

Big State Policy Question 1: SYSTEMS

Does state policy allow or encourage school systems to develop and oversee a diverse array of autonomous schools?

Many local districts aim to manage an array of distinct schools rather than the traditional, one-size fits-all approach to public schools. This management function is traditionally the mantle of the school district, and the analysis at times reflects this tradition while acknowledging that many alternative models, such as state-appointed boards or mayoral-run systems, might carry that mantle as well. A local school system that aims to adopt Empowerment Options will need the ability to create and maintain a system of autonomous schools, which in the best cases are diverse and complementary.¹ The ability of school systems to do this is hindered if there are few allowable pathways and models for autonomy (such as state chartering authority). It is further hindered where school accountability frameworks are weak and fragmented. Such challenges are often true of school systems that have many schools suffering from chronic underperformance. Thus, this review of state policies relevant to Big State Policy Question 1 was guided by the following questions, selected for their focus on advancing Empowerment Options:

- 1.1 Does the state allow local school systems to transform themselves and their schools, particularly in the wake of chronic underperformance?
- 1.2 Does the state offer multiple pathways—in addition to authorizing charter schools—for creating autonomous schools?
- 1.3 Do the state’s charter school laws promote adversarial or complementary relations between charter schools and local school systems?

Each of these questions is addressed in detail below.

Note that when autonomy is developed at the school level, many other challenges arise at the system level in response. Every new area of autonomy given to a school involves a corresponding limitation on the school system. For example, where a school is expected to manage its own budget, the central office must recuse itself from that task. States that are in the process of expanding or formalizing school-level autonomy must be sure to establish the corresponding constraints on the district at the same time. When implemented correctly, school funding can serve as a useful lever for accomplishing these constraints; pushing more dollars to the school level means fewer dollars—and thus, fewer staff and responsibilities—at the central office level. The issues around school autonomy are discussed further in the analysis of Big State Policy Question 2, which focuses on schools.

School Systems: Summary of Barriers

- States curtail school systems’ ability to intervene in chronically underperforming schools by placing constraints on systems’ ability to transform themselves, notably with respect to staffing but also to the allocation of funds.²

- Statutes that allow for the creation of autonomous traditional public schools—schools with considerable flexibility about days and hours of instruction, class sizes, and instructional methods—exist but are seldom used.
- State laws have set up charter schools as antagonists to districts and to traditional public schools. While the intent of such laws might have been to generate competition, innovation, and new opportunities, the laws have also led to zero-sum games in terms of access to funding and facilities, and have created different accountability frameworks that can drive the two sectors farther apart and keep them working at cross purposes.

1.1 Does the state allow local school systems to transform themselves and their schools, particularly in the wake of chronic underperformance?

State policy typically does not place explicit restrictions on the local authorities who oversee schools. In fact, cities and districts are usually expected to intervene in or close a low-performing school. But state policy often inhibits local authorities' practical ability to intervene in some of the more dramatic ways. For instance, states often restrict principal and teacher reassignments and dismissals, even at low-performing schools. The sections that follow discuss policies regarding staff reassignment and dismissal and labor relations and their implications for localities that want to place decision-making power at the school level.

Staff Reassignment and Dismissal Policy

There are two predominant ways in which states place restrictions on teacher reassignment and dismissal. First, some states have policies that dictate how a district must conduct staff reassignments or dismissals. State tenure statutes may require the school system to lay off affected staff in order of seniority (i.e., last in, first out), rather than by using other criteria such as teacher effectiveness or fit with the school. State statutes may also prohibit school systems from terminating teachers with tenure (with some exceptions, often requiring time-consuming and expensive statutory procedures). This constraint in effect requires school systems to maintain tenured employees on the payroll at the same time as hiring the new teachers necessary to turn around low-performing schools. Few school systems are able to sustain such an expense.

Labor Relations Policy

The second way states restrict teacher reassignment and dismissal is through labor relations. Most states have public employee labor relations statutes that require—or, in “right to work” states, at least allow—school systems to bargain with a chosen staff representative on matters affecting school staffing.³ Yet collective bargaining agreements can be just as restrictive as state labor statutes in constraining systems-level action. Even voluntary collective bargaining agreements, in “right to work” states, can include detailed procedures that must be followed for all layoffs or reassignments, or that require newly opened schools to give hiring preference to established teachers based on seniority rather than effectiveness.

Some state labor statutes (in Connecticut, for example) define what must be bargained in very broad terms, such that school systems must secure union approval before taking any actions affecting staff. Other states (e.g., Indiana and Tennessee) define the collective bargaining obligation narrowly or exempt actions taken in service of school transformation. Indiana, for example, limits bargaining to a select few measures.⁴ California limits bargaining on teacher evaluations to procedural rather than substantive issues.⁵ And several states require tenure decisions to be based primarily on performance, not seniority, which limits how bargaining units can bargain around tenure.

Given that a key component of Empowerment Options is the ability of school systems to hold low-performing schools accountable, states that want to support Empowerment cities must make sure

those cities have the ability to do this in practical as well as legal terms. This analysis turned up several examples of good ways to do this. For instance, under circumstances where a school is persistently failing to educate students to even minimum standards, state policy could state that the interests of the school staff coincide with or orient primarily around the interests of the affected students. A chronically underperforming school that suffers from turnover and talent loss might need ways to entice teachers to stay and to fill hard-to-staff roles, such as a differentiated or more front-loaded pay schedule and exemptions from collectively bargained step-and-ladder compensation schedules.

Alternatively, rather than narrowing the scope of a collective bargaining agreement that covers all schools in a district, as discussed above, the state could instead limit options for collective bargaining to the school level, or exempt certain schools (i.e., low-performing or autonomous schools) from the bargain or from parts of the bargain. A thoughtful exploration of school site bargaining is laid out in the book *United Mind Workers*.⁶

The role of unions in collective bargaining should be recognized in state policy as well. When a union has exclusive bargaining authority, the individuals who make up the union may not bargain separately with the employer. In exchange for this authority, the union owes the employees a legal duty of fair representation, which is a responsibility to represent them vigorously and fairly. If a union has broad authority to represent teachers in a school or school system and believes that its duty of fair representation requires it to oppose staff layoffs, terminations, or other actions resulting from school interventions, it can make it very difficult for the school or school system to fully implement Empowerment Options.

State law can play a role in finding ways to implement school and school system improvements without leaving unions open to charges that they have violated their duty of fair representation. For example, state law could modify the legal duty of fair representation to state that the school or school system need not obtain union consent to interventions under certain circumstances (such as for the lowest-performing schools). Or the school system and state could commit to working with the union to find ways to negotiate improvements that both serve students and allow the union to fulfill its duty of fair representation.⁷ For example, Ohio's "Cleveland Plan" provides that the city's corrective action plan takes precedence over any collective bargaining agreement provision entered into after the effective date of the statute, but also provides for union representation on the "corrective action teams" charged with making recommendations on implementation.

Empowerment-Friendly State Policies

While state teacher labor statutes and collective bargaining agreements can inhibit a district's ability to dramatically improve its school system, at least with respect to school staffing, some states have bypassed at least some of these obstacles by pushing an Empowerment Options framework for some of their cities. Among the 14 states reviewed for this study, two approaches were taken. In the first approach, the state carved out an empowerment-friendly policy for a specific school system, usually the state's largest urban district. In some states the law named the district that was the subject of the transformation; in others, the state set a minimum population requirement for the districts to which this policy could be applied, with population numbers that were often only applicable to the state's largest city. For example, Illinois has a carve-out statute that applies to "cities of over 500,000 inhabitants," and Chicago has 2.7 million inhabitants, whereas the state's next largest city has just under 200,000 residents.

In the second approach, the state did not single out a particular district, but established a generally innovation-friendly state education policy that would permit districts to opt in to Empowerment Options. Most of the states surveyed had some way for districts to request a broad waiver of education statutes and regulations. Theoretically, then, a district could identify and obtain the waivers needed for its schools to transform and operate autonomously, without the need for a law regarding charter schools or school autonomy. In reality, these waiver statutes were cumbersome and infrequently used, and often could be tied up in state-level politics. For example, California's specific waiver provision

is typically invoked for purposes such as getting around requirements for class size reductions and waiving the membership requirements for school site councils for schools located in rural areas.⁸ Louisiana passed a sweeping waiver law in 2010, the Red Tape Reduction Act, which could allow districts to request waivers of large swaths of the education code, but it appears no district has yet used this law to request any waivers at all.⁹

Georgia, which was not one of the states that was included in this study, appears to have a promising approach to empowerment-friendly policy at the state level. In 2015, all districts in Georgia were required to select from among several possible district models, including the status quo (no waiver), a charter district or “flexibility district” model (with a swath of waivers bundled together), and the IE2 “strategic waiver” (a select but limited set of waivers). Each district had to pick one model to follow. Georgia’s class size requirements had led many districts into unsustainable financing, and many were compelled to pick something other than the status quo. As of January 2017, forty-two districts have picked the flexibility district model, 136 selected the strategic waiver, and only two opted for “status quo.” The charter district and strategic waiver models both make it easier than not to curate a system of autonomous schools.

Some states use both the city-specific waiver approach and the general approach. Table 1 shows which of the 14 states reviewed has empowerment-friendly frameworks—that is, frameworks that either relax or lift the statutory or collective bargaining constraints discussed previously—for targeted school districts or more generally.

TABLE 1. States with Empowerment-Friendly Frameworks

FRAMEWORK	STATES (OF THE 14 REVIEWED FOR THIS ANALYSIS)
State policy identifies targeted school systems for empowerment-friendly actions	Illinois (Chicago), New York (New York City), Ohio (Cleveland), Pennsylvania (Philadelphia)
State policy generally allows for some empowerment-friendly actions in districts that want them	Colorado, Connecticut, Minnesota, Tennessee
State law has some policies targeted to particular school systems as well as some policies applicable more generally	California (Los Angeles), Indiana (Indianapolis), Louisiana (New Orleans), Michigan (Detroit), New Jersey (Camden, Newark, and Trenton), Wisconsin (Milwaukee)

1.2 Does the state offer multiple pathways—in addition to authorizing charter schools—for creating autonomous schools?

School districts have begun seeking the same kinds of flexibilities for their traditional public schools that charter schools enjoy, with the understanding that greater autonomy is the appropriate balance to increased accountability. A few states have passed legislation that sets forth conditions under which traditional public schools may be granted charterlike autonomies. In Colorado, the Innovation Schools Act¹⁰ allows schools to apply to their districts for innovation status, which waives local regulations.¹¹ The district then applies to the state for designation as an Innovation District, which waives the required state-level policies. This process allows the district to grant charterlike autonomy to a school that remains under direct district oversight. Collective bargaining agreement provisions may be waived by agreement of 60 percent of the teachers at the innovation school.¹²

Other states have other mechanisms for establishing autonomous schools. Minnesota passed a law authorizing site-governed schools in 2009.¹³ These schools are governed by local school councils, are entitled to receive the general fund revenue generated by their students, and have statutory authority

to select the school leader; determine the school budget; set curriculum and assessments; set the school calendar, schedule, and class sizes; and hire teachers. The reform, championed by teachers, states that the district collective bargaining agreement be honored and that hiring preference must first be given to teachers who are already employees of the district. Performance requirements are contained in an agreement between the school and the local board of education, which has the authority to close the school if the requirements are not met. However, only four schools thus far have become site-governed schools under this statute.¹⁴

In California, districts may establish alternative schools of choice and alternative programs of choice (situated within an existing school), and these schools and programs in turn may request waivers of state law in order to maximize student learning and improvement of the curriculum.¹⁵ Several states, including Indiana and Tennessee, offer increased flexibility to high-performing school systems. Illinois allows for contract schools and alternative schools, but only in Chicago.

Several school systems, notably in Denver and Chicago, have used a charter-type contractual relationship to oversee district-supervised schools in which day-to-day operations have been contracted out to a third party. Typically it is entrepreneurial school districts, not the state, that have developed this strategy. States that are interested in actively developing empowerment cities could easily clarify that these kinds of arrangements are permissible and encouraged.¹⁶

Given that empowerment cities are primarily interested in creating an array of autonomous schools, contract school arrangements must provide a way for the contract schools to operate with charterlike flexibility. This could be done either via a statute that expressly provides for such arrangements—which would essentially be equivalent to an innovation-styled school operated by a third party—or by using a state’s statutory waiver authority.

1.3 Do the state’s charter school laws promote adversarial or complementary relations between charter schools and local school systems?

For local authorities, charter schools represent a relatively familiar strategy for incorporating autonomous schools into their portfolio. In several school districts, such as in Denver, Colorado, and Grand Prairie, Texas (located between Dallas and Fort Worth), the districts have actively partnered with charter networks and charter schools and made them a centerpiece of the district’s strategy.¹⁷

The mere existence of a state charter school law, however, does not guarantee that the law is supportive of the empowerment strategy. States’ laws vary widely in how they affect charter-district relations, and they sometimes undermine mutually supportive relationships between the sectors. Districts that are committed to the strategy are indifferent as to whether a school is a traditional public school or a public charter school; they do not fret about whether the school is run by the district directly or by someone else. But many districts do not share that attitude. In some states, funding arrangements have resulted in hostility between districts and public charter schools (Ohio, Michigan, Pennsylvania), with districts viewing charter schools as siphoning off resources that would otherwise fund district programs, and charter schools viewing districts as unfairly restricting their access to facilities and funding.

State caps on the number of public charter schools or on total charter school enrollment (Illinois, Connecticut, Wisconsin) send the message that allowing charter schools to flourish will damage traditional public schools and school districts. States that slow-walk the process of expanding high-performing charter schools suggest that they are prioritizing factors other than performance and student outcomes. States that provide different standards of accountability for charter schools versus traditional public schools give rise to claims that the playing field is not level.¹⁸ In these cases, state policy contributes to an adversarial relationship between districts and charter schools.

Cross-Sector Collaboration

State law can help to foster greater collaboration between the sectors and ensure that both traditional public schools and public charter schools operate on a level playing field. The law can ensure that both types of schools receive comparable and equitable funding and that they are held to the same performance requirements.¹⁹ Districts' ability to "claim" high-performing charter schools can lead to improved district performance on state accountability frameworks and can be an important factor in marketing the district to families in their boundaries.

The Bill & Melinda Gates Foundation has provided funding to districts that are interested in collaborating with charter schools. The funding allows these districts to set up district-charter collaboration compacts, and the ways in which these districts do or do not partner with public charter schools can provide additional ideas for ways state-level policies can support charter schools in empowerment districts. For example, the district and charter schools involved in this initiative (1) agreed that all public schools (traditional public schools and public charter schools alike) should have equitable access to funding and facilities, (2) arranged for shared services contracts to capture efficiencies, and (3) committed to shared accountability systems. These types of incentives for cooperation can be built into state policy.²⁰

Not every collaborative effort between the sectors has proved fruitful, but for those that have, the resulting cost savings and improvements in student equity and access to schools make cross-sector policy coordination appear not merely a nicety, but a necessity.²¹

Charter Authorizers

When state leaders evaluate the empowerment-friendliness of their state's charter school law, one important issue to consider is the question of multiple charter authorizers. In states where only districts can authorize charter schools, the district has control over whether and how to invite charter schools into the mix of offerings. In many states, however, several different entities may authorize charter schools, and they may do so regardless of district priorities. Some states have approved statewide chartering authorities (e.g., Louisiana and Connecticut), while other states allow charters to be authorized by higher education institutions and nonprofit organizations (e.g., Michigan, Minnesota, and Ohio).

A law supporting multiple authorizers can be advantageous to a district, if one condition is met: that the authorizers' priorities and responsibilities are aligned with the district's. The district can then share the burdens of authorizing while encouraging greater school diversity. However, such alignment seldom occurs organically. The opposite usually takes place, especially where the state has a weak charter accountability law or a recalcitrant independent charter authorizer refuses to hold its schools to high standards. These conditions—which have happened in several large urban districts, including Detroit and Cleveland²²—result in a proliferation of low-quality schools in a locale, which dilutes local authorities' ability to manage a thriving portfolio.

Cleveland has tried to push back through state law. Ohio, a state with multiple authorizers and a history of variable charter school quality, passed the Cleveland Plan in 2012.²³ This plan incentivizes the district and its local independent charter schools to enter into an agreement to "endorse" one another. A charter school privy to the agreement then becomes a "partner community school" (charter schools directly authorized by the district are also partner community schools). The charter school and the district may agree to have the charter school's enrollment and academic performance data included on the district report card. If the charter school is performing well, the district has an incentive to benefit from that performance; the charter school, in turn, benefits from raised public awareness. The Cleveland Plan further provides for the mayor to convene a "transformation alliance" that includes partner community schools. The plan requires authorizers of new schools in the district to first receive the recommendation of the transformation alliance.

The Cleveland Plan tries to capture quality control more directly as well. The new charter authorizing criteria are to be based on standards issued by the National Association of Charter School Authorizers or other nationally organized community or charter school organization.²⁴ The National Association of Charter School Authorizers has developed quality standards for charter authorizing practices, and it recommends that states provide at least two authorizing alternatives for any given jurisdiction to encourage both school diversity and quality authorizing practices. It also recommends that authorizers be held to rigorous standards and in turn be expected to hold their schools to rigorous standards. (Ohio recently went a step further on this recommendation by adopting automatic closure provisions and more stringent accountability standards for authorizers.²⁵) A state looking to ensure a vibrant charter sector while supporting high quality in its districts can begin by integrating the National Association for Charter School Authorizers’ principles into its charter school law. States can also promote good authorizer practice by supporting state-level authorizer associations and making authorizer resources readily available through the state department of education.²⁶

Table 2 outlines different levels of support in state policy, from poor support to an ideal policy environment, for a school system to develop a diverse array of autonomous schools. Please note that support levels are not cumulative.

TABLE 2. Levels of State Policy Support for Key Policy Areas—SYSTEMS

KEY POLICY AREA	LEVEL OF SUPPORT			
	Poor	Good	Better	Ideal
State allows local school system transformation, particularly in the wake of chronic school underperformance.	State teacher labor statutes and collective bargaining agreements impede the local school system’s ability to transform itself.	State narrows the scope of collective bargaining agreements. (Ex. TN, IN)	State subordinates teacher labor statutes and collective bargaining agreements to student need, at least in some circumstances. (Ex. OH)	State limits collective bargaining agreements to the school site level, if not for all cities, then for specific cities.
State offers multiple pathways for creating autonomous schools.	State pathways to creating autonomous schools are cumbersome and underutilized. (Ex. MN, CA)	State pathways to creating autonomous schools are not cumbersome, but are available to only a limited set of districts. (Ex. IN, TN, IL)	State pathways to autonomous schools are not cumbersome, and they are available for any district to pursue. (Ex. LA, TX, AR)	State pathways to autonomous schools are not cumbersome; they are available to any district; and districts are encouraged to adopt these pathways. (Ex. GA)
Charter school laws promote complementary relationships between charter schools and local school systems.	Access to funds and facilities leads to adversarial relations between the sectors. There is no express encouragement of cross-sector collaboration. Checks on authorizer quality are weak. (Ex. MD, MI)	State incentivizes district-charter collaboration. (Ex. OH, IN)	Authorizer accountability is strong, and the same accountability mechanisms are used for both sectors. (Ex. MN)	Equitable and independent access to funding and facilities is available to both sectors. State ensures that multiple authorizers in the same locale align with local priorities and share in the burdens of quality control. (Ex. IN, MN)

Endnotes

- 1 The ideal of complementary schools needn't exclude competition. Rather, striving for complementarity involves working to avoid redundancy, inefficiency, zero-sum games, and political infighting.
- 2 Constraints on funding, which inhibit the prospect of local school system transformation, are discussed in the section analyzing Big State Policy Question 4.
- 3 Every intervention strategy is necessarily also a people strategy, which is why this section focuses on staffing. These issues are of course closely related to funding concerns, which are addressed in the section on Big State Policy Question 4.
- 4 Indiana Code Title 20: Education IN CODE § 20-29-6-1 et seq.
- 5 California Code of Education Sections 44660 – 44665.
- 6 Charles Taylor Kerchner, Julia E. Koppich, and Joseph G. Weeres, *United Mind Workers: Unions and Teaching in the Knowledge Society* (San Francisco, CA: Jossey-Bass, 1997).
- 7 For example, it is not a breach of the duty of fair representation for a union to negotiate contractual terms benefiting the bargaining unit as a whole, even if individual members may be adversely affected. A reform package that includes greater autonomy for teachers at the building level, combined with additional opportunities for pay and professional advancement, could meet this test even if it allowed individual teachers with ineffective ratings to be dismissed.
- 8 California Education Code Section 52863 (1982); California Education Code Sections 41376 and 41378; California Education Code: [Waiver of Class Size Penalties](#).
- 9 The Louisiana Federation of Teachers filed suit to block this law in 2012. Since no district had requested a waiver under the law, the Louisiana Supreme Court rejected the challenge as premature. Louisiana Federation of Teachers, [No. 2011CA2226](#) (La. S. Ct, 2012).
- 10 Colorado Innovation Schools Act of 2008, CRS 22-32.5101 et seq. (2008).
- 11 As of February 2016, “62 schools in nine different school districts have been granted innovation status in Colorado,” and these schools serve 29,429 students in total. See Colorado Department of Education, [2016 Innovation Report](#), accessed January 13, 2017.
- 12 At least two other states, outside those that were reviewed for this publication, have recently set up waiver processes. [Arkansas](#) allows districts to seek waivers from state law for their traditional public schools to gain the same flexibilities that charter schools have, so long as the district has at least one open enrollment charter school within its boundaries. [Texas](#) has a similar waiver package.
- 13 Minnesota Education Code Section 123B.045 (2009).
- 14 This analysis did not include an investigation into why these laws are so infrequently taken advantage of; however, one explanation might be that the laws are not comprehensive enough, and that the local system transformation is difficult if not impossible to implement in piecemeal fashion.
- 15 California Education Code Section 58500 (1976).
- 16 It is worth noting that smaller districts—including Spring Branch and Grand Prairie, Texas; Lawrence, Massachusetts; and Providence, Rhode Island—seem to be pursuing this as an option.
- 17 Sarah Yatsko, Elizabeth Cooley Nelson, and Robin Lake, [District-Charter Collaboration Compact: Interim Report](#) (Seattle, WA: Center on Reinventing Public Education, 2013).
- 18 It is also worth noting that where state accountability systems are ineffective, districts may ultimately be driven to create a separate accountability system, which in turn leads to increases in test taking and creates additional problems with cross-sector alignment.
- 19 Robin Lake, [“Encouraging Districts and Charters to Link Arms to Solve Problems.”](#) *The State Education Standard*, National Association of State Boards of Education, January 2017.
- 20 Yatsko, Cooley Nelson, and Lake, [District-Charter Collaboration Compact: Interim Report](#).

- 21 Robin Lake, et al., *Bridging the District-Charter Divide to Help More Students Succeed* (Seattle, WA: Center on Reinventing Public Education, 2017).
- 22 See, for example, Jennifer Dixon, "Michigan spends \$1B on charter schools but fails to hold them accountable," Detroit Free Press, June 22, 2014.
- 23 Ohio House Bill 525 (2012).
- 24 *The Cleveland Plan 2012–2016 Strategic Implementation Plan* (Cleveland, OH: Cleveland Metropolitan School District, 2014), 38.
- 25 Ohio Revised Code Sections 3314.35 and 3314.351.
- 26 See National Association of Charter School Authorizers, *Principles and Standards for Quality Charter School Authorizing* (Chicago, IL: National Association of Charter School Authorizers, 2012). The National Association of Public Charter Schools also has a model state charter law that incorporates many best practices, although this law is sometimes viewed as too favorable to charter schools at the expense of other education stakeholders. The model charter law is available on the National Association of Public Charter Schools' website, along with annual comparisons of each state charter school law with the model statute components.