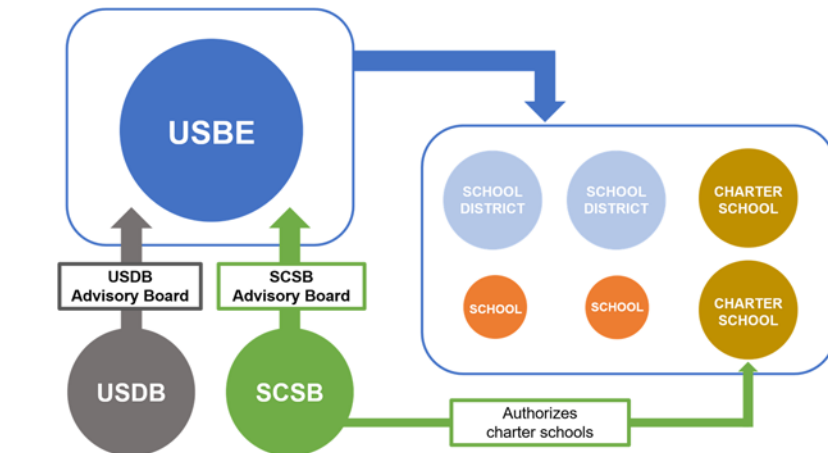
Option 3 Establishing the SCSB as a State Agency Under The Direction of USBE Could Clarify Roles of the State Boards

A third option would be to clearly define the SCSB as an agency under the broader supervision of USBE. This would require modifying statutory language to designate the SCSB as an advisory board under the supervision of USBE. As an example, the Utah School for the Deaf and Blind (USDB) is a state agency that falls under the direction of USBE. The USDB operates under the supervision and constitutional authority of USBE. USBE is considered the governing board for the agency and appoints a superintendent to USDB. It also establishes a USDB advisory council to consider recommendations and advice. USBE is not obligated to follow the recommendations of the advisory council, as USBE is the true governing body.¹⁶ Figure 3.5 shows a possible structure for this option.

Option 3: clearly define the SCSB as an agency under the broader supervision of USBE.

This option would require modifying statutory language to designate the SCSB as an advisory board under the supervision of USBE.

Figure 3.5 Option 3: A State Agency Option for SCSB. This option would put the SCSB under the supervision of USBE. The SCSB would still have authority to appoint its director and hire staff.



Source: Auditor generated

¹⁶ *Utah Code* 53E-8-201 & 53E-8-204.

This third option may require the SCSB executive director to be answerable to the state board rather than to the superintendent or staff at USBE. The SCSB would still maintain authorizing authority, but it would be under the direction and approval of USBE. The SCSB board members and executive director would be accountable to USBE as the constitutionally charged body over public education. If more internal independence is desired, statutory language could allow the SCSB to appoint its own director and hire staff, who would then be answerable to the state board.



Idaho passed legislation in April 2021 to this effect. The new law better defines the relationship between its state-level charter school board and the state board of education. The legislation made the state charter school board a separate state entity under the direction of Idaho's state board of education. Idaho's governance structure allows internal independence by allowing the state charter school board to appoint a director and hire its own staff. The state charter school board makes recommendations to the state board of education regarding the oversight of charter schools. It can also establish an MOU with staff at Idaho's office of education for support services such as human resources, information technology, and finance.¹⁷

The three options presented in this chapter are intended to improve state-level governance and charter school accountability. Each of the options will have benefits and challenges. We suggest that the Legislature study these options in detail to determine which governance model may provide stronger charter school accountability while also allowing flexibility for school innovation and autonomy.

Other States Require Authorizers to Report On the Performance of Their Charter Schools

Whatever decision is made as to increasing accountability for charter schools, the Legislature should consider increasing reporting requirements by Utah authorizers. A sample of five nearby states identified laws requiring authorizers to report on the performance of their charter schools. Each state we examined, regardless of

¹⁷ Idaho S.B. 1115 (2021 Idaho Legislative General Session).

This option would allow the SCSB to maintain charter school authorizing authority, but under the direction and approval of USBE.

The three options presented are intended to improve state-level governance of charter schools. We suggest that the Legislature study these options in detail to determine which model may provide stronger accountability while allowing flexibility for school innovation and autonomy.







governance structure, requires charter school authorizers to produce a report on the performance of its schools. Such reporting requirements for Utah’s charter schools could help to create more accountability as policymakers deliberate potential governance modifications.

Five Nearby States Require Performance Reports from Charter School Authorizers

Five nearby states share a common practice for overseeing charter school accountability at the state level. While the governance structure of each state differs, each state has reporting laws that hold charter school authorizers accountable for their portfolio of schools to policymakers. Most of these reports are provided to the state’s department of education. The reports are intended to provide information to public education leaders and policymakers on the performance of charter schools. Figure 3.6 summarizes each state’s reporting requirements for authorizers.

Five nearby states have reporting laws that hold charter school authorizers accountable for their portfolio of schools.

Figure 3.6 Utah Does Not Have a Reporting Requirement for Charter School Authorizers. A sample of five nearby states found that authorizers are required to produce reports on school performance.

	ARIZONA: The authorizer shall submit an annual report to the auditor general’s office. The report shall include the academic, operational and financial performance of the authorizer’s portfolio.
	COLORADO: Charter authorizers provide an annual report to the state education department. The report includes charter schools’ progress in meeting the objectives of its agreement and a financial audit.
	IDAHO: Charter authorizers annually publish and make available to the public a performance report for each public charter school it oversees.
	NEW MEXICO: Charter authorizers must submit an annual report to the charter division within the department of education. The report must include the performance for each charter school it oversees.
	NEVADA: Charter authorizers must submit an annual report to the department of education and the state board of education for review.
	UTAH: No reporting requirement

Source: Auditor generated from individual state statute requirements

In each of the states examined, charter school authorizers are held accountable for the schools they oversee. Utah does not require charter authorizers to provide performance reports for their portfolio of schools.

Utah does not require charter authorizers to provide performance reports for their charter schools.

In some cases, states have laws allowing an authorizer to be sanctioned by the department of education or policymakers. For example, Nevada allows the department of education to revoke an authorizer's authority if the authorizer persistently fails to carry out its powers and duties. In Arizona, if an authorizer fails to produce a required report, the governor and legislative leadership are notified and may consider revoking the authorizer's authority. An education official from a state we examined commented that the required reports were extremely valuable to policymakers when considering charter school accountability and governance. As such, we recommend that the Legislature consider requiring authorizers to produce reports of their schools for stronger accountability to USBE and policymakers.

We believe that the state-level governance of charter schools is a necessary policy consideration for the Legislature. Better defining the relationship between USBE and the SCSB can provide increased accountability while still allowing charter schools to be innovative and competitive in the public education system.

We believe that the state-level governance of charter schools is a necessary policy consideration for the Legislature.

Recommendations

1. We recommend that the Legislature consider the three policy options contained in this chapter for deliberations on the governance structure of the charter schools in Utah.
2. We recommend that the Legislature consider adding a section to Utah Code that requires authorizers to produce an annual report on the performance of the schools they authorize.



Chapter IV

Utah Charter School Authorizers Maintain Different Standards for Schools

Utah is unique nationally because it is the only state where the charter school system does not have a charter school renewal process specified in state law.¹⁸ Each of the 45 states with a charter school program has a process in law for charter schools to renew contracts with its authorizer.¹⁹ Utah does not require charter school contracts to be renewed with authorizers. Recent changes to state *Administrative Rule* require charter school authorizers to conduct a five-year comprehensive review of their charter schools. These reviews are a tool for authorizers to monitor charter schools. However, due to the confusion over charter school governance roles at the state level (detailed in Chapter II), the SCSB reports that these reviews are more reactive than proactive for charter school accountability. A formal renewal process, mandated in statute, could replace the five-year review and provide stronger accountability by requiring charter schools to apply for renewal of their contract agreement at a specified time determined by policymakers.

Utah Code allows three entities to authorize charter schools: the SCSB, local school boards, and the board of trustees of institutions of higher education. As discussed in the previous chapters of this report, the SCSB is the state's largest authorizer of charter schools. The SCSB authorizes 123 charter schools, approximately 91 percent of all charter schools in Utah. Local school districts and institutions of higher education authorize the remaining nine percent of the state's charter schools. These other authorizers are structurally different from the SCSB and have different oversight and monitoring practices for their individual charter schools. Most of the non-SCSB authorizers do not conduct the five-year comprehensive reviews specified in *Administrative Rule*. Figure 4.1 summarizes information about Utah's three types of charter school authorizers as of 2021.

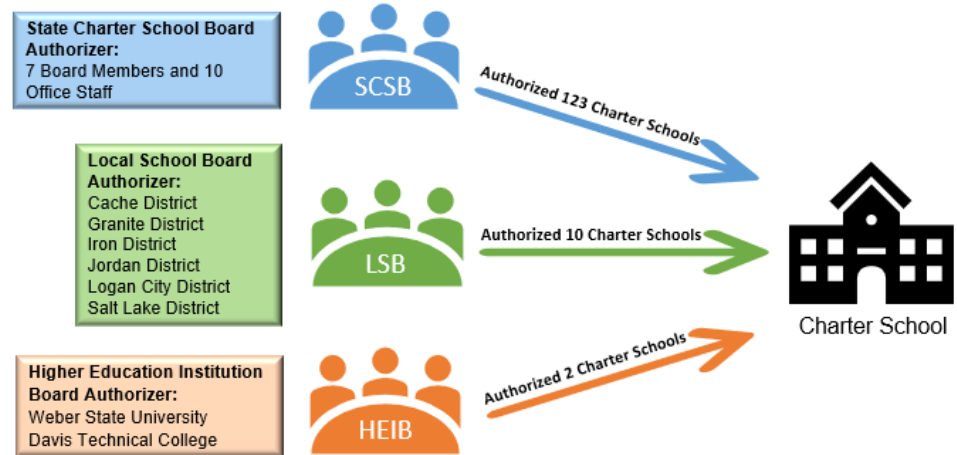
¹⁸ This finding is based on data compiled by the Education Commission of the States. January 2020.

¹⁹ Montana, Nebraska, North Dakota, South Dakota, and Vermont do not have a charter school program.

Utah is the only state that does not require charter schools to renew their contract.

The SCSB is the state's largest authorizer with approximately 91% of Utah's charter schools. Local school districts and higher education authorizers make up about 9% of charter schools.

Figure 4.1 There Are Three Types of Charter School Authorizers in Utah. The SCSB is the largest authorizer, overseeing 123 operating charter schools.



Source: The SCSB's January 2021 Annual Report

The number of staff at the SCSB is lower than the national average for charter school authorizers²⁰ and has resulted in the entity being more reactive than proactive to charter school concerns. Additional staffing may be needed for the SCSB to fulfill its duties if the Legislature determines the charter school governance structure should be modified to provide additional oversight.

A Formal Renewal Policy Should Be Considered in Utah Law

Utah charter schools are unique compared to the rest of the nation because charter agreements do not expire. A charter contract is permanently in effect when approved by one of the state's three types of authorizers.²¹ These are referred to as "evergreen" charters because they are permanently operational after approval. Because of these evergreen charters, authorizers have little influence in terms of whether charter school agreements are being met. Five neighboring states and a local school district provide examples of charter schools being required to go through a formal renewal process with their authorizer.

²⁰ Based on a 2016 NACSA report regarding charter school authorizer employment. NACSA did not release employment reports after 2016.

²¹ The Salt Lake City School District has a renewal process for its three charter schools. This is discussed later in the chapter.

In Utah, a charter contract is permanently in effect when approved by one of the state's three types of authorizer. These are referred to as "evergreen" charters agreements.

There Is No Charter Renewal Process For Most Charter Schools in Utah

A charter renewal process requires a charter school to periodically reapply to its authorizer to continue operating. For example, every five years a charter school may be required to prove it is meeting the terms of the contract agreement and performing well in other areas. The authorizer can then grant a new five-year agreement based on the performance of the school. This process places the responsibility on the charter schools to prove they are meeting the goals in their charter agreement and are operating effectively. However, *Utah Code* does not require charter schools to renew their charter agreements with authorizers. As a result, some charter schools operate with loose oversight from their authorizer and have little reason to update the goals in their agreement.²²

Some Charter Schools Have Not Updated Their Contract Agreements in Many Years. The lack of a charter expiration and renewal process may contribute to some charter schools maintaining outdated agreements and not fulfilling their school-specific goals. We found three such schools, as shown in Figure 4.2.

Figure 4.2 Some Charters Operate Under Outdated Charter Agreements. A sample of three outdated charter agreements shows that schools can continue operating with obsolete goals without a renewal process.

CHARTER CONTRACT EXAMPLE #1	Utilized a charter agreement from 2005 to 2021 that listed a goal of students being proficient on state Criterion Reference Tests (CRT). The CRT was a state exam that began in 1999 and were phased out in 2013. In April 2021, the charter school entered into a school improvement plan with the SCSB.
CHARTER CONTRACT EXAMPLE #2	Operates under a charter agreement from 2011 that maintains references to student achievement on UPASS, an obsolete state accountability system. It also references the non-existent Utah State Office of Education (USOE) and a non-existent state code for its fiscal management.
CHARTER CONTRACT EXAMPLE #3	Operates with a charter agreement from 2008 that references the federal <i>No Child Left Behind</i> law which has since been amended in 2015 to the <i>Every Student Succeeds Act</i> . It also references the outdated UPASS accountability system.

Source: Auditor generated from a sample of three charter agreements

²² Some individual charter contract agreements may have provisions for auto-renewal or termination. This practice is not a formal renewal process codified in state statute as discussed in this section.

A charter renewal process requires a charter school to periodically reapply to its authorizer to continue operating.

The lack of a charter expiration and renewal process may contribute to some charter schools not fulfilling their school-specific goals.

These schools have not updated their contract agreements with the authorizer in at least 10 years. It may be difficult to maintain innovative methods in schools with outdated contract agreements that reference obsolete laws and practices.

Authorizers in Utah Have Little Influence over Charter Agreements after They Are Approved. Because charter schools are not required to renew their contract, the authorizers have the burden of ensuring that contracts are being satisfied. Authorizers may have difficulty requiring updated agreements due to current statute, which disallows modification of a charter agreement unless mutually agreed upon by the authorizer and the charter school.²³ In short, an authorizer cannot require a charter school to modify or update its charter agreement unless the charter school board agrees to do so, or if it is a provision in the contract. In some cases, this provides the authorizer with little authority over the terms of a contract. However, oversight practices differ, as some local district authorizers have only a single charter school to monitor. This makes it easier to work on contract modifications with the school. Various authorizer practices are discussed later in this chapter.

Requiring a Renewal Process May Balance School Autonomy and Authorizer Supervision. By codifying a charter renewal process, charter schools would be held accountable for their performance by an authorizer. Authorizers could:

- Allow enough autonomy within their contracts to encourage charter schools to pursue innovation and risk taking.
- Hold charter schools accountable for the goals in their contract at the time of renewal.

At the same time, providing too much autonomy in charter agreements could weaken the oversight from the authorizers and may result in outdated contracts. This could be balanced by charter schools having flexibility and taking responsibility for:

Without a charter renewal process, the authorizers have the burden of ensuring that contracts are being satisfied, leading to difficulty in requiring updated charter agreements.

Codifying a renewal process could balance responsibilities by allowing schools autonomy to pursue innovation while holding them accountable for the goals in their contracts at the time of renewal.

²³ *Utah Code* 53G-5-303(4)

- Ensuring they meet, or are attempting to meet, the agreements in the contract before renewal.
- Selecting their own teaching methods, policies, and curriculum to meet goals in the contract agreement.

Instituting a renewal process for charter schools could allow flexibility for charter schools while improving the authorizer’s ability to maintain oversight and hold schools accountable for their unique education mission.

A Statutory Renewal Process Could Replace the Current Practice of Conducting a Comprehensive Five-Year Review

The passage of House Bill (H.B.) 313 in 2018 made changes to *Utah Code* to provide authorizers increased oversight authority over the schools they authorize. *Administrative Rule* was created in response to this legislation, instructing authorizers to conduct a comprehensive five-year review of the charter schools they authorize.²⁴ The SCSB conducts these reviews as the largest authorizer. However, it reports that the review process is somewhat reactive to issues of noncompliance, and places the responsibility on the SCSB to monitor 123 charter schools. Issues the SCSB reports to schools can be treated as suggestions for change, rather than requirements. The SCSB may escalate a school from warning status to termination if it meets the requirements for closure in statute. However, the SCSB notes that it is extremely difficult to pursue termination actions because it lacks the tools to exercise such oversight. Furthermore, terminating a charter agreement presents a hardship on students, parents, educators, and administrators.

We recommend that the Legislature consider replacing the comprehensive five-year review with a formal renewal process in statute. This change could shift some responsibility from the authorizers to the schools. When applying for renewal, charter schools would be required to demonstrate that they are meeting their charter agreement terms and performing well in other areas, such as financial compliance. This would prove beneficial to the SCSB which has the bulk of the state’s charter schools. Charter schools would be aware of

H.B. 313 (2018) required authorizers to conduct a five-year comprehensive review of its charter schools. This places the responsibility on large authorizers like the SCSB to review 123 charter schools.

We recommend that the Legislature consider replacing the five-year review with a formal renewal process in statute.

²⁴ *Administrative Rule* R277-553-2

Replacing the five-year review with a five-year renewal process would require charter schools to take greater ownership of their performance and allow larger authorizers to better manage school agreements.


the renewal timeframes and would be required to take greater ownership of their performance.

Replacing the five-year comprehensive review with a five-year renewal process could also allow the SCSB to better manage school agreements. The SCSB could stagger schools' renewal dates to better manage all 123 charter schools. Additionally, it could be selective in offering limited renewal contracts. For example, a high-performing school, upon renewing its charter agreement, could be awarded an additional five-year contract. A struggling school might be offered a one- or two-year contract renewal in efforts to remedy specific areas of concern. This approach could allow the authorizer to have a more proactive role in overseeing school performance. SCSB leadership have expressed support for creating a renewal process in place of the five-year comprehensive reviews. They believe the change could help them be more proactive rather than reactive when considering renewals.

At Least Five Nearby States and One Local School District Require Charter School Renewal

We found that a formal renewal process for charter schools is a common practice nationally. More specifically, an examination of five nearby states showed that each state requires charter schools to renew their agreements with their authorizer. The timeframe granted to a charter school differs in each state. Figure 4.3 details the laws of each state's charter school renewal policy.

Figure 4.3 Surrounding States Have a Charter Renewal Policy. Utah is the only state that does not have a defined renewal process for charter school agreements with an authorizer.

	ARIZONA: An initial charter agreement is effective for 15 years and may be renewed for successive 20-year periods.
	COLORADO: An initial charter agreement is effective for 4 years and it may be renewed for successive periods as adopted by the individual authorizers.
	IDAHO: An initial charter agreement is effective for 5 years and may be renewed for successive 5-year terms.
	N. MEXICO: A charter can be renewed for successive periods of 5 years.
	NEVADA: A school can have an initial charter agreement for 6 years and may be renewed for a term on not less than 3 years or more than 10 years
	UTAH: No renewal process. <i>*H.B. 242 (2020) allows a 3-year initial charter agreement for new schools. This does not impact currently operating charter schools.</i>

Source: Auditor generated from statutes of sample states

As seen in Figure 4.3, each of the five sample states requires charter schools to renew charter agreements within specific time periods after the initial agreement. Some of the states we interviewed reported that the renewal process is vital to the success of their charter schools. It places the burden on the charter schools to demonstrate their worth and reduces the authorizers’ administrative burden to be constantly monitoring the schools.

We also found that the Salt Lake City School District requires its three charter schools to renew their charter agreement every five years. Each school’s goals, contract terms, and expectations are discussed during the renewal process. Based on our audit findings, the Salt Lake City School District is the only authorizer in Utah that requires a renewal process of its charter schools.

Our interviews with professionals at the National Association of Charter School Authorizers (NACSA) found that they strongly support a formalized charter renewal process for all states and recommend the renewal process be codified in state law. They noted that evergreen charters are contrary to national best practices and standards. A policy for regular charter renewal allows authorizers to have more of the necessary tools to close underperforming charter

A sample of five nearby states found that each state requires charter schools to renew charter agreements within specific time periods.

Professionals at the National Association of Charter School Authorizers (NACSA) noted that “evergreen” charters are contrary to national best practices and standards.

schools, thereby enhancing the school's accountability within the charter school system.

It should be noted that H.B. 242, passed in the 2020 Legislative General Session, established an initial probationary period for new charter schools in Utah. New charter schools created after this date will be examined after an initial three-year period to determine if they should be granted permanent evergreen status. This is a positive step to provide increased accountability for charter schools, but it does not entail a formal renewal process. The process established by H.B. 242 applies only to new charter schools and has no effect on the 135 existing charter schools in Utah. A formal renewal process requires a charter school to reapply for approval at designated times determined by state law.

There Are No Uniform Standards of Charter School Oversight for Authorizers

The non-SCSB authorizers employ different practices to monitor their schools. Non-SCSB authorizers are also structured differently than the SCSB and maintain different practices to monitor their charter schools. Most of these authorizers did not conduct five-year reviews of their charter schools according to *Administrative Rule*. Establishing uniform criteria for a charter school renewal process could ensure the different authorizers are consistently holding their charter schools accountable to the same standards.

The Different Authorizers Have Varying Oversight and Review Practices for Their Charter Schools

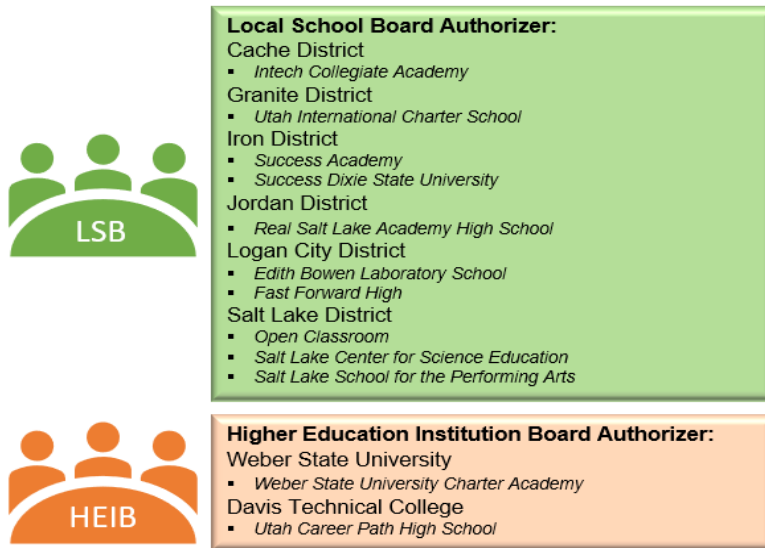
The oversight and governance structure of the SCSB is fundamentally different from Utah's other two charter school authorizer types. The SCSB conducts both annual and five-year reviews as the authorizer of 123 charter schools, but the same requirements were not consistently followed by the other authorizers. For example, non-SCSB authorizers are required to conduct the same five-year comprehensive review found in *Administrative Rule* for the schools they authorize. However, most local school district authorizers and the two higher education institution authorizers do not conduct a comprehensive five-year review for their charter schools.

The passage of H.B. 242 in 2020 established an initial three-year probationary period for new charter schools. However, this process has no effect on the currently existing charter schools in Utah.

The oversight and governance structure of the SCSB is fundamentally different from Utah's other two charter school authorizer types.

The number of schools overseen by local districts and higher education institutions are very limited. Most authorizing local districts only have one charter school, while even fewer have two or three charter schools at the most. Each of the two authorizing higher education institutions have one charter school. Figure 4.4 shows the local districts and higher education institutions authorize charter schools:

Figure 4.4. School District and Higher Education Authorizers. There are 12 charter schools authorized by non-SCSB authorizers.



Source: Auditor Created from SCSB's 2021 Annual Report

Non-SCSB authorizers utilize various practices for the oversight of their charter schools. For example, each of the local districts and higher education authorizers has a representative who sits on the governing board of the charter school it authorized. Some of these authorizers reported that they receive monthly update reports from their charter schools. Others had charter schools annually present performance reports to the authorizer. Still others reported that regular monitoring was difficult because the charter school was disconnected from it as the authorizer. Many of these authorizers believed they were holding their charter schools accountable.

To ensure that consistent, regular, and quality reviews are conducted, we recommend a formal renewal process in statute to clarify the inconsistent oversight practices between the different authorizers. Establishing criteria for charter school renewal and accountability could create consistent authorizer oversight and

The number of charter schools overseen by local districts and higher education institutions is very limited.

Non-SCSB authorizers utilize various practices for oversight of their charter schools.

A formal renewal process in statute could clarify inconsistent oversight practices between the different authorizers.

mitigate risks of schools seeking authorizers with more or less accountability standards. Both the local district and higher education authorizers responded positively when asked about a formal renewal process being included in state statute. These authorizers indicated that the burden of a renewal would be essentially nonexistent for their schools due to the monitoring that already occurs.

Specific Standards Do Not Exist for the SCSB's Approval Process for New Charter Schools

The passage of H.B. 313 in the 2018 Legislative General Session required authorizers to submit their process for approving charter schools to USBE. The process for each authorizer's approval would then be established in *Administrative Rule*. Prior to the passage of H.B. 313, authorizers could maintain their own criteria for approval without submitting it to USBE, since USBE had final approval authority. However, the bill removed USBE's final approval authority over charter school applicants. As such, USBE can hold an authorizer accountable to its process in rule for charter school approval but does not have final approval authority.

As the largest authorizer, an approval process for a new charter school from the SCSB was necessary. The SCSB's approval process is found in *Administrative Rule*.²⁵ While the process identifies specific areas the SCSB must review, there are no standard requirements or set criteria for the approval of new charter schools based on these areas. Members of the SCSB can weigh various areas differently and use judgment calls in many cases. The SCSB's considerations for the approval of a new charter school include:

- Evaluation of the school's governing board
- Review of the background of proposed governing board
- Capacity interview of the proposed governing board
- Evaluation of the school's financial viability
- Market analysis
- Anticipated enrollment
- Anticipated and break-even budgets

SCSB board members are provided with a pre-set list of questions to ask during the capacity interview of a proposed school governing board. They also may ask subsequent, random, follow-up questions

²⁵ *Administrative Rule* R277-552-2 (8)

There are no standard requirements or set criteria for the SCSB's approval process of a new charter school. It can weigh areas differently and use judgment calls in many cases.

related to areas where they would like more information. The SCSB director said that although the goal is to approve schools that have the highest potential for success, there are not set guidelines for approving or denying applicants.

Most local school districts and higher education institutions have not submitted a process for charter school approvals since the passage of H.B. 313 in 2018.²⁶ The approval process for these non-SCSB authorizers will be included in *Administrative Rule* if they choose to submit one. Many of the local districts and higher education institutions reported that they did not wish to authorize more charter schools in the future. They indicated that having a limited number of schools allowed better oversight, and they did not want the administrative burden of having more schools or competitive enrollment within the district. The most recent instance of a local district authorizing a charter school was the Real Salt Lake Academy by the Jordan District in 2016.

Organizational Changes for the SCSB Would Likely Be Required for Stronger Charter Oversight

The SCSB is fundamentally different from the other charter school authorizers in Utah because of the number of schools it approves and oversees. Because it oversees most of the state's charter schools, it developed the Charter School Accountability Framework (CSAF). The CSAF established a gradual scale of disciplinary action that could be taken by the SCSB for poor-performing or noncompliant charter schools. However, the SCSB recognizes that the CSAF model is reactionary because it is meant to detect potential concerns when reviewing a charter school rather than proactively finding concerns.

The SCSB employs a relatively small staff of 12 individuals, including an executive director, a school support team, a school performance team, and a financial compliance team. This staffing level includes an increase of three employees in 2020. The SCSB had previously operated with nine employees for some time. As such, the

²⁶ USBE recently approved Utah State University's (USU) process to be a charter school authorizer in July 2020. In May 2021, USBE approved USU's charter school transfer process request. This would allow a charter school to transfer its charter agreement to USU.

Many non-SCSB authorizers indicated that having a limited number of schools allowed better oversight and did not wish to authorize more schools in the future.

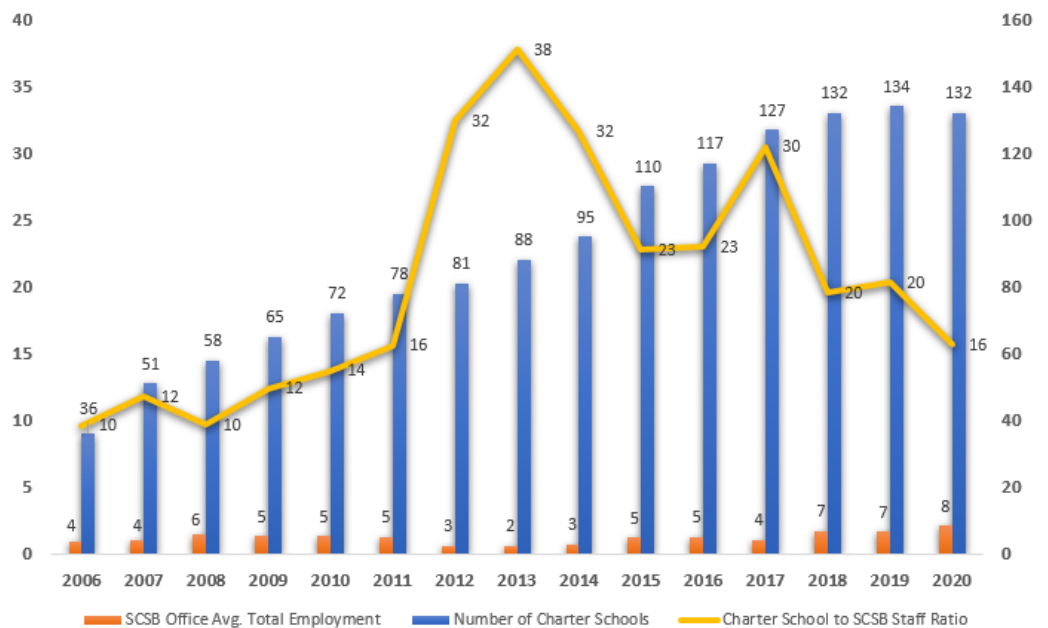
The SCSB oversees most of the state's charter schools and employs a relatively small staff of 12 individuals.

The SCSB may not have the capacity to routinely monitor the compliance of all its 123 operational charter schools.

SCSB may not have the capacity to routinely monitor the compliance of all its 123 operational charter schools.

We found that the SCSB’s ratio of charter schools per employee is higher than the national average for authorizers. For example, a 2016 NACSA study found that authorizers employ one full time equivalent (FTE) for every eight schools nationally. Employment data from the Department of Human Resources Management (DHRM) shows that in 2016 the SCSB had one FTE for every 23 schools. By 2020, this ratio had improved to roughly one FTE for every 15.7 charter schools. Figure 4.5 shows the ratio of SCSB employees to the number of charter schools over the past fifteen years.

Figure 4.5 SCSB Staff Has Remained Low with the Growth of New Charter Schools. The yellow line shows the total number of charter school per SCSB FTE from 2006 to 2020.



Source: Auditor generated from DHRM FTE data.
 Note: This figure includes all charter schools. Due to data limitations, we could not determine the authorizers of each school by year. Despite this, the SCSB has some responsibilities for all 132 charter schools in the state.

The staffing and organizational changes for the SCSB should be considered with options for structural governance changes discussed in Chapter III.

The staffing and organizational changes in this chapter should be considered together with the options for structural governance changes discussed in Chapter III. If the Legislature decides to implement one of the larger governance options in Chapter III, it may require organizational changes within the SCSB.

Recommendations

1. We recommend that the Legislature consider adding a formal renewal process that contains consistent criteria in state statute for both currently operating and new charter schools to renew their agreement with their authorizers.
2. If a charter renewal process is implemented, we recommend that the Utah State Board of Education change the language in Administrative Rule R277-553-2 (4) to replace the comprehensive five-year review with the renewal process for charter schools and authorizers.
3. We recommend that as part of the broader governance deliberations described in Chapter III, the Legislature consider reviewing the need for additional resources for the SCSB if the board is given additional governing responsibilities.



Chapter V

Local Governing Boards of Charter Schools Lack Uniform Standards

Charter school accountability can be strengthened at the local level by requiring local governing boards to establish expertise standards and training members in areas related to their responsibilities. *Utah Code* does not include standards for the composition or expertise of individual charter school governing boards. Unlike school district boards, whose members are elected by voters, local charter school governing boards consist of volunteer members who are appointed. Local charter governing boards have limited training related to board responsibilities in either *Utah Code* or *Administrative Rule*. The lack of such requirements may contribute to limited accountability provided by local charter boards.

Lack of Standards for Local Boards Can Contribute to Weak Charter Accountability

There are no standards established for charter school governing boards in Utah. As a result, each board is different in size, expertise, and expectations. Some surrounding states have standards for local charter school governing boards. Furthermore, national best practices recommend establishing statewide standards for local charter school governing boards.

Neither Statute nor Rule Establishes Standards for Local Governing Boards

Although statute requires that charters use a local governing board and sets forth board responsibilities, it does not set standards for those boards. *Utah Code* requires USBE to make a rule, setting forth the minimum standard to be used by an authorizer when reviewing the potential board of a charter school applicant regarding the "...skill and expertise of a proposed charter school's governing board..."²⁷ In turn, *Administrative Rule* states that

Charter school accountability can be strengthened at the local board level by requiring local boards to maintain expertise standards and training members in areas related to their responsibilities.

²⁷ *Utah Code* 53G-5-205(6)(b)(i)

There is not a set standard for charter school governing boards. As a result, boards vary in size, expertise, time of service, and frequency of meetings.

An authorizer’s review process for a new charter school shall include...an evaluation of the school’s governing board, including: a review of the resumes of and background information of proposed governing board members; and a capacity interview of the proposed governing board members.²⁸

Although this rule requires authorizers to consider expertise, it does not set a standard by which the authorizer is to compare potential board members. As a result, governing boards for Utah charter schools vary in size, expertise requirements, time of service, and frequency of meetings per individual charter agreements and bylaws. Figure 5.1 lists a sample of charters and their varying requirements.

Figure 5.1 A Sample of Six Utah Charter Schools Shows Wide Variety in Governing Board Requirements and Expectations. This variation occurs because *Utah Code* does not establish standards for local governing boards.

School	Board Member Size	Expertise Requirements for Board Members	Time of Service	Frequency of Meetings
Charter A	3-11	Local business community, parents, local school districts, and university representatives	Founding members - none. New – 6 years	As needed
Charter B	5-7	Familiar with curriculum	2 years	6 times yearly
Charter C	5-9	“... qualities, qualifications, and diversity determined by the board.”	3 years	Regularly as determined by the board
Charter D	5-9	18 years old	Founding members – 8 years. New – 3 years	10 times annually
Charter E	3-9	Experienced charter leaders, JROTC instructors, military personnel	None	Once a month or as needed
Charter F	5-7	None	4 years	Annual meeting and regularly as determined by the board

Source: Auditor analysis of a sample of charter agreements and bylaws

As shown in Figure 5.1, the requirements and expectations for Utah’s local governing boards are inconsistent. This inconsistency results in varying levels of expertise, experience, and accountability. Some charter school bylaws allow board members to remain on the board without term limits or do not list specified term limits. This differs from what is seen in local school districts, where board members are elected and accountable to the voters in their area.

²⁸ *Administrative Rule* R277-552-3(8)(b)(i-ii)

Some charter by-laws allow governing board members to remain on the board without term limits. This differs from school district board members who are elected and accountable to voters.

National Guidelines and Surrounding States Require More Consistent Boards

Some surrounding states maintain specific standards for local charter school governing boards. Additionally, national resources and a previous Legislative audit recommend stricter requirements of governing boards. Figure 5.2 summarizes standards for local charter school boards in Utah and surrounding states, based on their respective state statutes.

Figure 5.2 Statutes in Three Surrounding States List Specific Standards for Local Charter Governing Boards. Some states require stronger standards for local boards, while others allow the authorizer and school to agree on the local governing body.

State	Standards for Board Members	Conflict of Interest or Ethics Standards
Idaho	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> No more than 1/3 of a local board can be composed of representatives of nonprofit education service providers. 	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> Charter school board members shall annually disclose any existing and potential conflict of interest, pecuniary or otherwise, with affiliated educational service providers.
New Mexico	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> At least 5 members. Charter school governing body must be qualified as board of finance. 	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> A person shall not serve as a member of a governing body of a charter school if the person or an immediate family member has financial interest in a for-profit or nonprofit entity that contracts with the charter school.
Nevada	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> Requirements for board member expertise – teacher, parent, accounting knowledge, financial services, law, or human resources. 	<p style="text-align: center;">Yes</p> <ul style="list-style-type: none"> Disclose any conflict of interest between the charter school board of directors and an educational management organization. A code of ethics for members and employees of the governing body. The code of ethics must be prepared with guidance from the Nevada Commission on Ethics.
Arizona	No	No
Colorado	No	No
Utah	No	No

Source: Auditor review of surrounding states' code

Statutes in three states listed in Figure 5.2 have detailed standards for local charter boards. For example, statutes in Idaho, New Mexico, and Nevada all require conflict of interest standards for local governing boards. Utah, along with Arizona and Colorado, has only statutory conditions to include local governing boards as part of charter agreements. However, the statutes do not set forth specific standards for these boards.

The National Charter School Resource Center (NCSRC)²⁹ recommends that local governing boards include members with the

²⁹ The National Charter School Resource Center is funded by the U.S. Department of Education.

Three surrounding states have more standards for local charter school boards compared to Utah.

We recommend that the Legislature consider establishing standards for charter school governing boards.

Mandated training in areas such as finance and legal matters could benefit local governing boards.

New Mexico state code specifies that charter school governing boards receive mandatory training for all governing body members.

right skills and experience in areas such as finance, leadership, human resources, legal, education, and strategic planning. It also recommends that charter boards have enough members to be effective.

Our office also released guidance for board internal controls. Among the best practices for the roles of board and staff include:

- The board is ultimately responsible for governance.
- The board monitors results.
- Members recognize that their role is more than just ceremonial.

Given these best practices, as well as the accountability issues noted in previous chapters of this report, we recommend that the Legislature consider establishing standards for charter school governing boards.

Specific Training for Charter Governing Boards Is Not Required

Members of local charter governing boards in Utah have very limited training for their position.³⁰ A previous audit recommended that governance boards in Utah receive required training for their specific board duties—a practice that is common in some neighboring states for local charter school boards. Mandated training in areas such as finance and legal matters could benefit local governing boards, as Utah charter school expenditures exceeded \$800 million in recent years. Our audit findings suggest that many education stakeholders support the addition of a training requirement and believe it will improve charter school accountability at the local level.

Other Entities Recommend Training for Charter Governance.

The governing boards of Utah charter schools have minimal training related to their specific board duties. However, at the national level, the NCSRC asserts that “As the school’s governing body, the board...is legally responsible for the academic, financial, and operational quality of the charter school.” The NCSRC supports the requirement for training, stating that “every onboarding process should have an Orientation Training...” and further advises that the

³⁰ Charter school governing boards are required to be trained on the Open and Public Meetings Act. Additionally, USBE revised *Administrative Rule* to require LEA governing boards to be trained on their duties with audit committees.

governance committee “Provides ongoing governance training and support.”

New Mexico state code specifies that local charter school governing boards receive mandatory training for all governing body members. This training includes policies and procedures, duties of governing boards, legal concepts, and finance and budget matters. In addition, Nevada statute requires that all charter agreement bylaws specify what training the governing body will receive.

The Utah Association of Public Charter Schools (UAPCS), along with other organizations, provide training modules and seminars for local governing boards under the direction of the SCSB. However, these trainings are voluntary and board members are not required to participate. We believe it is important that local charter board members have the skills to fulfill their duties, especially given the amount of public funds they oversee. For example, a 2018 report from the State Auditor’s Office shows that charter school expenditures totaled more than \$800 million in that year.

Utah Charter Stakeholders Support Required Training for Governing Boards. We spoke with stakeholders in the charter community about a training requirement to improve accountability at the local governing board level. Those in support of such training include the following:

- Members of SCSB
- SCSB staff
- Members of USBE
- UAPCS leadership

For example, the SCSB suggests going beyond simply offering training, but requiring training for board members of charter schools. The SCSB noted that local governing boards play an essential role in identifying and resolving concerns earlier than the SCSB can by focusing on the financial health and academic performance of individual schools.

A Previous Legislative Audit Recommended Mandatory Training for Local Districts. Further supporting the need for required training, our office released guidance for local board internal

The SCSB suggests that mandating training for all charter school board members could help the school identify and resolve concerns earlier.

We recommend the Legislature consider requiring that members of local charter boards be annually trained on areas specifically related to their governance duties.

controls.³¹ One of the four key elements of an effective system of internal controls is that “The board...need[s] to be qualified and receive ongoing training.” The audit report further notes that “the best practice is to provide annual training of the board and staff.”

The audit also stated that “...an effective, engaged board is one of the most important lines of defense against fraud, waste and abuse.” One way to improve local accountability and avoid such risks would be to train local charter governing boards on their specific duties. Local boards are ultimately accountable for their school’s success. Mandatory board training for local governing boards can assist the members in knowing their role and addressing concerns early. As such, we recommend that the Legislature consider requiring that members of local charter boards receive annual training specific to their governance duties.

The recommendations in this chapter are intended to improve charter school accountability at the local board level. The recommendations are contingent on stronger accountability from the SCSB and USBE, as discussed in the previous chapters of this report. If oversight confusion is clarified at the state level, charter schools governing boards and staff could better understand which state entity they are answerable to for these recommendations.

Recommendations

1. We recommend that the Legislature consider setting standards and requirements for local charter school governing boards.
2. We recommend that the Legislature consider requiring members of local charter school governing boards to be trained annually on their responsibilities.

³¹ *A Review of Best Practices for Internal Control of Limited Purpose Entities* (Audit Report #2017-05).

Agency Responses



UTAH STATE BOARD OF EDUCATION

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June 4, 2021

Kade Minchey, CIA, CFE
Auditor General
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W315 State Capitol Complex
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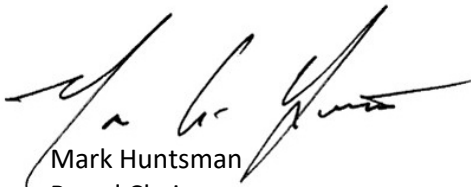
Dear Mr. Minchey:

Thank you for the opportunity to respond to *A Performance Audit of Utah's Charter School Governance Structure* (Report 2021-09). The Utah State Board of Education (USBE) recognizes that effective governance is essential to the achievement of the objectives of the public education system in the state of Utah.

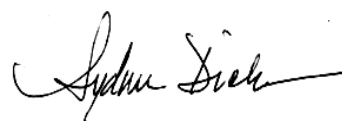
As noted in the audit, the governance of charter schools is unclear due to one public education system with two state-level boards, the USBE being constitutionally established, and the State Charter School Board (SCSB) being governor-appointed. The audit also states that, "The governance structure of charter schools is a policy decision for the Legislature to consider." These statements underscore the challenge the USBE, and SCSB, have encountered while working together to finalize a Memorandum of Understanding (MOU). The USBE concurs that legislative action to clarify the governance structure of charter schools will be of significant benefit to the state of Utah. The USBE is committed to a timely update of Utah Administrative Code in response to any changes to statute.

We appreciate the professionalism and objectivity of your staff in conducting the audit.

Sincerely,



Mark Huntsman
Board Chair



Sydnee Dickson, Ed.D.
State Superintendent of Public Education

cc: Laura Belnap, Board Vice Chair/Audit Committee Chair
Cindy Davis, Board Vice Chair/Audit Committee Vice Chair
Angie Stallings, Deputy Superintendent of Policy
Deborah Jacobson, Finance Director
Debbie Davis, Chief Audit Executive



June 1, 2021

Kade Minchey, CIA, CFE
Auditor General
Office of the Legislative Auditor General
W315 State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Minchey:

Thank you for the opportunity to respond to Report Number 2021-09, "A performance Audit of Utah's Charter School Governance Structure". The State Charter School Board (SCSB) appreciates the hard work that went into this report and is grateful to you and your staff for taking the time to understand the situation and some of the more complicated issues. We find the report to be a comprehensive analysis of the current dynamic and look forward to clarifying direction from the legislature.

The SCSB supports the recommendations in the report. We especially appreciate the direction on the items of note below:

- The SCSB and the Utah State Board of Education (USBE) have been collaborating and working on a Memorandum of Understanding (MOU) for several years as recommended. We will continue this positive collaboration; although we recognize that putting into place some of the other recommendations in the report may assist us in agreeing to the terms of the MOU.
- While SCSB and USBE generally work well together, the current governance structure between the SCSB and USBE has created additional challenges. One of the three policy options listed would clarify that governance structure:
 - Option 1 (LEA): In order to work well, the authority and capacity would need to be commensurate with the responsibility given. As a reference point, the Nevada Charter Authority authorizes 67 campuses and 20 staff. The SCSB currently authorizes 125 campuses and would therefore need approximately 35-38 staff members to adequately oversee our portfolio of schools.
 - Option 2 (independent agency): In order to work well, the rules of engagement would have to be clearly defined for all parties.
 - Option 3 (new state agency): This option may provide us with additional internal independence if it were to be structured similarly to Idaho, as outlined in the



report. However, this is very similar to the format that was in place prior to HB 313 that holds the SCSB accountable to a process rather than having the SCSB approve, then the USBE approve or deny di novo. As a point of reference, all charter schools that have closed were approved under that previous process.

- The SCSB currently provides an annual report on charter schools as a whole and on its activities. See <https://www.utahscsb.org/annual-reports> for reports dating back to 2005-2006. However, legislative requirement for such a report could clarify its purpose and use.
- The SCSB strongly supports a renewal process for charter schools in Utah in order to implement a best practice currently in place in every other state.

Our mission and vision are *“advancing choice, innovation, and student success through rigorous authorizing and supportive oversight so that every student has access to an excellent education that meets their unique learning needs,”* so first and foremost, we will work hard to align our actions with the best interests of students and Utah taxpayers.

Additionally, the SCSB is committed to doing whatever is necessary to improve charter school performance and we have been continually improving our oversight and support of the charter schools we authorize. While the majority of the 125 charter schools we authorize are fiscally responsible and provide positive student outcomes, we will continue to find ways to help struggling schools and, when necessary, take action that may lead to significant changes or closure if warranted.

Respectfully,

A handwritten signature in blue ink, appearing to read "DeLaina Tonks".

DeLaina Tonks
Board Chair
State Charter School Board

A handwritten signature in black ink, appearing to read "Jennifer Lambert".

Jennifer Lambert
Executive Director
State Charter School Board