Big State Policy Question 2: SCHOOLS

Does state policy allow schools in an empowerment community to have meaningful decision-making authority and flexibility?

The concept of school-level autonomy is central to Empowerment Options. Big State Policy Question 1 explored policies that affect a school system’s ability to develop and oversee a set of autonomous schools. In this section, Big State Policy Question 2 addresses the question of autonomy from the school’s perspective. In a given city or district, state policy must give school leaders the ability to make important decisions, and must also give schools and school systems enough flexibility and support so that these choices will be meaningful. In many states, charter school laws spell out significant flexibility and autonomy for charter school leaders, but alternative arrangements for traditional public schools, such as innovation schools or district-initiated contract schools, are less clear.

In most states, existing policies support a traditional education system which assumes that districts will make most decisions around staffing, scheduling, and school design at the central level, and that a school leader’s role is to accept the resources provided and use them to run the school accordingly. For example, collective bargaining agreement statutes typically presume that a district will be the employer of its teachers and will assign staff to its schools based on student enrollment ratios. This assumption leads to the following additional assumptions:

- That the district is in charge of hiring, teacher placement, and teacher evaluation.
- That school principals are assigned numbers of staff or positions rather than funds.
- That all schools operate according to a central district calendar.
- That all teachers are paid according to a district salary schedule.

In some cases, state statutes act to institutionalize this presumption of district centrality, such that schools cannot act autonomously even in districts that support this approach.

Thus, this review of state policies relevant to Big State Policy Question 2 was guided by the following questions, selected for their focus on advancing the Empowerment Options:

2.1 Can traditional public schools select their own staff?
2.2 Can traditional public schools select the terms of staff compensation and working conditions?¹
2.3 Can traditional public schools make decisions about school design?²
2.4 Can traditional public schools easily enter into contracts with external providers?
Schools: Summary of Barriers They Face Operating with Empowerment Options

- Traditional public schools have limited control over staff selection, either because state law prescribes hiring and placement decisions, or because state law enables robust districtwide collective bargaining agreements. While some states require mutual consent hiring, even in those cases, school personnel are still district employees.

- States largely leave compensation decisions to district discretion, which gives traditional public schools only limited control over staff compensation.

- Traditional public schools can, in theory, make decisions about school design, but those decisions are limited by statutory provisions regarding learning time and educator training. Schools are further limited by external constraints such as bus routes.

- Traditional public schools can, in theory, enter into contracts with external providers, but this ability is hindered by arduous procurement processes, by providers who tend to overlook the possibility of direct relations with schools, and by low capacity at the school site to pursue external providers.

2.1 Can traditional public schools select their own staff?

All of the recommended areas of school autonomy are important, but the ability of a school leader to choose the staff who will be working in the building is paramount. Education is a personnel-intensive field, and the effectiveness of the teaching staff is the top in-school factor influencing student learning. Ideally, a school leader would select staff who align with leadership priorities and who would thrive in the culture that the leadership is working to foster. Ideally, the school leader would also be free to dismiss staff who did not best benefit students.

Collective Bargaining Agreements

Among the 14 states reviewed for this report, no current instance was found where autonomous traditional public schools would employ staff directly, at the school level; the district was always the employer. But there were instances where autonomous school staff were made exempt from districtwide collective bargaining agreements and other district policies. For example, an autonomous traditional public school in Cincinnati, Ohio, negotiated a carve-out for itself from the district’s collective bargaining agreement in order to pursue a teacher-powered model. Similar carve-outs were achieved by similar autonomous traditional public schools in Denver, Colorado, and Los Angeles, California. In each of these instances, it was the district that acted as enabler for school staff autonomy; in such circumstances, the kind and number of carve-outs are subject to political and other considerations at the district level that are not necessarily predicated on school or student need. The states in this analysis have not gotten into the game of enabling autonomy carve-outs from collective bargaining agreements, likely because they rely on their charter school statutes to cover schools that wish to pursue autonomy. Or, these states are pushing questions of staffing at autonomous traditional public schools down to the district level, as discussed in Big Policy Question 1.

In contrast, charter schools enjoy a statutory advantage. Most of the states analyzed require that charter school employees be either directly employed by the charter school or charter management organization, or be employed by the district but under terms different from those that apply to the district’s other teachers. It is typical, for example, for states to provide that charter school employees are not part of their district’s teacher bargaining unit, or that a districtwide collective bargaining agreement will not apply to charter school employees. Table 1 shows that most of the 14 states reviewed for this analysis default to exclude charter schools from district collective bargaining agreements.
<table>
<thead>
<tr>
<th>State</th>
<th>Policy on Charter Schools and Collective Bargaining</th>
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<tbody>
<tr>
<td>California</td>
<td>California law states that charter schools are exempt from district collective bargaining agreements.</td>
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<tr>
<td>Colorado</td>
<td>Colorado law doesn’t explicitly address this issue, but has been consistently interpreted to exempt charter schools from district collective bargaining agreements.</td>
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<td>Connecticut</td>
<td>Connecticut law allows a charter school’s teachers to negotiate as a separate unit within the charter school governing council or to work independently. The law requires that a local charter school’s teachers be covered by the school district’s collective bargaining agreement, but states that this agreement may be modified by a majority of a charter school’s teachers plus the charter school’s governing council.</td>
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<td>Illinois</td>
<td>Illinois law makes charter schools exempt from district collective bargaining agreements. The law also specifies that any bargaining unit that is formed of charter school employees must be separate and distinct from any bargaining units formed from direct employees of the school district in which the charter school is located.</td>
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<tr>
<td>Indiana</td>
<td>Indiana law makes charter schools exempt from district collective bargaining agreements.</td>
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<tr>
<td>Louisiana</td>
<td>Louisiana law requires that the provisions of any collective bargaining agreement entered into by a local school board must apply to any charter schools located within the district’s jurisdiction, unless the charter school’s approved charter provides otherwise. A charter school operator may decide not to be subject to the local district’s collective bargaining agreement and can specify this in the charter. This provision does not apply to Type 5 charters, which in Louisiana are exempt from participation in any district collective bargaining agreement.</td>
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<td>Maryland</td>
<td>Maryland law states that a charter school’s teachers remain covered by the school district’s collective bargaining agreement. However, a charter school and a local teachers’ union may mutually agree to negotiate amendments to the existing agreement to address the needs of the particular charter school. Amendments may address work days, work hours, school year, procedures for transfers that are consistent with the instructional mission of the school, and extra-duty assignments.</td>
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<tr>
<td>Minnesota</td>
<td>Minnesota law states that a charter school’s teachers are at-will employees and may organize for collective bargaining similar to teachers in other districts. The law also states that a bargaining unit at a charter school authorized by a traditional school district must either negotiate as a separate unit with the charter school governing body or remain part of the school district unit—if certain conditions and approvals are agreed upon.</td>
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<tr>
<td>New Jersey</td>
<td>New Jersey law makes start-up schools, but not conversion schools, exempt from district collective bargaining agreements.</td>
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<tr>
<td>New York</td>
<td>New York law exempts most public charter schools from existing collective bargaining agreements. The law requires that conversion schools remain part of district collective bargaining agreements, but allows such agreements to be modified. The law also states that if enrollment at a new charter school exceeds 250 students within the first two years of operation, all employees of the school will be considered members of the same union or employee organization that represents like employees in the school district. Such schools may still apply for one of a limited number of waivers under the law.</td>
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</table>
Ohio law exempts start-up charter schools from mandatory participation in any outside collective bargaining agreements. The law subjects conversions to the school district’s collective bargaining agreement, unless a majority of the school’s teachers petition to work independently or form their own unit. Ohio law states that employees of a conversion charter school that is sponsored by the board of education of a municipal school district can be made no longer subject to any future collective bargaining agreement if the mayor submits to the board of education sponsoring the school and to the state employment relations board a statement requesting that all employees of the conversion charter school be removed from a collective bargaining unit.

Pennsylvania law states that a charter school’s teachers may work independently or bargain collectively (but not as part of the school district’s collective bargaining unit).

Tennessee law does not require a charter school to participate in a collective bargaining agreement. However, a charter school’s employees may form a bargaining unit, which may elect to represent themselves in negotiations with the charter school’s governing body; alternatively, a charter school’s employees may elect to be represented by any qualified person or organization, including the local bargaining unit within the school district. A charter school’s bargaining unit can bargain only with the governing board of the charter school, and not with the local school board.

Under Wisconsin law, charter schools authorized by local school boards and other authorizing entities that employ their own staff are exempt from participation in any outside collective bargaining agreements. Charter schools authorized by local school boards that do not employ their own staff are required to participate in any district collective bargaining agreements.

**Forced Placement and Mutual Consent Policies**

Collective bargaining agreements aside, states do form policies that affect teachers’ school assignments. Some states require districts to place teachers in schools based on teacher seniority. This is sometimes referred to as forced placement, and it inhibits school autonomy. California and Minnesota both have forced placement provisions. Their provisions also come with limitations on dismissing teachers, which means dismissal entails an expensive, long process made more arduous still for a teacher with tenure or seniority.

The opposite policy is called mutual consent (i.e., the teacher and principal mutually consent to the assignment). In states with a mutual consent policy, principals are empowered to make teacher hiring and dismissal decisions for their school. Colorado adopted mutual consent with the enactment of SB 191 in 2010 (The Colorado Supreme Court is currently reviewing a case challenging the provision). Louisiana enacted a mutual consent law with HB 974 in 2012.

Some states are silent on this area of policy, leaving it open to districts and/or their schools as to whether to follow forced placement or mutual consent. Tennessee does not explicitly require mutual consent but gets close, with its 2011 legislation prohibiting collective bargaining agreements from speaking to teacher assignment. Maryland, while not included in the states reviewed for this analysis, is a useful example: it is silent on the law, leaving hiring decisions to superintendents. In 2008, this silence allowed Baltimore’s superintendent at the time to end forced placement for the district and defer to principals on school hiring decisions.

Lastly, some states have a mix of mutual consent and forced placement policies. Indiana, for example, gives superintendents responsibility for selecting principals, who in turn have the responsibility for selecting their school’s staff; all of those decisions are subject to local school board approval. Illinois prescribes mutual consent but carves out an exception for high-performing (“proficient” and “effective”) teachers outside of Chicago who are subject to reductions in force; they get priority.
2.2 Can traditional public schools select the terms of staff compensation and working conditions?

Schools need the ability to tailor their structure to the needs of their students. This often involves extending the school day or year, implementing personalized learning models, or imposing other structural changes that require staff at the school to work in ways that are not usually contemplated in traditional public schools. For school leaders to have this ability to tailor school structure, they need to be free from state laws or collectively bargained provisions that assume that traditional schedule, staffing, and classroom models are the best fit for every school community and its students.

To attract and select the most appropriate staff for an individual school, the school leader may have to offer incentives or provide working conditions that differ from those governing staff at other schools. While some states have statutes that require teachers to be paid according to a systemwide or statewide salary schedule, many states have dabbled with departures from those schedules, such as with performance pay schemes:

> [P]olitical and financial support for teacher compensation reform has grown at all levels—federal, state, and local. For instance, the U.S. Department of Education (ED) awarded $95 million in 2007 to 34 grantees through the Teacher Incentive Fund (TIF). State and local initiatives include Minnesota’s Q-Comp program ($86 million), Nevada’s teacher bonus programs ($65 million), and New York City’s Partnership for Teaching Excellence ($15 million granted by the Carrol and Milton Petrie Foundation), and a multisite investment of $370 million by the Bill & Melinda Gates Foundation to reform teacher compensation in Pittsburgh, Pennsylvania; Memphis, Tennessee; Hillsborough County, Florida; and a consortium of charter schools in California.

Some of the states reviewed for this report are also innovative in this way, such as Tennessee with its differentiated pay provisions, which allow districts to design teacher pay to be more attractive and competitive for prospective teachers even though there is a statewide minimum salary and a salary schedule. Likewise, Minnesota’s performance pay provisions allow districts to set site-based pay increases based on pre-set criteria. But neither of these provisions, nor any other reviewed in this study, automatically allows schools to design their own compensation criteria, let alone working conditions.

2.3 Can traditional public schools make decisions about school design?

Empowerment Options presume that different student learning needs will best be met by offering a variety of schools and programs, and allowing families to choose which school best meets the needs of their child. If schools are limited in the ways they can educate students, the school choices offered to families will be limited as well.

None of the 14 states reviewed here requires all of its districts and schools to follow a universal school design. State policy generally allows for school diversity. However, particular state policies can have a practical impact on the ability of individual schools to select their own design by placing limitations on how instruction can be delivered and measured. Limitations regarding learning time and educator training are two state policies that make diversifying schools more challenging.

**Learning Time**

The states reviewed for this report typically prescribe the start date for the school year and the minimum number of days to constitute a school year. The number of days is often paired with a specified minimum number of hours a day that students must attend school. Each prescription on learning time decreases the flexibility schools have in design decisions.
**Start date.** A number of states give districts broad discretion in choosing when to start the school year, while other states require districts to start no earlier than Labor Day. And yet, district discretion in picking the start day for the school year might not translate into allowing a school to design its own calendar. For example, district schools may still be foreclosed from adopting a year-round schooling calendar.

**Minimum numbers of hours and/or days per year.** Minnesota provides flexibility around the minimal number of instructional days by prescribing, for sets of grade levels, only the minimum number of hours required. This flexibility might allow schools to pursue block scheduling, pursue a four-day school week, or make certain days longer or shorter depending on student needs and curricular models. New Jersey’s policy does nearly the opposite—setting only the minimum the number of learning days (180), with a very low daily minimum number of daily hours (4 per day)—but allows for similar results: block scheduling and flexibility in length of day, though not as much flexibility in number of days per week.

**Instructional time.** Some states define what can and cannot count as “instructional time.” Michigan, for example, disallows professional development as instructional time unless a collective bargaining agreement is already in place that says otherwise. The more closely instructional time is defined, the less flexibility is left for schools to design their own model.

While each state’s learning time prescriptions come with their own balance of advantages and disadvantages, none of those reviewed allows flexibility in learning time directly to a traditional public school. During this analysis, interactions with districts showed that external pressures often dictate instructional time. As one Tulsa central office leader said, “Our district schedule is dictated by bus routes and lunches.” In other words, a public school that tries to decide its own calendar and bell schedule might find itself at odds with the busing system responsible for getting its students to school on time. In light of such external constraints, traditional public schools are left with very little flexibility in terms of instructional time.

**Educator Training**

Mutual-consent hiring is necessary to ensuring that the most appropriate teachers and leaders are selected based on the needs of students in a particular school. However, this approach works only if there is an appropriately qualified pool of candidates to hire from. To supply diverse school models (i.e., Montessori, project-based learning, school turnaround, etc.), a range of educator expertise will be required. If a district has an inappropriate or unqualified pool of candidates, a so-called mutual consent approach becomes strategically no different from forced placement.

There is no way around the need for a talented education workforce. A city’s ability to develop a diverse array of schools, and to replace low-performing school operators with those of higher quality in a timely way, depends on the availability of school leaders and staff who are willing and competent to open or transform schools in the city. Without that supply, decisions to close or reconstitute schools are likely to do more harm than good.

In efforts to ensure a quality workforce, states heavily regiment the qualifications needed for those who serve as a principal or teacher in a traditional public school. The vast majority of teacher and principal preparation programs are designed to prepare candidates for districts and schools that operate in the traditional way. And central offices tend to recruit and hire the same way. For autonomous schools to thrive, leaders and staff need a different kind of training.

The kinds of leaders and teachers needed for autonomous schools might be found in training by national organizations such as New Leaders for New Schools, by successful charter management organizations such as KIPP, or by other groups, such as Public Impact, that specialize in turnaround schools. However,
these sources of training and experience are not likely to be able to supply the entire demand for leaders with diverse skill sets. Meanwhile, schools and districts vary widely in their ability to attract national talent to their location.

Most states provide for traditional and nontraditional pathways for training teachers, and some states have policies that measure the quality of the talent supplied by both pathways. Tennessee, for example, has tracked both its traditional and nontraditional preparation programs for candidates to shore up its education workforce, and it has tracked those programs’ graduates against its teacher performance evaluation system to identify where the effective teachers might be graduating from. While the data are not exacting enough to track which specific schools graduate candidates that are best for particular fields, kinds of schools, or areas of the state, this seems a promising approach nonetheless. Such approaches to tracking may allow schools to be more strategic in their efforts to recruit staff.

Notably, the state does not track and evaluate principals in this way yet. Arguably, teachers are better situated than principals to be developed and trained at the school level. It is therefore potentially even more critical that the state ensure that its principal pipelines are producing effective school leaders.

2.4 Can traditional public schools easily enter into contracts with external providers?

Under Empowerment Options, schools should be able to choose among providers for everything from professional development to janitorial services. In some cases, the district will be the most suitable vendor. But in other instances, schools may be able to find services from other vendors that better suit their needs and are a better use of their resources. If a school has discretion over a greater portion of its funds yet no reasonable option but to purchase needed services from the district, then the school funding allocation (discussed in Big State Policy Question 4) serves only to introduce more inefficiency into the equation.

In this analysis, three significant challenges for school site purchasing were found: (1) procurement, (2) capacity, and (3) supply.

Procurement

State and district procurement codes are designed in part to provide benefits to large purchasing organizations. Because districts tend to handle procurement for schools, the codes are designed with districts in mind. For example, states have allowed districts to form joint powers agreements with other government entities in order to leverage scale in the purchase of equipment, materials, and supplies. Schools that want these powers need to go through the district to get them. Innovations that are known to be at play for improving procurement have emerged without the individual school in mind. Even if a school could participate individually in a large purchase, the vendor and items involved might not be particularly useful for that school. For example, if a school could buy into a district contract on textbooks or laptops, those items might not be suitable for its curriculum or pedagogical approach.

Capacity

Human capital is needed to manage procurement. State procurement policy, while helpful with big purchases, also is designed to protect the public against government fraud, waste, and abuse. These protections can be complex and extensive; they come with bureaucracy. A school short on operations staff might find it challenging to navigate such procurement processes, and for this reason may simply fall back to the district. Otherwise, the school would need to train or hire staff to become familiar with procurement policy, or possibly rely on an external organization to help (as many charter schools do).
Either way, these efforts might entail retooling the school’s accounting system so that expenditure patterns are easily visible and reviewable from the outside.

So, as an example, while a better curriculum might be available to a school in theory, just looking at the process necessary to purchase it—the budget approval process, then the approvals from the superintendent and local school board, then the RFP for bids from curriculum providers, and then finally sorting and picking the winner—might be enough for a school to give up the ordeal and simply opt for the district curriculum after all. A district could in theory help manage each school’s procurement needs, as it likely has staff who specialize in procurement. But compounding a large district’s procurement work with the needs of all of its autonomous schools, each with its own purchasing interests and requirements, quickly becomes impracticable.

There is hope that third parties can address the challenge of scarce human capital and abundant red tape. For example, Noodle Markets claims it can handle procurement quagmires such that educators and vendors alike can better navigate education markets. It is too soon yet to tell how successful it will be and whether it will benefit schools in addition to districts.

Supply
Even if procurement were to be streamlined and human capital made available at the school level, there would still be the problem of generating a robust market from which schools could shop. From buses to iPads to desks to uniforms, vendors may count on districts for the big sale, despite the growing market that has sprung up to support charter schools. Vendors also might avoid working with schools because of the procurement and human capital challenges mentioned above.

State law itself does not exactly get in the way of school purchasing, but it is not precisely helping either. Thus, this analysis focuses on how states could improve the decision-making capabilities of autonomous school leaders in a range of ways. Table 2 outlines different levels of support in state policy, from poor support to an ideal policy environment, for development of school autonomy. Please note that support levels are not cumulative.
## TABLE 2. Levels of State Policy Support for Key Policy Areas—SCHOOLS

<table>
<thead>
<tr>
<th>KEY POLICY AREA</th>
<th>Poor</th>
<th>Good</th>
<th>Better</th>
<th>Ideal</th>
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<tbody>
<tr>
<td>State enables traditional public schools to select their own staff.</td>
<td>State requires forced placement. (Ex. CA, MN)</td>
<td>State prohibits collective bargaining from including forced placement provisions which forces districts into a position they might not be ready for or interested in. (Ex. MD)</td>
<td>State maintains a set salary schedule at state and/or local levels. (Ex. MD)</td>
<td>State allows traditional public schools to set their own terms of staff compensation and working conditions. (Ex. MD)</td>
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<tr>
<td>State allows traditional public schools to select the terms of staff compensation and working conditions.</td>
<td>State mandates a set salary schedule at state and/or local levels. (Ex. IL)</td>
<td>State allows districts to depart from salary schedules in order to design differentiated pay structures for their schools. (Ex. TN)</td>
<td>State allows schools to differentiate pay for their teachers, subject to pre-set state-prescribed criteria. (Ex. MN)</td>
<td>State allows traditional public schools to set their own terms of staff compensation and working conditions, leaving open the possibility that they can opt into a district schedule or district terms.</td>
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<tr>
<td>State enables traditional public schools to make decisions about school design.</td>
<td>State heavily prescribes learning time.</td>
<td>State provides some flexibility to schools in decisions about learning time. (Ex. NY, TN)</td>
<td>State provides much flexibility to schools in decisions about learning time. (Ex. NY, TN)</td>
<td>State allows schools to make decisions about learning time.</td>
</tr>
<tr>
<td>Traditional public schools can easily enter into contracts with external providers.</td>
<td>Procurement processes are arduous, favoring larger government entities.</td>
<td>No good example</td>
<td>State manages approved or rates vendor, product, and service lists.</td>
<td>State simplifies procurement processes for school-level purchases.</td>
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Endnotes

1 This analysis focuses on staff compensation because it is the most significant expense in every school budget. Without control over compensation, discretion in school-level fund management becomes highly limited.

2 For example, decisions related to instructional design, staffing patterns that involve class size, and tradeoffs between staff and materials.


4 But see Oklahoma HB 1691 (2015), which arranges for this relationship. Tulsa Public Schools is working on such an arrangement to be implemented in 2017.


7 “Pilot school agreements (Boston and Los Angeles),” Teacher-Powered Schools, Student-Centered Learning, accessed January 13, 2017.

8 California Education Code Sections 44830 – 44929.

9 Minnesota Education Code Section 122A.40 (as of 2016).

10 Colorado Education Initiative SB 10-191.


12 Louisiana House Bill No. 974 (2012).


19 Michigan Compiled Laws Section 388.1701.


23 School Leadership Policy Toolkit, Center on Reinventing Public Education, Thomas B. Fordham Institute, and Eric Lerum, April 2016.

24 Districts then overlay their own procurement protocols for schools on top of the state protocols, which simply makes procurement even more complex.
See, for example, California Government Code Section 6500, et seq.; and Minnesota Statute Section 471.59.


For example, charter schools in Louisiana’s Recovery School District face the same procurement requirements (e.g., open bidding) as any other state entity.

Charter schools often rely on their charter management organization’s centralized services for this function or otherwise contract with third party back office organizations.