

## Agency: UTAH STATE BOARD OF EDUCATION

### Program or Request Title: Charter Audit Implications and Findings

**Summary of Request:** June 2021 the Office of the Legislative Auditor General (OLAG) published a performance audit of Utah's Charter School Governance Structure. This was the third of six audit reports on Utah's public education. The audit had five recommendations (see Appendix A):

- 1) Consider the Policy Options on the state-level governance structure for charter schools
- 2) Consider adding a section to Utah Code to require Charter School Authorizers to produce an annual report on the performance of the schools they authorize
- 3) Consider adding a formal renewal requirement to state statute for charter schools to renew agreements with their authorizers
- 4) Consider requiring local charter governing boards to be trained annually, and setting standards for membership on local governing board
- 5) Finalize a Memorandum of Understanding between the two state-level boards for internal clarification between the two staffs.

This Summary of Request will provide the policy options to meet these solutions provided in the OLAG audit.

### What is the nature of your request?

Select one:

- POLICY REQUEST – You are seeking changes to Utah State Code to improve your program/services.
- BUSINESS CASE – You are seeking new or additional financial resources to support a program/service for education.
- BOTH POLICY and BUSINESS – You are proposing a new program or expansion of an existing program that will require new/amended state code and financial resources.**

Questions? Please contact:

Sarah Young ([sarah.young@schools.utah.gov](mailto:sarah.young@schools.utah.gov)) for questions related to a request for information or business case.

Angie Stallings ([angie.stallings@schools.utah.gov](mailto:angie.stallings@schools.utah.gov)) for questions related to a policy request.

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## **Additional USBE points of contact (as needed):**

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**If you are already working with a policymaker or member of USBE leadership on this request, identify them below:**

**Representative Lowry V. Snow (2022 General Session, H.B. 265)**

**Senator Karen Mayne (2022 General Session, S.B. 223)**

**1. Please provide an overview of this educational topic. Please include all of the following as applicable:**

- A narrative that describes the educational topic in 3-5 sentences.
- What is the existing agency footprint in this area? (For example, do we have existing programs to address this topic, FTE, grant programs, etc.?)
- If you have a website that includes additional information about this topic area, please include that as well.

*The OLAG audit found that charter school oversight and the state organization responsible for that oversight is not clearly delineated for the State of Utah. Both the Utah State Board of Education (USBE) and the State Charter School Board (SCSB) have responsibilities, as outlined in statute, for overseeing Charter schools. However, since roles and responsibilities overlap, or are unclear, knowing which organization is ultimately responsible for the different areas of oversight is difficult. Recent charter school closures and high-profile remediation have highlighted this confusion as well as the varied abilities of charter school board's in carrying out their governance responsibilities. Utah's system of evergreen charters does not follow best practice and leaves Utah the only state offering this type of contract in the nation.*

*Current state oversight of charter schools is split between the USBE and SCSB. The USBE has the general control and supervision of the State's public education system (Utah Constitution Article X section 3). The SCSB has the authority and responsibility to "enter into contracts, sue and be sued... Annually review and evaluate the performance of charter schools... and hold a charter school accountable for the school's performance and monitor charter schools authorized... for compliance with federal and state laws, rules, and regulations" (53G-5-202, 53G-5-205). It is important to note that other entities such as school districts and higher education entities may also authorize a charter school. While this report focuses on the USBE and SCSB's roles in overseeing charter schools, any statutes that seek to clarify the oversight should also consider both school districts and higher education entities that authorize charter schools.*

*Charter schools are governed according to their chartered agreement. The charter agreements vary and the mechanisms to monitor the school's fidelity to the charter agreement have also been varied. Most charter schools in Utah receive an evergreen charter contract from their authorizer. Current Utah statute does not have any mechanisms to require any type of sunset provision or renewals.*

*Current Utah statute allows for the SCSB to monitor charters for fidelity to law and their contract. The SCSB's ability to effectuate change is through the SCSB's remediation process known as the Charter School Accountability Framework (CSAF). This process allows for a charter school found to be out of compliance with law or their charter contract, to be placed on one of the following levels of remediation: Notice of Concern, Warning, Probation, or Closure. Statute requires that the school is noticed in writing before the SCSB can take actions such as removing board members, directors, business administrators, or closing the school.*

*The USBE likewise is responsible for the oversight of charter schools as the constitution has vested it with the general control and supervision of public schools. USBE can remediate charter schools through withholding funds, placing schools on corrective actions plans, and taking action to restructure or close the school if it fails to meet the requirements of turn around (Utah constitution chapter X section 3, 53E-5-3).*

*Charter school governing boards are voluntary which results in those boards having differing levels of ability and skill to perform proper oversight of their own school. The lack of knowledge and training is a contributing factor in those schools that are found to be out of compliance with state laws and charter agreements. The OLAG audit has identified that the creation of standards for board appointment and specific trainings could help improve the accountability at the board level.*

*Due to the nature of authorization and due to school oversight being performed mainly by two different state entities, it is hard to maintain clear lines of accountability. It is also unclear who has ultimate oversight responsibility. Evergreen charters create difficulties in holding schools to performance standards. And the lack of standards and trainings for the volunteer governing boards provide for a wide variety of understanding and skills to manage state money and programs. These observations led to the OLAGs recommendations on clearing up the confusion of who has the ultimate responsibility for the oversight of charter schools and the recommendations on the changes to contracting and board governance that they believe will improve oversight and accountability.*

**2. What are the challenges in this educational topic? Please include all of the following as applicable:**

- A narrative that describes each challenge in 3-5 sentences.
- Existing data that reflects the challenge and the data source.
- Stakeholder input that has been gathered to inform the challenge.

***Challenge #1- Charter schools are given evergreen contracts***

*Utah code does not require renewals to be written into the charter contract. The majority of schools chartered in Utah have “evergreen” charters. There are very few incentives for charter schools to voluntarily add in sunset provisions to their existing contracts. Without sunset provisions or renewals, holding charter schools accountable for performance outcomes becomes increasingly difficult since performance measures can become outdated and obsolete. Nationally, renewals are seen as best practice for chartering schools. Utah is the only state in the nation that does not have some form of a renewal process codified in statute.*

*Current stakeholders (charter schools, Charter associations) are not in favor of the addition of renewal requirements. Stakeholders have voiced concerns that they do not believe it is the right time to implement renewals in Utah’s charter schools. They feel that the assessment and accountability system has been impacted because of the 2020 pause in assessments, which they believe may negatively affect charter school performance. They do not want the current law and licensing committee to create the standards. And lastly, stakeholders are also worried that there is not enough information to know the requirements for receiving the 3-, 5-, or 10-year renewal contract.*

*HB 265 undertook to add expirations and renewals into the charter agreements. However, the bill never made it out of the house. It is important to note that this bill was supported by the SCSB and the USBE, however recent conversations with the SCSB show that due to the backlash from charter schools it is likely that they would not be willing to back a similar bill a second time. Codifying the need for renewals would put Utah in line with best practice and the rest of the nation. This follows the OLAG audits recommendations and is a way to improve the state's ability to hold charter schools more accountable to the outcomes of their contracts. Renewals would provide a way to leverage the need to amend contracts when performance standards become outdated.*

Sources:

[H.B. 265](#)

[OLAG Audit](#)

### **Challenge #2- No codified requirements for Charter governing boards**

*Charter school governing board members are volunteers. There are no codified requirements or qualifications to be a charter school governing board member. While some boards have placed requirements for certain skill sets in their organization's bylaws, there is no requirement or obligation to be trained in how or what the duties are for public servants and governors of public schools. This leads to a varied range of governance and accountability.*

*The OLAG audit recommends that the state codify membership standards and annual trainings for charter school boards. In the 2022 general session S.B. 223 undertook to codify requirements for charter school governing board membership as well as provide a requirement for annual trainings. This bill proposed to incentivize these trainings by allocating a stipend to be distributed to board members when they completed the training. The bill was never put to vote.*

*The SCSB did not support this recommendation because they did not feel it was equally applied to district schools.*

[OLAG Audit](#)

[SB 223](#)

***Challenge #3- The Oversight structure over charter schools is not clear***

*Both the USBE and the SCSB have statutory duties to oversee charter schools. The USBE has constitutional authority over all public education and the SCSB has authority to authorize charter schools. Money flows through the USBE however the SCSB is tasked with holding schools accountable to charter contracts, law and the school's performance. Charters, by Utah statute, can only be held accountable by the SCSB to those performance measures listed in their charter contract (53G-5-404(5a)). Additionally, state code also requires the SCSB to notify and coordinate with the USBE when credible complaints about student safety, finances and fraud are involved.*

*An exception for charter school performance accountability oversight is that the USBE has the authority to remediate charter schools based on their performance when their proficiency rates fall within the bottom 3% of schools in the state (53E-5-3). This would allow charter school performance to be judged relatively to the rest of the state's public schools. This exception seems to provide two levels of performance accountability which seem to provide very different rubrics.*

*The two state level entities over charter schools (USBE, SCSB) do not allow for clear lines of authority nor autonomy for oversight. Not only are the schools confused about who they answer to, but the OLAG audit also found that state employees from both the SCSB and USBE (when asked about which organization was responsible for charter oversight) were evenly split on the topic.*

*The OLAG audit mentions a 2016 charter school task force which made recommendations for the creation of a MOU to detail out roles and responsibilities between the SCSB and USBE, no MOU has been finalized.*

[OLAG Audit](#)

**3. What are potential solutions to address the challenges for this educational topic?**

**Please include all of the following as applicable:**

- A narrative that describes each solution in 3-5 sentences and how to addresses the root cause of the challenge. Please include any reference to existing evidence-base that align with the solution.

- Projected costs to implement this solution.
- Can the cost be scaled up or down, and how would that impact the solution?

*<Narrative Solution #1 Charter schools are given evergreen contracts>*

1. **Refile H.B. 265.** Refiling this bill would codify renewals for charter schools. This option would allow the state to have better oversight over performance standards for charter schools. The renewal period would give the authorizer the opportunity to take an in-depth review of the charter contract and its results allowing them to weigh the efficacy of that school. Good schools that fulfill their contractual obligations can be renewed with longer contracts. Schools that do not perform can be placed on remediation and given shorter contracts to produce results or close. This option allows for better accountability and increases the state's ability to take risks on innovative models with the security that if they do not perform, they do not need to be renewed. This option would bring Utah into best practice already implemented throughout the rest of the nation. The con, charter schools and their organizations already voiced opposition to this bill the first time it was proposed, and it did not pass. This option still requires that the authorizer be willing to close or remediate schools not meeting performance standards and it does not change the social pressures to keep schools that do not perform but are well attended open.
2. **Keep the status quo.** Utah law already requires the SCSB to perform annual and five-year reviews on charter schools. Newly passed legislation also requires that all new schools pass a renewal after the school's first 3 years before an evergreen contract is provided (53G-5-307). Current law does not require that charters be given an evergreen contract and the authorizer could write in renewals into the charter agreement individually for each school. The annual and five-year comprehensive reviews also serve as an opportunity for authorizers to ensure that schools are performing and meeting their contractual obligations (53G-5-406). No current law requires that an authorizer keep a contract that is not performing to the standards of that contract. In essence the same oversight that renewals provide can be done with the current laws surrounding charter school. The con is that the status quo does not provide incentives to use contracting and charter reviews in this manner. It requires that people make hard choices that affect kids. Whereas a law written into code leaves less choice in those charged with making hard decisions. Another con is that the same issues relating to performance standards that was raised in the OLAG audit is likely not to be addressed if code remains the same.

<p><b>Projected Cost:</b> No change in costs</p>	<p><b>Can it be scaled?</b> N/A</p>
<p>&lt;Narrative Solution #2 No codified requirements for charter governing board's&gt;</p> <ol style="list-style-type: none"> <li><b>1. Refile S.B. 223.</b> This bill codified requirements and training for charter school governing boards. This option would provide money (\$500.00 per board member) and structure to charter boards who complete the training. The pros to this option are that the volunteer boards will have more training and resources to better understand what it means to govern public schools and be a good steward of the public's resources. Required competence in governance and professional abilities will allow boards to function at a much higher rate. Training will alleviate the burden of remediation as board members will be more knowledgeable and capable of governing schools. SCSB was not supportive of this bill.</li> <li><b>2. Refile 223 but require both district and charter governing board members to be subject to board membership requirements and annual training.</b> This option would follow the recommendations of the previous option (1) but would be amended to apply to all boards both district and charter. As such both types of boards would be required to meet the new conditions or membership. This option could help appease some of the SCSBs reservations that the original bill targeted charter school boards while ignoring the district boards.</li> </ol> <p><a href="#"><u>SB 223</u></a></p>	
<p><b>Projected Cost:</b></p> <p><b>Option 1</b> \$650,000</p> <p><b>Option 2</b> <i>If district boards are also included then this cost would need to be increased to maintain similar amounts of monetary incentives. Average board size is approximately 5 members. There are 41 districts in the state of Utah so the new cost would be approximately \$752,500.</i></p>	<p><b>Can it be scaled?</b> This amount could be scaled. Incentives are not necessary and the amount per board member could be changed.</p>

*<Narrative Solution #3 The Oversight structure over charter schools is not clear>*

*The OLAG audit provided three solutions to better define the responsibility for charter school oversight. Each solution would require a change to statute.*

- 1. Designate the SCSB as a hybrid local education agency (LEA) in statute and provide specific authority.** *The SCSB would report to the USBE similar to the way a large district reports. The pro is that this option would allow the SCSB to distribute state funds to its charter schools and therefore take on the responsibility to hold schools accountable for those funds. Curriculum setting and policy making powers would still be under the purview of the USBE. The SCSB would be accountable for the full oversight of their charter schools and the USBE would hold the SCSB accountable for the carrying out of their duties. The state of Nevada already operates its state level authorizer in this manner. Choosing this option may require that the SCSB and other authorizers hire more staff to accommodate all the new responsibilities. The SCSB estimates it would need around 35-38 staff members to match the ratio that Nevada has.*
- 2. Establish the SCSB as an independent government entity without ties to USBE.** *This option would make the SCSB independent from the USBE and it would concentrate the SCSB's responsibility to the monitoring of the charter contract. It would leave the oversight and remediation associated with all other aspects of the public education system to the USBE. With this option statute would need to be changed to fully separate the two entities. The designation of each parties' duties and rights would need to be clearly defined. The State of Arizona currently operates this type of model.*
- 3. Explicitly define the SCSB as a state agency with USBE's supervision.** *This option would make the SCSB similar in operation to the Utah Schools for the Deaf and the Blind. SCSB would be its own entity, but it would report to the USBE. The SCSB board would become an advisory board to the USBE. All responsibility for accountability would be with the USBE as the ultimate governing board and the SCSB would be tasked with making recommendations. The SCSB sees this option as a return to previous charting authority which was in place prior to HB 313 which allowed for the SCSB to operate as it currently does. The SCSB points out that all of the charter schools that they have closed were approved under a process similar to*

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<p><i>this option. Currently the state of Idaho's state charting board is structured in this manner.</i></p>	
<p><b>Projected Cost:</b> Option 1 would require the most costs. The SCSB would likely make a request to triple the number of staff it currently has if this option was selected.</p> <p>Option 2 would require amendments to statute to provide the SCSB the authority to receive their own funding. Costs could remain the same.</p> <p>Option 3 This option also could allow costs to remain the same.</p>	<p><b>Can it be scaled?</b> Scaling would depend on the option selected.</p> <p>Option one is the only option with real opportunity for scaling.</p>

Once you have created your request for information form, please upload it to this folder using the following naming convention RFI.ProgramName.Month.Year. (Ex. Educator Licensing would look like *RFI.EducatorLicensing.June.2022*)

[Draft 2023 Requests for Information for Board Review](#)

# APPENDIX A



## 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.