

Memorandum of Understanding (MOU)

Between the Utah State Board of Education and the State Charter School Board

December 4, 2024

Introduction and Definitions:

This Memorandum of Understanding (MOU) is entered into by and between the Utah State Board of Education (hereinafter referred to as "the Board") and the State Charter School Board (hereinafter referred to as "the SCSB," and together hereinafter referred to as "the parties.") The purpose of this MOU is to establish a framework for cooperation and collaboration between the Board and the SCSB, clarifying their respective roles and responsibilities in the oversight and support of the SCSB's authorized public charter schools in the state of Utah.

Authority and Purpose:

This MOU is authorized by the following:

1. **Utah Constitution Article X, Section 3**, which vests general control and supervision over public education to the Board.
2. **Subsection 53E-3-401(4)**, which allows the Board to make rules to execute its duties and responsibilities under the Utah Constitution and state law.
3. **Title 53G, Chapter 5, Charter Schools**, which allows the Board to make rules governing the operations of public charter schools and defines the status and powers of the SCSB.

The purpose of this MOU is to:

1. Clarify the roles of the Board and the SCSB relative to one another.
2. Define how the Board and the SCSB will cooperate and interact when their responsibilities overlap.
3. Refer to or restate certain provisions of Utah Code that relate to the relationship between the Board and the SCSB. The references to Utah Code provisions in this MOU are not exhaustive but are meant to highlight key provisions to clarify the relationship between the two Boards. Nothing in this Agreement limits the Board's authority or responsibility as required by the Utah Constitution or Code.

Restated Provisions of Utah Code Related to the Relationship:

Utah Code provides an initial framework for the relationship between the Utah State Board of Education and the State Charter School Board. The parties both acknowledge that:

1. As stated in 53G-5-202, the Board shall:
 - (a) approve the State Charter School Board's annual budget; and
 - (b) otherwise grant autonomy to the State Charter School Board to manage the SCSB's budget and expenditures.

2. The SCSB shall utilize the services of the Board's procurement staff for purchasing, in compliance with Title 63J, Chapter 1, Budgetary Procedures Act; and Rule R277-122.
3. As stated in 53G-5-203, the SCSB shall appoint a staff director for the State Charter School Board, and the SCSB shall have the sole authority to remove the staff director.
4. As stated in 53G-5-203, the SCSB may use facilities for SCSB operations provided by the Superintendent which are occupied by the Board or the Board's employees, with costs charged for facilities equal to those charged to sections and divisions under the Board. The SCSB may also use facilities for SCSB operations other than facilities that the Board or the Board's employees occupy at the sole expense of SCSB.
5. If the SCSB receives a report from a charter school on the charter school's innovative practices, which fulfill the purposes of charter schools described in 53G-5-104, the SCSB shall forward the report received from charter schools to the Superintendent.
6. The SCSB shall, in accordance with Board rules, including R277-552, establish and make public the SCSB's:
 - (a) application requirements, in accordance with Section 53G-5-302;
 - (b) application process, including timelines; and
 - (c) minimum academic, governance, operational, and financial standards.
7. As stated in Section 53G-5-406, the SCSB shall do the following for charter schools the SCSB authorizes:
 - (a) visit a charter school authorized by the SCSB at least once during the school's first year of operation;
 - (b) review the charter school as required in Rule R277-553; and
 - (c) provide written reports to the SCSB's authorized charter schools after the required visits as required in Rule R277-553.
8. As stated in Section 53G-5-206 and in accordance with Rules R277-114 and R277-555, the Board may initiate corrective action against the SCSB if the SCSB fails to:
 - (a) develop and implement a process meeting minimum standards for authorizing charter schools;
 - (b) develop and implement a process meeting minimum standards for charter school oversight per 53G-5-205-2; or
 - (c) comply with statute or Board rule.
9. If the SCSB becomes subject to a corrective action plan, the Board shall design and implement a consistent monitoring and corrective action plan following procedures outlined in Rules R277-114 and R277-555.

10. The SCSB may appeal to the Board any adverse decision of the Superintendent resulting from a corrective action plan imposed by the Board or Superintendent as described in Rule R277-555.
11. As stated in Section 53G-5-205, the Board may direct the SCSB to do the following if the SCSB or an applicant to the SCSB fails to follow statutory or Board rule requirements:
 - (a) reconsider the SCSB's approval of an application for a new charter school; and
 - (b) correct deficiencies in the charter school agreement, in the charter school application, or SCSB's application process as described in statute or Board rule.
12. As stated in Subsection 53G-5-503(2), the Board shall hear an appeal of a termination of a charter school authorized by the SCSB, if the terminated school's governing board makes an appeal to the Board. As stated in Subsection 53G-5-503(2), the Board's action is final action subject to judicial review.
13. As outlined in 53E-3-401, the Board may take the following actions when public education code or rule has been violated:
 - (a) require the public charter school to enter into a corrective action agreement with the Board;
 - (b) temporarily or permanently withhold state funds from the public charter school;
 - (c) require the public charter school to pay a penalty; or
 - (d) require the public charter school to reimburse specified state funds to the Board.

Role of the Utah State Board of Education (USBE):

The Utah State Board of Education (USBE) possesses a range of abilities and responsibilities to effectively oversee public education in Utah, including public charter schools. These include but are not limited to:

1. Advising upon all matters involving the welfare of the schools as outlined in 53E-3-303.
2. Establishing rules and minimum standards for public schools, including public charter schools, governing the following:
 - (a) the qualification and certification of educators and ancillary personnel who provide direct student services;
 - (b) required school administrative and supervisory services; and
 - (c) ;
3. Establishing rules and minimum standards for public schools, including public charter schools, governing the following:
 - (a) access to programs;

- (b) attendance;
 - (c) competency levels;
 - (d) graduation requirements; and
 - (e) discipline and control;
- 4. Establishing rules and minimum standards for public schools, including public charter schools, governing the following:
 - (a) school accreditation;
 - (b) the academic year;
 - (c) alternative and pilot programs;
 - (d) curriculum and instruction requirements; and
 - (e) school libraries;
- 5. Establishing rules and minimum standards for public schools, including public charter schools, governing the following:
 - (a) services to persons with a disability as defined by and covered under:
 - 1. the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102;
 - 2. the Rehabilitation Act of 1973, 29 U.S.C. Sec. 705(20)(A); and
 - 3. the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1401(3); and
 - (b) other groups protected by law;
- 6. Establishing rules and minimum standards for public schools, including public charter schools, governing the following:
 - (a) state-reimbursed bus routes;
 - (b) bus safety and operational requirements; and
 - (c) other transportation needs;
- 7. Establishing rules and minimum standards for public schools, including public charter schools, governing the following:
 - (a) school productivity and cost-effectiveness measures;
 - (b) federal programs;
 - (c) school budget formats; and
 - (d) financial, statistical, and student accounting requirements; and
- 8. Establishing clear reporting requirements and timelines for the submission of reports, data, and other relevant information.
- 9. Working collaboratively with the SCSB regarding the process to address the following related to a charter school the SCSB authorizes:
 - (a) concerns for the health, safety, or welfare of the charter school's students;
 - (b) a significant aggregate number of complaints related to a specific charter school authorized by the SCSB.

Role of the State Charter School Board (SCSB):

The State Charter School Board (SCSB) possesses a range of abilities and responsibilities to effectively authorize and support public charter schools in Utah. These include but are not limited to:

1. The SCSB has the authority to create its own bylaws and policies to govern its operations, ensuring these do not conflict with state law and the Board's policies.
2. Upon approval of its annual budget by the Board, the SCSB has the authority to manage its budget and expenditures which includes the authority to;
 - (a) determine all expenditures
 - (b) hire and terminate the SCSB's staff;
 - (c) determine the classifications and salaries or wages of the SCSB's staff;
 - and
 - (d) use funds allocated by the legislature to the SCSB for specific statutory purposes.
3. The SCSB has the ability to enter into contracts, sue and be sued, and provide administrative services to charter schools for which it may charge fees.
4. The SCSB is responsible for authorizing and promoting the establishment of public charter schools.
5. The SCSB may make recommendations to the Legislature on charter school legislation and to the Board on charter school rules and funding.
6. The SCSB provides technical support to charter schools and individuals seeking to establish charter schools, including identifying successful models, facilitating the application process, and directing them to funding sources and sources of support.
7. The SCSB may provide technical support to other charter authorizers.
8. After the SCSB approves a charter school application, the charter school applicant and the SCSB shall execute a written charter agreement in accordance with Section 53G-5-303. A charter agreement:
 - (a) is a contract between the charter school applicant and the charter school authorizer;
 - (b) shall describe the rights and responsibilities of each party; and
 - (c) shall allow for the operation of the applicant's proposed charter school.
9. The SCSB is responsible for reviewing and evaluating the performance of its authorized public charter schools and will hold schools accountable to meet the unique performance measures established in their bilateral charter agreements.

10. The SCSB holds a governing board of directors of a public charter school authorized by the SCSB accountable for adherence to the Open and Public Meetings Act, governance, and financial oversight of the public charter school.
11. If a charter school is found to be materially out of compliance with the requirements of Section 53G-5-404 or the school's charter agreement, the SCSB shall provide written notice of the reason for the charter school's noncompliance and a reasonable time to remedy the deficiency. The notice shall state that the charter school governing board may request an informal review before the SCSB to present evidence related to the deficiency. The SCSB reviews the evidence within a reasonable time to determine if the charter school has remedied the noncompliance or if the circumstances necessitate additional time to remedy the deficiency; and establishes a deadline to remedy the noncompliance.
12. As stated in Sections 53G-5-501, the SCSB may take action as provided in Section 53G-5-501 when a charter school does not remedy the material deficiency within an established timeline subject to limitations of due process and notification requirements.
13. The SCSB may grant or deny the request of a governing board of a charter school that it authorizes to be placed in a school improvement process as described in Section 53G-5-502. The SCSB may also grant or deny the request of a governing board of a charter school that it authorizes to transfer operation and control of the charter school to:
 - (a) the school district in which the charter school is located;
 - (b) the governing board of another charter school;
 - (c) a private management company; or
 - (d) the governing board of a nonprofit corporation.
14. The SCSB ensures the health, safety, and welfare of students by providing a reporting tool for charter schools to report concerns and collaborating with the Superintendent to address violations. The SCSB will post information on the reporting tool on the SCSB's website in a readily accessible location. When the SCSB receives a report from a charter school concerning any threat to the health, safety, or welfare of one of its charter school's students, the SCSB shall:
 - (a) refer the concern to the appropriate Board staff or refer the concern to other appropriate authorities;
 - (b) if the charter school is authorized by the SCSB, address the concern directly if the matter concerns:
 1. a provision related to the charter school's charter agreement; or
 2. actions or failure to act of the governing board of directors of a charter school authorized by the SCSB.

(c) the SCSB may terminate a charter agreement immediately if good cause has been shown or if the health, safety, or welfare of the students at the charter school is threatened.

15. As stated in Section 53G-5-503, the SCSB may terminate the charter agreement of a charter school authorized by the SCSB for reasons allowed by and following processes outlined in Section 53G-5-503.
16. The SCSB is responsible for designating a records officer responsible for receiving and responding to its own records requests.

Mutually Beneficial Collaboration, Communication, and Working Relationship:

The Utah State Board of Education (the Board) and the State Charter School Board (SCSB) agree to collaborate, communicate, and work effectively to ensure the successful oversight and support of public charter schools in Utah. The parties will:

1. Direct their respective staffs to hold regular meetings to discuss ongoing projects, address concerns, and share updates on charter school performance and compliance.
2. Develop a process for addressing concerns and violations, including a mechanism for charter schools to report issues related to health, safety, and welfare of students.
3. Promote transparency and open communication by sharing information and resources that support the goals and objectives of both parties.
4. Work together to identify and promote successful charter school models and best practices.
5. If the SCSB intends to use space provided by the Superintendent for SCSB operations, the SCSB understands and agrees that space is subject to both availability and sufficient notice.
6. When occupying space provided by the Superintendent for SCSB operations, all indirect cost pool services and calculated indirect cost pool amounts shall be enforced. Furthermore, all internal services and associated costs remain (e.g., human resource support and service, payroll support and service).

7. When the SCSB uses space outside of what the Superintendent provides for its operations, the SCSB will be responsible for all indirect cost pool services, which means that calculated indirect cost pool amounts will no longer apply. However, there are exceptions where it is mutually beneficial for both USBE and SCSB to share services, in which the USBE will provide SCSB with indirect cost pool services at no cost. These exceptions are outlined below:
 - (a) State Superintendent and Deputy Superintendents support in all oversight matters;
 - (b) Hosting and shared management of Utah Charter Access Point;
 - (c) Other services as mutually determined to be beneficial by parties.

Furthermore, all internal services and associated costs remain the sole responsibility of SCSB (e.g., human resource support and service, payroll support and service).

8. The USBE and SCSB will co-create a mutually beneficial procedure that allows the SCSB to have autonomy in deciding and spending its funds within the parameters of the budget and designated line items while ensuring that the USBE has oversight. This procedure will include the SCSB preparing and presenting a budget versus expenditures report every month including encumbrances. This report will give the USBE assurance and oversight that the SCSB is spending funds within the parameters of the annual budget approved by both the USBE and SCSB. Through mutually beneficial collaboration, communication, and work this report should reflect the information in the State financial system. Moreover, this report will give the USBE assurance and oversight that the SCSB is spending funds within the parameters of the annual budget approved by both the USBE and SCSB such that USBE can take appropriate corrective action as authorized by Code and Rule where necessary. In addition to this, the USBE and SCSB will conduct quarterly reviews of SCSB's spending relative to the approved budget, identifying any variances and adjusting controls or reporting practices as needed to provide or strengthen oversight and support autonomy.

Additional Terms

1. The SCSB may determine use of its allocated funds as long as funds are available and are from a line item approved by the SCSB in open meeting and in alignment with the SCSB budget approved by the USBE.
2. The SCSB has autonomy to work directly with the Division of Finance in finance related matters, including but not limited to seeking approval for any exceptions to state policies related to finance directly from the Division of Finance which has the authority to grant or deny such requests.
3. The SCSB has autonomy to work directly with the Division of Human Resource Management (DHRM) in human resource and related matters, including but not limited to employee classification, compensation, job description, time approval, employee discipline, and dismissal. SCSB employees are not employees of the USBE, and SCSB bears sole legal and financial responsibility for any employment-related actions.

4. Both Parties intend to be legally and contractually bound by the terms of this Memorandum of Understanding.
5. Where a dispute arises concerning any issue within the scope of this MOU, the Parties agree to submit the matter to mediation. Each party will select 3 members to represent each Board selected by the respective Board leadership. The parties will jointly select a mediator by a majority vote.
6. The Board and the SCSB are governmental entities as defined in the Utah Governmental Immunity Act. Nothing in this MOU shall be construed as a waiver by either Parties of any rights, limits, protections or defenses provided by the Act. Nor shall this MOU be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this MOU is otherwise entitled. Subject to and consistent with the Act, each party will be responsible for its own actions or negligence and will defend against any claims or lawsuit brought against it. There are no indemnity obligations between these Parties.
7. The Board and the SCSB shall provide written notice to the other of non-performance along with a specific demand for cure. Any demand for cure shall be remedied within 30 days. Otherwise, the issue becomes a Dispute which shall be addressed as described above.
8. Unless a modification to this MOU is necessitated by a change in statute, a modification to this MOU shall be made in writing and only with the mutual consent of both parties.
9. The SCSB shall obtain their own risk management policy.

Signatures:

This Memorandum of Understanding (MOU) is agreed upon and signed by the duly authorized representatives of the Utah State Board of Education and the State Charter School Board.

For the Utah State Board of Education:



James Moss
Board Chair 12-4-2024

For the State Charter School Board:



Dr. W. Bryan Bowles
Board Chair 12-4-2024