Title
Law and Discretion in California Charter School Oversight

Permalink
https://escholarship.org/uc/item/8515w6k5

Author
Mayo, Kelsey

Publication Date
2018

Peer reviewed|Thesis/dissertation
Law and Discretion in California Charter School Oversight

By

Kelsey W. Mayo

A dissertation submitted in partial satisfaction of the
requirements for the degree of
Doctor of Philosophy
in
Jurisprudence and Social Policy
in the
Graduate Division
of the
University of California, Berkeley

Committee in charge:
Professor Calvin Morrill, Chair
Professor Catherine Albistion
Professor Bruce Fuller

Spring 2018
Abstract

Law and Discretion in California Charter School Oversight

by

Kelsey W. Mayo

Doctor of Philosophy in Jurisprudence and Social Policy

University of California, Berkeley

Professor Calvin Morrill, Chair

Over the past 25 years, charter schools have grown rapidly both in number and in popularity through market reforms to education at federal, state, and local district levels. With this rise has come a practical and scholarly focus on charter school quality, approached primarily through the proxy of comparative student performance on standardized tests. While results from these inquiries are mixed, substandard or mediocre charter performance poses a legitimacy problem for the charter school as a reform that merits additional investment. If charters do no better than traditional public schools, how do politicians and advocates justify their continued operation or expansion?

One strategy to ensure charter quality has been to attend to oversight responsibilities carried out by local and state authorizers. Existing literature on these authorizers has taken a predominantly comparative approach, mapping the oversight structures that emerge in a decentralized regulatory environment with significant legal diversity regarding charter schools. Yet gaps remain in our understanding of how diverse authorizers (particularly within the same state), understand and act on school quality, and in how piecemeal regulatory decisions shape larger educational landscapes and opportunities.

To address such gaps, this project trains a sociolegal lens on oversight fora and its participants. How do formal legal requirements shape the local practice of charter oversight? How does embedded discretion affect regulatory processes surrounding compliance and quality judgments? How do alternative ideas of school quality intersect with legal understandings? These questions are grounded by two theoretical concepts: (1) institutional logics- motivating ‘idea bundles’ present in the organizational field and the strategic actions of participants, and (2) the ‘law in action’ paradigm that sees law as a dynamic tool at work both within and beyond its traditional structures. This project stands as a counterpoint to existing research on charter quality that focuses on student performance and measurement outcomes.

This study examines the role of law as a primary institutional logic of charter oversight in California, the state with the largest and arguably most diverse
population of charter schools in the nation. I focus on charter establishment and renewal petitions to understand how authorizers approach and enact determination of school quality and operational fitness, and how these moments reflect interaction and competition of institutional logics. I examine the participation of different actors and their arguments, finding evidence for three motivating logics of oversight: the legal, the educational, and the market logic. I track how a sample of diverse charter authorizers- from the local district level to the State Board of Education, respond to these arguments and decide to open or to close schools. The project relies on multiple sources, including demographic data on California’s 327 charter authorizers and more than 1,200 charter schools (as of 2017); minutes from local, county, and state oversight fora; 31 interviews and three case studies of specific oversight actions. I also draw on materials relevant to charter operation and oversight, including legal opinions, materials from advocacy organizations, and charter petitions and renewal documents.

The first chapter provides background on the demographics of charter schools and the oversight structure in California. Chapter 2 reviews the previous research on charter quality and oversight and delve into the conceptual approaches mentioned briefly above. Chapter 3 presents the research design and methodological strategies. Chapter 4 situates oversight within the organizational and strategic action field of charter schools. It explores the participants, logics, and boundaries revealed in the practice oversight: a contrast to the orderly portrait of regulation suggested by existing legal provision, or “law on the books.” Chapter 5 examines local discretion in chartering decisions and the role of competing logics therein. Chapter 6 focuses on the legalization of the oversight process and the consequences for participants; it also examines law as material resources distributed unequally among charters and the resistance potential contained within the legal logic. Chapter 7 discusses the implications of the research: both theoretically- in thinking about how institutional logics interact to structure the regulatory environment, and practically- for authorizers, charter operators and school communities.

The study’s findings challenge the prevalent notion that charter quality is an objective organizational fact. It presents evidence that authorizers’ decisions reflect conflicting institutional currents now present in larger charter environment as well as material disparities among schools. I conclude that the current legal framework of charter oversight in California creates an open stage for actors to debate the nuances and sources of school quality, the suitability of market logics in public structures, and the legitimacy of the charter form itself. On such a stage, law is a dynamic tool in the hands of diverse participants, permitting mobilization toward different ends: arguing for increased market reforms to education, shoring up historic arrangements of local control, or even resisting the erosion of traditional public provision. Following from research in the law and society movement, law also emerges as an unequally distributed material resource, with advantages accruing to the “repeat players” while disadvantaging the position of less-resourced schools and communities. This work has implications for theories of how law unfolds in the
unique organizational context of public education, as well as for the construction of equitable and democratic charter oversight structures.
# Table of Contents

Acknowledgements ii

Chapter 1: Introduction 1
Chapter 2: Literature Review & Conceptual Framework 16
Chapter 3: Research Design & Methods 28
Chapter 4: Institutional Logics in the Field of Charter Oversight 40
Chapter 5: Local Discretion in Oversight: Dynamics & Consequences 63
Chapter 6: Legal Logic as Structure and Material Resource 84
Chapter 7: Implications & Conclusions 96

References 100
Appendix A Charter Oversight Data 111
Appendix B Interview Guide 129
Acknowledgements

Thank you to my committee members, Catherine Albiston, Bruce Fuller, and to my Chair, Calvin Morrill, for their thoughtful guidance and critical eye throughout the many stages of this project. Their sustained engagement sharpened the project’s design, analysis, and writing, and as individuals I thank them for the consistent warmth and mentorship they provided over many years.

I also wish to thank the National Science Foundation (Law and Social Sciences Division), the Spencer Foundation, and Berkeley Empirical Legal Studies for the financial support that made this research possible. Thanks also to the individuals interviewed as part of this project, whose candor, experience, and insight into charter operation and oversight led me down the forking paths of inquiry, and into many a fascinating tangent.

Supreme love and thanks to my family: to my husband Michael Taylor, a true and equal partner; to my endearing and enlivening children, Caroline and Elliot; and to my extended family and friends, who supported this work in countless ways, and who now know more about charter oversight than they ever thought possible! This work is dedicated to the memory of my mother, Mary Jane Mayo, a beloved font of wisdom, wit, and curiosity.
Chapter 1: Introduction

In this introductory chapter, I detail the project’s primary research questions and situate them within the concerns of charter school oversight. I provide background on educational quality and charter oversight as currently structured in California, and discuss the sociolegal and institutional framework that shapes my inquiry. The chapter concludes with an overview of the project’s central findings and structure of the dissertation.

Mr. Sing’s voice cracked as he spoke of Westin Charter School’s closure. It was June 2014, two years since the Contra Costa County Office of Education had denied Westin’s appeal of the local school board’s denial, and the memory was still painful. As a parent and president of Westin’s governing board, Mr. Sing had helped lead the renewal effort: writing the application, meeting with parents, and petitioning the local school board. An engineering project manager by profession, he had little familiarity with educational bureaucracies or the legal requirements of charter renewal, yet he trusted in Westin’s administrators and teachers. After all, students and their parents were satisfied with the school’s performance and welcoming climate. Westin’s small size lent it a family-like atmosphere, free from the bullying and gang activity that occurred at the neighboring public schools. His own son had blossomed there.

Yet throughout the months of the renewal process Mr. Sing soon learned that Westin faced a serious challenge: the school’s academic performance was middling to poor: about on par with the local public school in the area. An atypical leadership structure of two principals had contributed to political infighting and factionalism within the school, and the renewal application was disorganized and months behind schedule; little contact had occurred between school administrators and district personnel. Yet despite these challenges, Mr. Sing and other parents thought Westin was still the best option for their children, a school worthy of renewal by the local authorizer.

For Mr. Sing and his family, the closure of Westin Charter was an unexpected rupture with tangible academic and social consequences. His son transferred to the large public high school where he felt lost and at times unsafe. The families and teachers of Westin’s close-knit community scattered, as students dispersed to other schools in the area. Ultimately, the experience disabused him of trust in the oversight process as a fair and meaningful one; in his view, it substituted formal, legalistic requirements over the holistic assessment of the school and the kids’ best interest. He was finished with charters. “If somebody asked me, ‘I’m interested in joining the board or in being the board president of the school- the school’s board,’ I would say ‘You are a fool! You have no idea.’”

---

1 Unless otherwise specified and excepting the formal legal record, I use pseudonyms for individuals and charter schools. School districts and county offices of education retain their real place names.
Law, Logics, & Discretion in Charter School Oversight

Why does charter oversight matter? At a general level, oversight of charters by local school boards represents a compromise that exists between school autonomy and public accountability. Charters promise better instruction and student outcomes through innovation and flexibility, yet critics fear ineptitude and misuse of public resources, that might lead to the weakening of traditional public education. Public oversight, at least in California, seeks to balance these concerns—encouraging innovation and school diversity while maintaining established state standards and accountability for performance.

For local, county, and state boards of education, charter oversight is only one of the many responsibilities they must manage, a peripheral task in some districts yet an overwhelming one in those with large charter populations. Oversight is, at its core, a legal process, in that the basic parameters and criteria are established in the state’s Education Code. A successful petition assures the authorizer that a charter school can manage responsibilities of school operation and is likely to succeed by both organizational and student performance metrics. Public hearings concerning school renewals and revocations are moments of public accountability that take place in local school board meetings. For authorizers the basic concern is for the opportunity and welfare of the students in question: students who would otherwise attend the district’s traditional public schools and remain the responsibility of the district in question. Oversight assures authorizers that resources are used properly and that a charter is working well, both organizationally and in educating its students.

For charter school advocates, oversight is a critical arena to increase their own legitimacy, and to forward preferred policies and standards favorable to the charter “movement” writ large. Public actions and hearings provide the opportunity for these actors to flex professional influence and consolidate power on both front and back stages (among board member contacts, for example). For students, parents, and community members, oversight actions are the primary public forum available to them to express satisfaction or dissatisfaction: places for grassroots advocacy; informal educational entrepreneurship; or even disruption and resistance to existing structures and state educational priorities. Greater attention to charter oversight is especially needed given the current emphasis on accountability in educational policy. In California, the booming population of charters as well as the high rate of charter closure (approximately 25 percent since 1992) suggests that the current regulatory structures have their work cut out for them.

From a theoretical perspective, oversight fora are rich sites to examine the logics, or bundles of ideas, that motivate charter operation and authorizer action. Within this landscape, I focus specifically on the logics that speak to charter educational quality. All stakeholders—authorizers, advocates, and school communities directly engage the issue of educational quality, and it is an area of particular legal charge: subject to concrete formal legal requirements established in statute, yet also discretionary and frequently contested.

This dissertation asks two primary questions:
1. How and where does law surface in charter oversight moments and in the construction of educational quality?

This question focuses on the ways in which diverse participants (school board members, charter operators, lawyers, advocates, and community members, etc.) encounter law and legal ideas in the construction and application of charter quality standards during oversight actions.

2. How does law interact with other institutional logics in the field of charter oversight? What are the consequences of this interaction for the oversight process and its participants?

Here I investigate charter oversight as a site where multiple institutional logics interact to shape regulatory decisions and to structure the differential participation of relevant groups.

To answer these questions, this dissertation employs a multi-method approach that combines charter demographic exploration with in-depth qualitative components, including case studies of specific oversight actions; content analysis and tracking of charter petitions, renewal applications, and authorizer documents; observation of oversight actions; and 31 interviews with participants in oversight actions: including authorizers, charter operators and board members, charter lawyers, and community members.

By focusing on the connections between formal law, institutional logics, and local discretion in charter school oversight, this inquiry contributes to research in organizational and neo-institutional theory. I focus on ‘quality’ as actively constructed in a hybrid field with market pressures and traditional public accountability. To the field of education research, this study brings a new dimension to the discussion of charter quality and authorization/oversight, bringing in an expanded and active sense of law.

Charter Reforms in Context

Over the past two decades, charter schools have emerged as arguably the most popular educational reform across the nation, surging in media attention and in number. 43 states now permit them; over 6,100 charters operate nationwide, nearly six percent of all public schools. They serve more than 2.1 million students, approximately five percent of public school enrollment (National Center for Educational Statistics, 2013). Yet national-level data masks significant differences in state and local charter populations. 11 states permit charters but have fewer than 30 schools (CER Annual Report Card, 2014), while other states have hundreds of schools, supported and encouraged by special legal protections and well-developed

---

2 A 2013 Phi Delta Kappa/Gallup poll found support for public charters at slightly less than 70 percent, and a majority of survey respondents agreed with the statement that charters provided a better education than traditional public schools. By comparison, more than 70 percent of respondents opposed vouchers, another common market reform (PDK/Gallup Poll of the Public’s Attitudes Toward the Public Schools, 2013).
advocacy networks. California, for example, recognizes charters as fundamental to the project of education reform, and states this unequivocally in the state Education Code. California has the largest number of charter schools in operation (over 1,200 schools as of 2017), and serves seven percent of the public school student population (NCES, 2014).

The idea of the charter school first emerged in the late 1980s, when Albert Shanker, the president of the American Federation of Teachers, proposed that public schools charter smaller schools run by innovative teachers to reach struggling and disengaged students. The idea took hold, and the charter movement progressed rapidly. So rapidly, in fact, that sociologists of education tried to make sense of the wildfire spread of the charter form. These scholars focused on certain regional and state characteristics that might explain the “mimetic tendency” observed as part of the charter growth during the 1990s (Renzulli & Roscigno, 2005). By 1991, only three years after the first charter opened in Minnesota, 11 states had passed legislation authorizing charters (Wohlstetter, Wenning & Briggs, 1995), and all but 7 of the 42 states adopted charters before the year 2000 (Center for Education Reform, 2014). Scholars have also identified demographic factors that correlate with growth of charter populations (Stoddard and Corcoran, 2006; Renzulli 2005; Henig et al. 2002). Variables identified in these studies (including racial diversity, urbanization, and political polarization) likely also affect the political character of charter oversight at the state and local level (Hassel and Batdorff, 2004; Kirst 2007), yet exactly how these factors do so remains largely unexplored.

At the national level, charter school policy may best be described as a shifting coalition of strange bedfellows: advocates have included think tanks on the political right and progressive academics; the U.S. Department of Education and conservative state politicians who would abolish it; parents and students; grassroots community activists and philanthropists such as Bill Gates and Mark Zuckerberg. These advocates have promoted charter schools for diverse educational and ideological reasons: from a traditional belief in local control of education; to an embrace of a neoliberal model of education; to a radical progressivism that sees choice and autonomy as mechanisms to disrupt social inequality in traditional educational institutions. The diversity of support in part explains why charters are an advantaged reform in politically turbulent field of American education.

---

3 The term charter was coined by education professor Ray Budde in the 1970s. Both Budde and Shanker eventually changed their views on charter schools, concerned that charters were becoming new agents of competition and privatization to the detriment of public schools, and a way around hard-fought union agreements.

4 The new brand of educational philanthropy is not without its critics, who charge that millions are wasted on initiatives with little to no community input or larger accountability structure. For a critique of Newark’s troubling experience with large philanthropic gifts, see the scathing 2014 New Yorker article “Schooled” by Dale Russakoff.

5 For example, in the Charter Schools Act of 1992, the California Legislature stated that charter independence from existing school district structure was a method to achieve several related ends: to improve learning, especially for low-achieving students, encourage innovation and competition, encourage teacher responsibility, provide choice to parents, and shift accountability from rule-based to performance-based metrics (EC § 47601).
Federal educational policy has also been favorable to the charter movement. Within the U.S. Department of Education, the Charter Schools Program administers eight grant programs that allocate many millions ($242 million in 2013-2014) to state departments of education, non-profit or charter management organizations (CMOs), or directly to individual charter schools. Despite increasing federal pressure on states to loosen restrictions on charters—pressure that has intensified with the tenure of decidedly pro-charter Secretary of Education Betsy DeVos, charter policy and oversight remains the responsibility of the states. Although this dissertation focuses on the charter oversight and environment in California, each state (and by extension, each individual authorizer) has a story to tell about the political coalitions and reform philosophies that shape charter policy locally. The analogy of states as laboratories for policy experimentation is particularly apt in the case of charter schools.

A Focus on Educational Quality

With the explosive growth of charter schools has come a practical and research focus on their quality and educational outcomes. Politicians and advocates stress that their support is limited to “high quality” charters, yet there is disagreement over the criteria that signal quality and little consensus on the regulatory processes that best ensure it. Though not without its critics, academic performance data has emerged as the primary proxy for assessing charter quality. Do students in charters perform better on standardized academic assessments when compared to their peers in traditional public schools? Are charters with poor academic outcomes closed? Educational and market justifications of charter reforms suggest that the answer ought to be ‘yes’ on both accounts. After all, the freedoms granted to charters—flexibility and autonomy in the service of innovation—are justified by the belief that they will lead to better academic outcomes; sustained poor charter performance should therefore prompt authorizer intervention or closure, as students and parents exit for other options or as regulators move in (Chubb & Moe, 1990).

Yet the evidence on charter performance is mixed. Research shows that the general academic performance of charters is roughly on par with traditional public schools, yet this aggregation masks important difference across localities, authorizer

---

6 For example, Obama-era Race to the Top federal grant program required applicant states to remove existing caps on the number of new charters permitted, and to strengthen existing authorization processes and performance standards.

7 In proclaiming “National Charter Schools Week” in 2013, President Obama extended this metaphor down to the school form itself, calling charters “learning laboratories” and “ladders of opportunity.” His support is further evidence of the diverse ideological foundations behind charter schools, and includes neoliberal language of choice, technical language of innovation, flexibility, and replication, and references to widening educational opportunities for those students and communities. (Presidential Proclamation, National Charter Schools Week, 2013, [http://www.whitehouse.gov/the-press-office/2013/05/03/presidential-proclamation-national-charter-schools-week-2013](http://www.whitehouse.gov/the-press-office/2013/05/03/presidential-proclamation-national-charter-schools-week-2013)).

8 The National Association of Charter School Authorizers (NACSA) has attempted to fill this gap by developing resources for authorizers including 12 “essential practices” (ranging from charter application criteria to audits and use of external experts), as well as toolkits and professional services.
structure, and school organizational type. We do know that poor performance does not always lead to timely intervention or closure (Bulkley, 2001); many charters continue to operate after authorizer concerns come to light. It seems that much-publicized assurances of charters’ superior innovation, flexibility, and accountability have not yet come true across the board.

This project suggests a new approach to the issue of charter school quality, one that focuses on quality decisions that take place in the process of charter oversight. Rather than focusing exclusively on charters’ academic performance data, I examine quality as constructed through the interplay of data, legal requirements, and local authorizers’ discretion. Authorizers are legally required to evaluate school quality and regulate charter populations, yet there is little research that documents how they perform these tasks. Three general points that inform my decision to focus on the combination of quality and oversight include the following:

- Authorizers weigh different, and at times conflicting claims of quality and operational fitness put forward by participants.
- The discretion of local authorizers must fit into established legal and policy mandates regarding school quality.
- Local understandings of charter quality can vary, and these understandings (reflected in regulatory actions to open or close schools) have the power to shape the landscape of educational opportunity and the practical meaning of school choice in communities.

**The Concerns of Oversight**

Charter schools operate according to the provisions of a charter approved by an authorizer identified in law, typically in the state’s Education Code. While authorizers vary among the states, they are most frequently arms of the traditional educational bureaucracy: local school boards, and county or state boards of education. Some states permit other authorizers: university and community colleges or specialized state charter boards; a few states operate independent charter boards to manage the population at the state-level.⁹

By and large, charter schools are subject to the same academic performance criteria as traditional public schools, yet they are released from certain regulations that govern school operation. In California, these areas include the selection of curriculum and permissible types of instruction, union and collective bargaining regulations, and school governance policies, among others (Zimmer, Buddin, Chau et al. 1999). Yet with greater autonomy and decentralization comes a specialized oversight process: initial approval of the charter by the authorizer, renewal after a set term (typically five years), and potential revocation or closure if the school fails to meet certain operational or academic standards (Paino, Renzulli, Boylan & Bradley, 2013; Wilkens 2013). The legal requirements for charter operation and oversight are located in state education codes and other regulations, and

---

⁹ Continued expansion of authorization powers to non-traditional educational actors is a chief goal of charter advocates nationwide.
supplemented by case law from the small number of litigated actions (Green, 2009; Eckes, Plucker, & Benton, 2006; Wall 1998).

In many school districts throughout the nation, charters now form a core part of the educational landscape. Philadelphia, Newark, and Chicago—large urban districts serving high-poverty populations, have incorporated charter schools into a portfolio management model, in which a slimmed-down central school district administers charter schools under its own auspices and with the help of non-profits and foundations. The resulting portfolio of schools includes charters, privately-run schools, and traditional public schools (Hill, 2006; Bulkley, Henig & Levin, 2010). The use of the term “portfolio” here is instructive, pointing to the growing influence of market logics and management consulting language on school choice reforms.

The growth of charters nationwide has meant concurrent growth of charter advocacy and support organizations (Kirst, 2007). At the national level, for example, the National Alliance for Public Charter Schools and the Center for Education Reform (CER) lobby for charter interests; they also produce polished media and data sets for public consumption. CER, for example, publishes a yearly “Charter Report Card” that issues each state an A-F grade based on the favorability of the policy environment. They also distribute “model charter laws” (similar to ALEC in other policy areas) for use by state legislatures in the area of charter operation, expansion, and regulation structures. In the area of charter authorizing, the National Association for Charter School Authorizers (NACSA) provides services and trainings for authorizers across the country, though certainly not all authorizers participate. In California, the more powerful and significant advocacy organizations operate at the state and local level, and will be discussed in further detail below.

This study focuses on regulation of charter schools in California’s diverse authorization contexts, examining the role of law and other institutional logics in constructing educational quality. While the legal standards of quality appear straightforward and politically neutral, in practice the decentralization of oversight and local discretion can politicize quality judgments and affect regulatory decisions. As I argue, unraveling the legal currents of oversight leads to a constructivist understanding of educational quality. Quality emerges not as a clear, objective measure, but rather as the result of a malleable social process—one whose outcomes are affected by local discretion and the distribution of power and resources. There are ‘winners’—schools and school networks with resources that can play the long game (akin to Galanter’s ‘repeat players’(1974)), and there are ‘losers’—inexperienced schools with very little at the margins: one challenge for them can mean closure.

Tracing the logics within charter oversight actions permits us to see the sources of educational quality as they filter in from disparate places. We see how these ideas are received and reshaped by authorizers, and ultimately how quality standards emerge in the tension among legal requirements, local discretion, and material resources.

Other relevant national charter organizations include the National Charter School Resource Center and the National Resource Center on Charter School Finance and Government.
California’s Charter School Landscape

This research focuses on the charter school environment in California. The developed character of the charter legal framework in this state, diverse complement of actors at the local level, and over two decades of school establishment and performance data make the state a particularly rich site for this study. As charter schools continue to grow as a critical component of the education reform landscape both nationally and among the states, California’s experience with the charter form may serve as a bellwether for other states.

In 1992, California became one of the first states in the country to permit the formation of charter schools.11 The state’s charter population is currently the largest and arguably the most diverse in the nation: as of 2017 over 1,200 schools serve more than 630,000 students throughout the state, concentrated in the urban centers of Los Angeles and Oakland but also present in the rural counties of Northern California and the Central Valley. Charters vary in their mission and organizational structure; they include brick and mortar schools with traditional site-based instruction, home school charters and virtual learning academies, dual language immersion programs, performing arts academies, and STEM-focused schools among others.

Organizationally, they may be single-sited, “mom and pop” schools, school networks administered by non-profit charter management organizations (CMOs), dependent charters administered by a traditional school district, or “conversion” charters- traditional schools or districts that have converted to charter status at the request of school leadership or faculty. California has also experimented with “parent-trigger” forms of charter conversion, in which parent referenda can spur a school’s conversion to charter status, though this controversial method has not yet been employed widely or particularly successfully.12

Statewide, the political climate is favorable to charter schools. The growth of high-performing charter populations is a state priority in California, clearly articulated in the Education Code: “the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged” (EC § 47605(b)). In the next section, I consider the demographics and performance of charter populations in California as necessary prologue to the concerns of oversight.

Demographics and Performance

California’s charter school population has slightly different demographics

---

11 The Charter Schools Act of 1992 established the requirements for new applicant charter schools, including the13 (now 16) material components required in a school’s initial application among other things. The Act also outlined the administrative process for school oversight including initial authorization, renewal, revocation, and appeals of initial decisions. Over the next 20 years, lawmakers amended this initial statutory framework multiple times, modifying areas of school finance, governance, operations, and oversight.

from those of the state’s traditional public schools. In the aggregate, charter student populations are whiter (68 percent students of color versus 75 percent in traditional public schools in 2012-13), less likely to be English language learners or receive special education services, and more likely to be poor, as measured by eligibility for free or reduced lunch (CREDO: Charter School Performance in California, 2014). In terms of academic performance, charters are overrepresented in both the top and bottom 10 percent of public schools statewide. This means that there are more charters among the highest performing schools than their proportion in the general population of schools suggests, yet the same is also true for the cohort of lowest performing schools.

Before the suspension of the academic performance index (API) measure in 2012-2013, the average charter API score was ten points lower that of traditional public schools (790 versus 800, with a maximum score of 1000), though this average does not reflect the considerable variation by demographic subgroup, grade-level, and geographic region (CDE report, 2013). When historic API data are disaggregated by grade span, charter elementary and middle schools marginally outperform traditional public counterparts; traditional high schools outperform charter high schools. Results from urban districts with sizeable charter populations also are mixed: in Los Angeles, Oakland, and Sacramento the evidence suggests that charters performed better than traditional schools by double-digit API margins, yet in San Jose, Fresno, San Diego, and San Francisco charters performed worse than their public counterparts.

Such variable data make it difficult to speak about the comparative performance of charters across the state, particularly considering the different oversight jurisdictions and student populations. Since parents and local community members usually want to know if charters are performing well in their particular community, average performance data prove narrow, unsatisfying, and at times misleading. Expanding the understanding of quality by focusing on charter operation and performance in local context is therefore critical to study of charter quality.

Authorization and Oversight
The formal structure of charter oversight in California is tripartite: authorizers are local school boards, county offices of education, and the State Board of Education.

---

13 While the Latino population is comparatively lower in charter schools (47 percent v. 53 percent), the percentage of African-American students is higher (10 percent v. 6 percent). Also, these aggregate figures mask important regional and county differences. By breaking down data to the level of county and district, charter populations emerge as quite variable: in some places they are as whiter and more privileged than their local public school counterparts, and in others equivalent or more disadvantaged than peer schools, as in Oakland Unified School District.

14 By the Academic Performance Index (API), a state measurement of academic performance and growth ranging from 200 to 1000 that is calculated for all schools as well as for subgroups within schools. The state target for all schools is an API score of 800. As part of Common Core adoption, however, the API score was suspended in 2014; a reconstituted API resumes in 2015-2016, one that will incorporate changes to California’s standardized testing regime. In practice, however, API scores continue to be a key reference for school operators and authorizers in charter renewal actions.

15 The Advisory Commission on Charter Schools, or ACCS, exists to advise the State Board of Education on charter laws, policy, and recommendations regarding specific charter actions.
Oversight by local boards is by far the most common administrative arrangement, and also the established legal and policy preference. As of February 2015, 282 of the 332 individual charter authorizers were local school boards. The vast majority of charter applications come initially to these local boards. Local board context varies enormously, from the professional boards of large urban districts of Oakland and Los Angeles to the more informal and less-bureaucratized proceedings of rural and suburban school boards.\textsuperscript{16} This diversity may also be seen in the internal organizational structures of school districts and their central administrative offices; districts with larger charter populations have developed routines and internal structures to manage the duties of charter oversight. Once established, these structures then have consequences for schools that wish to locate in these districts, including preliminary deadlines and additional paperwork and reporting requirements. A flowchart of the oversight process is below in Figure 1.1.

**Figure 1.1 Structure of Charter Oversight in California\textsuperscript{17}**

Initial Petitions/Renewals

Appeals Process

1. State Board of Education & Advisory Commission on Charter Schools
2. County Boards of Education
3. Local School Boards (>90% of initial petitions)

The legal requirements for initial charter authorization and oversight are found primarily in California’s Education Code (EC) § 47605-47608. Applicant charters must submit a petition that presents a sound educational program with evidence that petitioner can successfully implement said program, along with required signatures, affirmations, and compliance with 16 material elements that address school operation and governance (EC § 47605.b.5). The authorizer receives this charter, holds a public hearing within 30 days, and issues a decision to approve or deny within 60 days. In order to deny a charter, a local school board must issue written findings detailing reasons for denial and their reasoning: an unsound educational program, unlikelyhood of success, etc.

An applicant charter may contest a local board denial by appealing to the County Office of Education, and if also denied there, to the State Board of Education. (If an appeal or original petition is submitted to the State Board, the action is first

\textsuperscript{16} Despite the large numbers of charter schools in certain districts (LA Unified had 281 charter schools in 2014-2015), most districts with charter schools oversee fewer than five charters.

\textsuperscript{17} EC § 47605.
routed through the Advisory Commission on Charter Schools, an appointed body that advises the State Board on charter school issues). This process is structured as a quasi-legal appeals process focused on the facts and original petition presented to the local school board.

Renewal applications are handled by the authorizer in a similar manner, though the most important criterion for charter renewal is the academic performance of the school during the previous term: “the authority that granted the charter shall consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal” (EC § 47607.a.3.A-B). The Education Code lists five performance thresholds, and charters must meet at least one of them to be eligible for renewal. It is important to note, however, that four of the five standards listed here rely on a school’s Academic Performance Index (API) measure, and this measure was suspended in 2012-2013. The fifth criterion identifies alternative accountability measures adopted between authorizer and individual school, and thus is decidedly more discretionary a performance measure. Charters that have been denied renewal at the local level may contest the denial by following the appeals process explained previously. Examining contested charter actions at different levels of this regulatory system is a primary focus of this study.

Charter Closures

Since 1992, nearly 25 percent of all charters ever granted in the state have closed.\textsuperscript{18} While a closure is not necessarily synonymous with a “failed” school, this high proportion of closed charters should intrigue researchers and trouble advocates. School closure is a disruptive and problematic event, as the experience of Mr. Sing and Westin Charter illustrates: in addition to logistical and administrative upheaval (students must be reassigned, debts and other financial items settled), closure raises public questions about the legitimacy and spread of the charter organizational form.\textsuperscript{19} For opponents of charter schools, a high closure rate suggests that further experimentation may endanger student wellbeing and academic achievement; at the very least we need to know more about where and why these closures happen. Even more problematic from a legitimacy standpoint is the continued existence of charters that operate despite operational problems or records of poor to middling academic performance.

This dissertation addresses the phenomenon of charter closure by attending to non-renewal decisions made by local authorizers, as well as regulatory language in evidence among authorizers, advocates, and charter operators themselves. I also follow third-party advocacy organizations as they react to problematic charter school performance and school closure. As I argue in a following chapter, some

\textsuperscript{18} This number does not include charters considered by the California Department of Education to be ‘abandoned’, in which an authorizer approved a charter but the school never opened to students. This percentage was calculated using the demographic information available on the California Department of Education’s Charter Schools Database.
advocacy organizations attempt to police charter populations through their influence and action in local oversight decisions; they see it as central to their mission and the larger legitimacy of the charter movement. Ultimately, school closure is a rich phenomenon that encompasses debates of educational quality, regulatory intervention, and the role of community and family in educational decisions.

**Previous Literature on Charter Oversight**

While there has been much research on the comparative academic performance of charter schools, fewer studies have focused specifically on charter authorization and oversight. Within this area of scholarship, certain themes and approaches have predominated: the initial promise of rigorous public oversight to ensure accountability in the time of rapid charter expansion (Bulkley, 1999), the logistical challenges that come with decentralized oversight regimes (Hassel & Vergari, 1999), and the diverse regulatory styles that emerged among state-level charter authorizers (Vergari, 2000). Research into the particularities of California’s charter oversight environment dates from earlier in the state’s charter experiment, and was commissioned for official policy use by the state legislature (Zimmer, Buddin, Chau, et al., 2003). To date, research into charter oversight has perpetuated two problematic assumptions: (1) that oversight is a bilateral affair between charter school operator and authorizer, and (2) that the formal legal requirements provide clear guidelines for assessing charter academic and operational quality. This study challenges both of these assumptions.

In the area of charter school law, research has focused on the legal environments created by state statutes, and the effect of state charter laws on school creation and operation (Shober, Manna, & Witte, 2006; Green, 2009). It has also explored the possibility of charter laws to advance longstanding goals of educational equity and equal opportunity (Mead & Green, 2012). Additional streams of charter law research have focused on legislation and case law relevant to charter school operation, including employment law (Baker & Dickerson, 2006), special education (Rhim & McLaughlin, 2001; Estes 2004), privatization (Miron, 2008), and liability (Callahan, Krebs & Bondurant, 2008). Relevant legal research on oversight structures will be examined in more detail in Chapter 2.

There are clear gaps in the literature on charter school oversight and the law. Few, if any, studies focus on how the formal legal directives of charter oversight are received and shaped in local context, or how legal understandings of oversight interact with other institutional motivations that motivate charter regulation. Most studies have taken legal requirements and processes as preeminent and controlling, minimizing how local discretion and application of the law guides the project of accountability. While there have been comparative studies of how diverse authorizers engage in charter regulation, the overall cast of research illustrates the need for a conceptual approach that examines legal directives of oversight in context, and approaches law more expansively: as a guiding though not exclusive institutional logic.
Bringing in Neo-Institutional and Sociolegal Perspectives

This dissertation employs an institutional and sociolegal framework to approach charter school oversight. Both within sociology and education research, institutional perspectives examine routine practices and interactions to understand how context shapes organizational structure and field environments (DiMaggio and Powell 1983, Edelman 1992, Sewell 1992, Barley & Tolbert 1997, Burch 2007). This study focuses on the institutional logics in the strategic action field of charter oversight (Fligstein & McAdam, 2012): following the “idea bundles” that shape charter oversight and tracing the sources of organizational and collective action (Friedland and Alford, 1991). The inquiry follows from studies that have sought the effects of institutional logics in many different settings: from family, medicine and law in the care of sick newborns in hospitals (Heimer, 1999); to the work of surgeons in operating rooms (Kellogg, 2009); to workers negotiating contested leaves (Albiston, 2005), to altered instructional processes in an urban elementary school (Hallett, 2010).

Institutional theorists see multiple logics at work in the many domains of society: markets, law, family, religion, professions, community, and education among others. Each of these logics carries with it a particular set of assumptions and values: how people or organizations should act, what counts as ‘success’, and how change happens (Thornton, Ocasio, and Lounsbury, 2012). Institutional logics operate not only from the top down, but also are referenced and contested on the ground (McPherson and Sauder, 2013). They are present at different levels of analysis, from interactions between people to organizational and field activity. They provide cultural and cognitive frames for individual and collective thought and action; how people define good school, for example, or how to improve a bad one.

Consistent with these ideas, I begin with the assertion that law in charter oversight is more than a static set of requirements for charter operation, but rather an institutional logic of particular salience: a dynamic ‘bundle’ of ideas and motivations employed by charter operators, authorizers, and other parties. When interpreted and traced in this way- against the backdrop of other relevant motivating logics, law is not confined to technical minutiae of charter petitions or renewals, nor defined only by statutes or case law.

The idea that law exists outside the bounds of courts or formal law is not new. The scholarly field of law and society stands as evidence to the contrary, with its focus on law in action (as opposed to law on the books), and the understanding of law as a decentered phenomenon: observable in courts and legislatures, yet also in social movements (McCann, 2006), organizations (Edelman, 2016), and individual actions and understanding (Ewick and Silbey, 1998). This study draws on previous attention to law unfolding in organizational context; it relies on the sociolegal inheritance that seeks law outside courts and legislatures- in the processes, mechanisms, and sources of organizational action.

Following from these frames, this study begins with the assertion that the legal character of charter oversight is more than the corpus of formal requirements suggests. Legal demands are neither imposed entirely from above nor created carte blanche by local, county, or other professional actors. While California’s Education
Code does provide clear and unequivocal requirements for charter school operation in certain areas, it defers to local judgment on actionable criteria such as suitability of pedagogical program, likelihood of school success, and other critical areas of school operation (EC § 47605). This legally protected discretion forms a key area of inquiry.

This project thus adopts the perspective of law as powerful institutional logic within charter oversight, and charter law itself as constituted from formal sources and crafted in situ, influenced by contending groups that call upon multiple logics. While formal law gives shape to critical parts of charter oversight, local discretion and other factors empower authorizers, lawyers, and charter advocates to sift through these logics to shape the practical meaning of relevant education law. Taken together, their decisions reflect the interaction and competition of disparate logics, and can reinforce or challenge political ideas of school quality and educational equity. This approach departs from common approaches to law and education, which privilege formal legal sources and straightforward ideas of charter regulation and policy implementation.

This approach attends also to the role of lawyers, professionals key to constructing the meaning of the law (Edelman, 2016), as well as other powerful legally-savvy third parties. This study examines lawyer participation in charter actions: where and when lawyers appear; how they contribute to specific oversight actions; and how their presence intersects with the participation of other actors and consequences for charter regulation. A neo-institutional approach traces the currents of law and legality through the general blueprint and technical processes of charter school oversight, yet also follows them through the actions and arguments of diverse participants in charter actions. Ultimately, the project brings a sociolegal attention to a hybrid organizational form at the vanguard of education reform in the United States.

**Dissertation Overview: Findings and Organization**

My analysis challenges the framework of charter oversight as one of straightforward legal compliance. It reveals how local context and the participation of diverse groups shape legal requirements governing charter school oversight decisions. First, my study shows that the increasing complexity of charter law has contributed to a legalistic and adversarial oversight process that equates school quality with standardized performance measures. This choice has clear consequences for less-resourced schools and those schools whose mission or curricular program places them at odds with traditional accountability metrics. And while local discretion is intended to bridge these gaps, its exercise often reflects the resources of the school in question over the values of the larger charter movement (community support, autonomy, flexibility).

Second, I find that a close relationship between advocacy organizations and authorizers can affect oversight processes by bringing a powerful third party to the table, one that is not accountable to the public. Rather than a bilateral process between a charter school and its authorizer, oversight now frequently encompasses third-party fact-finding and recommendation—most frequently charter advocates and member organizations, but also those of lawyers and community activists. The
resources of these groups at times are a needed supplement to board capacities: advocacy organizations bring research acumen and legitimacy to overwhelmed school board; charter lawyers bring legal frameworks and an adversarial bent. Students and parents bring ideas of educational quality often quite different from traditional accountability measures. Ultimately, the influence of advocacy organizations in this space reinforces the ascendance of compliance and accountability.

The first three chapters help to frame the study. In Chapter 2, I explore the previous relevant empirical research on charter oversight and present the project’s conceptual approach, situating the inquiry within relevant sociolegal and organizational literatures. Chapter 3 explains the project’s research design and core methodological strategies. The next four chapters detail the findings and implications of the study. Chapter 4 examines the participants, institutional logics, and boundaries of charter oversight as both an organizational and strategic action field. Chapter 5 dives into local board discretion in chartering decisions, focusing on the interaction of oversight logics and their consequences. Chapter 6 explores consequential aspects of the legal logic of oversight, including the structural foundations provided by adversarial legalism; law as a material resource unequally distributed among participants, and the seeds of resistance to traditional models of compliance and accountability. Chapter 7 offers final reflections and concludes with a discussion of implications for different constituencies including charter operators, authorizers, policymakers, and scholars.
Chapter 2: Literature Review & Conceptual Framework

This chapter reviews the literature on charter school oversight and its legal environment. Despite the volume of research on charter schools, oversight by public authorizers has received considerably less scholarly attention than charter academic performance, despite the stated connection of oversight to school quality. I argue that significant gaps remain in these areas, including the local context of regulation, competing institutional logics revealed in oversight processes, and the consequences of decentralized oversight regimes for regulatory outcomes and local charter populations. This chapter also presents the conceptual framework of the study, drawn from the fields of legal sociology and institutional analysis in educational research. Oversight of charter schools takes place through decentralized, bureaucratic structures with clear legal charges, and yet significant discretion is reserved to authorizers. We need a variety of perspectives- organizational, institutional, and legal to make sense of charter oversight; in this study I attempt such an approach.

Elements of charter school performance have received considerable research attention over the past two decades (Wohlstetter, Smith, & Farrell, 2013; Hanushek et al., 2007; Zimmer & Buddin, 2006, 2009; Hoxby, 2004), yet charter oversight by public authorizers has not received commensurate research attention. This is not due to its lack of importance; advocates and politicians alike identify rigorous, public oversight as necessary to ensuring high-quality charters. Authorizers are the primary gatekeepers of charter school populations: they approve, renew, and revoke charters according to established legal provisions, and are responsible for monitoring school performance and assuring educational quality. On the issue of quality, research on charter oversight thus presents a critical counterpoint to inquiry into charter school performance.

This chapter reviews the empirical literature on charter oversight and the legal environment of charter regulation. Despite increasing federal support for and involvement in charter regulation, oversight remains primarily a state and local-level project. The resulting decentralization can make it difficult to generalize across myriad regulatory regimes, yet comparison of diverse oversight arrangements is a central current in the existing literature. While this study focuses on charter oversight in California, previous research on charter authorizers in other state and district contexts informs the project.

In this review, I take up three strands of research on charter oversight: (1) initial development of oversight structures (2) comparative authorizer studies, and (3) studies of local context and charter regulatory outcomes. I then examine the existing research on the legal context and issues of oversight. Building out from these educational and traditional legal perspectives, this project envisions local discretion as structuring oversight from the ground up, in addition to the top down

---

20 From President Obama’s Presidential Proclamation of National Charter Schools Week in 2016: “We must also ensure our charter schools, like all our schools, are of high quality and are held accountable- when a charter school does not meet high standards, we need to act in the best interest of its students to help it improve, and if that does not prove possible, to close its doors.”
pressure of formal legal and statutory requirements. Grounded in the perspectives of legal sociology, the law and society movement, and institutional analysis in education research, this conceptual approach seeks the motivating logics of oversight from both formal and informal sources; it traces their interaction throughout oversight fora and among participants. I conclude by discussing the strengths and limitations of this conceptual approach.

Charter School Oversight Research

Development of Oversight Regimes. Since the first charter schools opened in the 1990s, scholars have identified public oversight as foundational to preserving charter accountability and quality. In this early era, charter oversight was a “wild west”, as the specific charges and primary loci of oversight were evolving both in structure and mission. Early reports from the U.S. Department of Education revealed that “unclear laws and lax implementation in many states cloud charter schools’ relationships with government and threaten to replace performance with compliance as the basis of school accountability” (Hill, Pierce, & Lake, 1998:3), a tension still in evidence today.

Early research sought to describe the diverse and emerging regulatory structures, offering normative recommendation to structure public oversight more effectively. In their study, Hassel and Vergari (1999) catalogued the practices of 14 relatively new charter authorizers, identifying them as “laboratories for change...at the very heart of the charter school movement” (1999:406). Bulkley (1999) examined state-level authorizers in Arizona and a university authorizer in Michigan, finding that isomorphic pressure to emulate the structure of existing organizations contributed to differences in authorizer development and philosophy. In a later study, she examined authorizers’ response to accountability structures, finding that they rarely closed schools for poor academic performance (Bulkley, 2001). Manno, Finn, & Vanourek (2000) argued that compliance-based regulation would make charter schools too much like traditional district public schools, and advocated for accountability via radical transparency: “a regimen in which so much is known about each school that its various watchers, participants, and constituents can and routinely do regulate it through market-style mechanisms rather than command-and-control structures (2000: 477)- early evidence of the competing institutional logics relevant in oversight decisions. In the California context, Dianda & Corwin (1994) reviewed the state’s population of charters one year after charter legislation took effect in 1992, finding that relationships with district leaders and teachers’ unions (particularly in metropolitan areas) were key areas of contention in both establishment actions and continuing forms of oversight.

With few exceptions, charter oversight developed according to the existing principles of local educational control, becoming the responsibility of local educational agencies. The political choice to slot charter oversight into existing K-12 educational infrastructure has not been without controversy. Charter advocates have argued that this arrangement disadvantages charters by positioning them as competitors with traditional districts for students and public resources. Advocates and school operators have argued for expanding oversight powers to third parties
(including universities, non-profits, for-profit companies, or even individual schools themselves) independent of a traditional educational infrastructure. Some states have come to rely on different oversight structures: in New York, for example, the state university system is one of the largest authorizers of charters; other states (Arizona, Mississippi) have created specialized state-wide charter boards. Yet in California and many other states, charter oversight remains primarily a local project, and the charge of local district bias against charter schools has been formally rejected by the California Supreme Court in *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013).

**Authorizer Dynamics and Approaches.** In the decentralized environment of charter operation, comparative approaches have pointed the way forward. In her study of statewide charter authorizers in Arizona, Michigan, and Massachusetts (2000), Vergari, a political scientist, used Robert Kagan's framework of regulatory styles to show that “negotiated compliance” based on authorizer/school relationships predominated over an “enforced compliance” of more punitive measures. While Vergari's findings illuminated the internal dynamics of authorizers, they predate the rapid growth of charter populations and the explosion of decentralized oversight by local school boards, which may have different constraints and approaches to regulation. Now statewide authorizers are the exception in most states.

In California, local school boards oversee more than 90 percent of charter schools, and the mechanisms and consequences of local charter oversight remain largely unexplored. Existing research on the practical project of charter oversight has focused largely on charter compliance with operational and legal criteria (Manno, Finn & Vanourek, 2000). In the California context, the most comprehensive treatment of charter oversight structure and procedures is found in Zimmer, Budde, Chau et al.’s 1999 RAND report prepared for the state legislative analyst’s office, although the charter landscape has changed significantly in the intervening 16 years, further research into the character of local oversight is needed to contextualize the consequential decisions that charter authorizers make. A systematic exploration of an individual state's charter policies and oversight infrastructure has not yet been attempted, despite both practical and scholarly relevance.

Another area of research considers the experiences of individual schools as they move through oversight actions: initial authorization, renewal, and at times, revocation (Flynn & Arguelles, 2001). In this area, school closure is a phenomenon more studied than most (Paglin, 2001; Anderson, Finnigan, et al. 2003). In a qualitative exploration of local oversight dynamics, Karanxha (2013) followed the regulatory experience of one charter school in Florida, concluding that closure was not only the result of concrete policy requirements, but also a product of the dysfunctional relationships among the charter's governing board, school leadership, and local authorizer. Another recent study (Paino, Renzulli, Boylan & Bradley, 2014)

---

21 In this case, the California Supreme Court upheld a Court of Appeals decision that the existing statutory requirements for charter revocation satisfied constitutional due process requirements. See Appendix A for a full discussion of the case and its significance for this inquiry.
focused on charter closure in North Carolina found that bureaucratic, market, and financial accountability processes all contributed to the likelihood of charter school ‘failure’, though closure decisions were more locally contingent than the study's quantitative event history methodology could capture. This project follows from research into schools’ experience of oversight, and extends the line of inquiry by attending to the formal legal context as well as on-ground practice.

**Charter School Law Research**

Taken together, charter school research has focused on academic outcomes, the consequences of decentralized school governance (Bulkley 1999, Fuller 2000, Bulkley & Fisler 2003), and the role of charters within comprehensive school choice approaches (Chubb & Moe, 1990, Hoxby 2003, Lubienski & Weitzel 2010, Dobbie & Fryer 2011). Research on charters and the law has focused on states’ adoption of the charter organizational form: including demographic factors affecting charter legislation, relevant political coalitions, and increasing federal support of charters (Arsen et al. 1999, Buechler 1996, Lake and Millot 1998, Hassel 1999, Wong and Klopott 2009); litigation and formal claims sparked by charter school operation (Mead 2003, Green 2009); and normative recommendation for the legal reform of ineffective authorization procedures (Wells, 1999). Although charter school oversight has received increased critical attention with the rise of market ideas and the entrance of private actors into education (Bulkley 1999, Chau et al. 1999, Vergari 2000), oversight research has focused primarily on the experience of individual charter schools (Karanzha 2013) or the regulatory relationship between state-level authorizers and schools (Vergari 2000).

Attention to law and charter oversight is therefore scant, and focused on formal law provision and traditional regulatory assumptions. It is also frequently normative, with the goal of identifying and correcting legal problems that currently exist in oversight regimes (Eckes, Plucker & Benton, 2006). While these studies do point to real problems in legal regulation, they overlook the social dimensions of legality that emerge in oversight actions: the interplay of organizational process, professional interests, and alternative motivations that shape authorizers and charter applicants’ relationship to legal requirements. While grounded in formal legal provision, this project brings in a constitutive understanding of law- bringing it to bear on the institutional environment of charter school oversight. This conceptual approach will be discussed later in the chapter.

**California’s Charter Legal Environment: A Brief Overview**

This section provides a brief overview of the formal legal sources most relevant to charter operation and oversight in California. At the state level, these consist of the following:

*Education Code.* The primary formal legal source of charter operation and oversight in California is the state Education Code, Sections 47600-47664. Establishment, renewal, and general oversight procedures and requirements are found in Sections
47605-47608, and delineate authorizer responsibilities and discretionary areas, the required material elements of establishment and renewal petitions, specific criteria for establishment and renewal, procedures for school revocation, appeals of local board denials, etc. While charters are exempt from most of the California laws that apply to school districts (for exemptions and specific legal requirements see EC, Section 47610), they are not exempt from federal legal requirements (IDEA, ADA, etc.). The EC is the most referenced legal source in charter petitions oversight hearings, and is supplemented by local board policy.

*California Code of Regulations.* Title 5, Sections 11967.5 and 11967.5.1 of the CCR set forth how the State Board of Education will review charter petitions on appeal according to the relevant provisions of the Education Code. It attempts to give shape and additional requirements to ambiguous and discretionary criteria from the EC, including familiar terms such as “sound educational practice, demonstrably unlikely to successfully implement the program, unrealistic financial and operational plan, reasonably comprehensive plans in other areas, etc.” As Section 11967.5 states, “when the criteria call for judgments to be made, the judgments will be made in such a manner as to be reasonable, rational, and fair to the petitioners and other parties potentially affected by the chartering of the school by the State Board of Education.” This section from the CCR is the state level equivalent of local charter policy guidelines, and guides both the Advisory Commission on Charter Schools and State Board in the project of charter oversight policy and regulation. While it attempts to provide concrete guidance for the interpretation of Education Code requirements, this guidance at times reinforces the discretion authorizers enjoy in constructing aspects of educational quality or operational fitness.

**Sample of California Case Law on Charter School Oversight**

*American Indian Model Schools v. Oakland Unified School District et al. (2014)*

Background: Oakland Unified (OUSD) revoked three AIMS charter schools in 2013 after an audit revealed fiscal mismanagement and conflict of interest violations. In addition to challenging the revocation at the local board level, AIMS also sought a preliminary injunction to stop the revocation during the internal appeals process. In light of the high academic achievement of AIMS schools, the court granted this preliminary injunction, stating that AIMS was likely to prevail at trial due to the lack of evidence that OUSD had complied with the requirements of EC Section 47607 (proper procedures for deliberation, consideration of academic performance, and required written findings in the case of revocation actions). During the appeal, OUSD argued that the court had improperly inserted itself into the oversight action in question, thus “usurping the jurisdiction of the State Board of Education” and the established internal appeals process. The Court of Appeals upheld the order granting the injunction.

Significance for this study: This case gives critical insight into what can happen when logics of oversight collide - specifically the business and academic sides of
charter operation. Section 47607.c.2 of the Education Code stipulates that authorizers must consider pupil academic achievement as the most important factor in determining whether to revoke a charter, but it remains silent on what this consideration entails, or how exactly authorizers should balance evidence of academic performance against serious operational malfeasance. Written district authorizer statements of consideration were found to be legally insufficient; after all, OUSD argued that they had in fact considered AIMS academic performance, but that the financial violations were serious enough to outweigh all other factors, including student academic performance. The court rejected this argument, putting local discretion around revocation decisions under additional scrutiny with no clear guidelines on how to comply with the law.

This case shows us what can happen in the rare instance when charters pursue remedies through courts and through the internal appeals process. While this strategy is not commonplace, it is significant as districts handle more and more oversight decisions, including potentially contentious school renewals or revocations. While the district argued that the court did not have jurisdiction because AIMS had not exhausted its administrative remedies, the court reiterated that the exhaustion requirement does not apply when “irreparable harm would result if judicial intervention were withheld until a final administrative decision is rendered.” The disruption that would occur to AIMS students and faculty was found to be an irreparable harm. While the jurisdiction of the State Board in the revocation matter was preserved, the turn to the court presages a potential legalization of the oversight process: one that challenges local discretion and fact-finding, and shifts authority to lawyers and the logic of legal compliance.

*Today's Fresh Start, Inc. v. Los Angeles County Office of Education (2013)*

Background: Today's Fresh Start, a charter school in Los Angeles, challenged its revocation by the LA County Office of Education (a closure later affirmed by the State Board) on the grounds that established oversight, as lodged in local districts and county offices of education, violated due process and was thus biased against charter schools due to authorizer preference for the traditional public schools. In the ruling, the California Supreme Court found that the school’s due process rights had not been violated, and that the structure of local oversight as currently arranged did not present a biased regulatory system.

Significance for this study: This ruling reaffirmed the tripartite structure of local regulation of charters in California- closing off the argument of biased oversight popular with some advocates, and stymieing calls to open up authorizing powers to third parties. Yet the arguments forwarded by Today's Fresh Start point to controversial realities of charter operation: the politicization of local school boards and charter decisions, the relationship of district staff and local board members who make the charter decisions, and the adversarial tinge of the proceedings. To this last point, consider the school’s characterization of the County Office general counsel as a ‘prosecutor’ with a distinct agenda of revoking the school’s charter. While the
court rejected this view of the proceedings and the counsel’s role, the perception of authorizers as antagonists can guide school strategy, response, as well as the decision to turn to the courts for remedy.

*California School Boards Association et al. v. State Board of Education; Aspire Public Schools (2010)*

Background: This case challenged the determination of statewide benefit status, a classification that permits charters to operate in multiple locations under state oversight rather than through local authorizers. The California School Boards Association challenged the statewide benefit status of Aspire Public Schools, a large charter management organization, arguing that the State Board of Education did not comply with a section of the Education Code requiring it to find that the benefit could not be carried out through locally approved charters before issuing statewide benefit status.

Significance for this study: As more local oversight decisions are challenged through the internal appeals process of county and state-level review, the nature of charter oversight provided by the State Board becomes more consequential. When issued, statewide benefit status minimizes local discretion over and monitoring of charter populations and removes oversight to the State Board. A growing number of schools (with non-statewide benefit status) receive direct oversight from the State Board; this occurs when a school’s charter is approved on appeal to the state, after initial denials at the local and county levels. The role of the State Board in chartering decisions and the logics revealed in their decision-making have important consequences that trickle down to local authorizers and charter populations.

This chapter has reviewed the existing literature on charter school oversight, examining the confluence of charter law and oversight with a view toward expanding the inquiry. While a direct and tidy line of accountability between charter and authorizer is attractive, it rests on several problematic assumptions. First, it presumes objective and uniformly applied definitions of educational quality—both within a single authorizer and across authorizer populations. Second, it assumes sufficient capability and desire of local authorizers to engage the tasks of charter regulation: sufficient time and resources to carry out the duties of effective oversight. Existing research on charter oversight has not yet sufficiently explored these tasks and dynamics, nor the effect of oversight regimes on local charter populations or participants.

By peering into the fora that measure and judge charter educational quality, this approach challenges the view of educational quality as a static, objective measure. I try to understand how law, authorizer discretion, and bureaucratic process shape quality determinations, and the motivating logics that flow in and among them. Authorizers and the diverse participants who come before them— including school operators, charter advocates, lawyers, parents, and others—are the focal actors of this study. I argue that, in the context of oversight, these actors together construct the meaning of educational quality and then enact it, building out
from the scaffolds provided by bureaucratic procedure and formal law. In the next section, I examine the conceptual framework undergirding this approach.

**Conceptual Framework**

Previous research into charter law and oversight has focused predominantly on compliance and regulatory strategies. Yet these approaches have left underexplored the nexus of law and social dynamics that shapes oversight in diverse local contexts, nor have they captured the nuance of legal and other logics that permeate oversight structures and the actions of participants.

A traditional view of law's connection to education assumes a direct link of formal law and policy to school operation. Simply stated, federal and state legal directives lead to local implementation in schools. Yet even a cursory historical reflection reveals the inadequacy of the traditional view. Virulent Southern resistance to school desegregation occurred at the state and local levels after the famous Brown decision, a racist foot-dragging that continued for nearly two decades. Even today, resistance to educational policies and laws (new math, bilingual education, and the Common Core standards, for example) illustrates that the path to meaningful local implementation is rarely straightforward.

While emphasis on the formal sources of law reflects the traditional, doctrinal approach of legal scholarship, exclusive focus on case law and legislation has had the effect of separating law from social context. The scholarly tendency to reify law—treat legal remedies as discrete interventions into a social or organizational status quo, minimizes law's ability to bring about consequential *indirect* change (Handler 1978; McCann 1994). These indirect changes may take the form of subtle shifts in legal understandings or dispute patterns, as opposed to law's more visible or immediate direct effects. While traditional legal approaches excel at assessing and measuring direct legal impact, they are less able to capture law at work within social and organizational process, and therefore less attuned to law's ability to set or shift boundaries for social challenge and change. The traditional view of law as a concrete intervention has carried over to its treatment in other disciplines, including within educational research. Yet attention to the social consequences of law finds a natural consonance with areas and methods in educational research, and particularly with developments in the study of policy implementation.

The challenges and mechanisms of policy implementation form a core area of interest within educational research (Honig, 2006). Writ large, this research approaches implementation through many different lenses and levels of analysis: through cognitive and language frames (Spillane, Reiser, & Gomez, 2006; Hill 2006); through an organizational lens focused on teacher professional communities and other local participants and institutions (Coburn & Stein, 2006); as well as the social, political, and economic aspects of policy adoption (Smylie & Evans, 2006; Malen, 2006; Loeb & McEwan, 2006). With such a breadth of approaches, it is worth asking what fertile terrain remains, or how legal perspectives might best be integrated. In addition to other perspectives, this dissertation assumes that sociolegal approaches, as developed through decades of institutional analysis in sociology and the law and...
society tradition, can enrich both the study of educational law and policy implementation. In the context of this project, an expanded sense of law as grounded in the social reorients the common understanding of charter school oversight as a straightforward regulatory project, revealing it to be both legally contingent and socially constructed.

When extended beyond this specific project, such a perspective argues for re-imagination of what legal inquiry could mean for charter school research and school choice regimes. In place of exclusive reliance on case law, statutes, and formal regulation, I focus on the research promise offered by “real law” (Calavita, 2010), an on-the-ground approach that includes but also extends beyond formal institutions, lawyers, and traditional educational bureaucracies. In contrast to rational-choice perspectives of regulation (those that highlight the ‘carrot and stick’ elements of compliance) or instrumental approaches focused on law’s “impact”, I approach law as a malleable set of social and normative processes that unfold within the spaces of oversight: a guiding institutional logic that is both harnessed and created by participants. The conceptual underpinnings of this approach are discussed further below.

Law & Society Movement

The law and society movement is an interdisciplinary scholarly coalition that shares a common interest in the connection of law and the social (Friedman 1986; Seron & Silbey 2004). Beginning with foundational work by Karl Marx and Max Weber, sociologists have examined law’s inherent relationship to existing social structure (Cotterrell 2004), yet the focus on law in context departs from the legal academy’s standard focus on doctrine and policy recommendation. In place of traditional jurisprudence, the law and society movement offers an empirical, social-scientific approach, descending from an early 20th century legal realist attention to the law in action in place of law on the books (Garth & Sterling 1998; Tomlins 2000), or “what law does rather than what it ought to do” (Silbey 2002: 860). Since law and society scholars come from diverse academic backgrounds- history, anthropology, sociology, and psychology among them, the movement offers a diversity of method and theoretical frame, and has produced research ranging from large-scale, quantitative surveys of legal behavior and social movement activity to deep legal ethnography born out of the interpretive and anthropological traditions.

The law and society movement emerged in the United States during the 1960s, a time when law and legal mobilization stood at the forefront of widespread social and institutional change, when scholars and activists embraced the potential of formal legal action to right longstanding social wrongs such as desegregation and child poverty (Sarat 2004). Though the connection of legal and social justice grew more complicated in the following decades with conservative backlash and the rise of neoliberal policies, the relationship of law to social and organizational change persists as a vital interest within sociological research (Albiston 2005; Edelman et al. 2010; McCann, 2006), and is a concern shared by those in the field of education (see Anyon 2009 on the connection of progressive social movements to educational equity in the United States).
Following shifts toward cultural and interpretative explanation in the social sciences (Bonnell & Hunt 1999), by the 1980s sociolegal inquiry had moved out from courts and legislatures to seek the law outside formal institutions. By entering homes, schools, and other spaces of everyday life, these scholars encountered law “all over” (Sarat 1990), discovering and extending concepts such as legal pluralism and legal consciousness. Research in this vein focused on the cultural and cognitive dimensions of law, as well as forms of compliance, disputing, or mobilization behavior found within particular social contexts. Taken together, these approaches call into question earlier views of law’s reception by organizations and individuals as an inherently rational response to rules and regulation. By untethering law from official sources, scholars brought forward the socially constructed dimensions of legality, searching for and discovering law and its consequences in places far from the courthouse or statehouse.

**Law and Organizations.** One prominent area of law and society scholarship that informs this dissertation focuses on the dynamics of law and organizations. Sociolegal scholars have long recognized that organizational context shapes the influence and interpretation of law. They have examined diverse organizational environments (corporations, hospitals, schools) to understand how law functions as an embedded social institution, shaping the character of organizational structures, practices, and individual behavior constitutively rather than instrumentally (Edelman, Leachman & McAdam 2010, Dobbin 2009, Kellogg 2009, Albiston 2005, Edelman 1990, 1992; Edelman & Suchman 1997, 1999; Heimer 1999; Vaughan, 1998). Empirical investigations of law in these diverse organizational contexts illustrate how formal law acquires structure and plural meanings through contestation with alternative normative understandings (or institutional logics) and through the participation of professional actors, including lawyers, doctors, or others (Edelman et al. 1999, Edelman & Suchman 2007, Albiston 2005, Heimer, 1999, Zald, Morrill & Rao, 2005).

Implicit to this approach is the idea that law operates constitutively as well as procedurally and normatively. While law imposes concrete material demands and technical requirements, it also leaves space for discretion and the creation of meaningful and legally salient categories. For example, it shapes the meaning of compliance or transgression, or the good worker, or in the case of this project, a quality charter school. Law is at work in the judgments and predilections of individuals and collective actors; it influences understandings of the boundaries and mechanisms of social change (Sarat 1990, McCann 1994, Ewick & Silbey 1998, 2003). And like its procedural and normative dimensions, constitutive elements of law are also contested: in venues ranging from courtrooms to informal conversation, making it a popular area of research for scholars of organizations and social movements (Friedland & Alford 1991, Morrill 1995, Strang & Soule 1998, Armstrong 2002, Binder 2002, Edelman, Leachman & McAdam 2010, McAdam and Scott 2005, Davis, Morrill, et al. 2008, Fligstein & McAdam 2012). This project draws on the law and organizations literature to bring a constitutive understanding of law to the substance and processes of charter school oversight. It contributes to these areas by focusing on the legal understandings that emerge within charter school
oversight, a growing organizational reform that presents an intriguing hybrid of public and private governance structures. Of particular significance to this study is the idea of law as a motivating and consequential institutional logic. In settings where multiple institutional logics are available to organizations or individuals— in the workplace or hospital or charter school, for example, how do we uncover the logics at play, or their significance? One way may be to look closely at the presence and participation of legal actors (lawyers) in certain key decision moments (Heimer 2009), as well as the legal knowledge of other participants, the language of key organizational documents and public presentations, or the tenor of meetings in private and public spheres. We might also look to the legal practices that emerge within organizations (Zald, Morrill & Rao, 2005). While these concerns are also methodological, this project engages the sociolegal literature concerned with dynamics of plural institutional logics, applying it to the oversight structures and diverse parties to charter school oversight.

**Institutional Analysis in Education Research.** This project engages strands of field-level and institutional analysis long present in educational research. With the increasing privatization of public education and the tighter coupling of organizational structure to student performance, institutional analysis in education has moved away from foundational ideas of loose coupling and the insulation of education’s technical core (i.e. the “black box” of classroom teaching) from symbolic policies, looking instead to cultural and cognitive explanations of organizational change or resistance to policy implementation (Meyer & Rowan 2006, Burch 2007). Recent empirical research has focused on the strategies that organizations and affiliated individuals use to interpret and act on messages (or logics) entering from the larger institutional environment or field (Coburn 2004, 2005 on the logics of reading instruction present in the context of the 1980’s “reading wars”; Rigby 2013 on school administrators’ instructional leadership). It has also examined the effect of tighter coupling and ascendant accountability logics on the internal organizational environments of schools: the emotional turmoil and “chaos” that ensues when logics clash, or when education reforms force strict compliance with accountability policies (e.g. Hallett 2010 on the turmoil of school staff facing provisions of the No Child Left Behind Act). This project builds on this line of educational research grounded in institutional logics and field analysis, incorporating an attention to law as a powerful yet plural logic at work in the context of charter school oversight.

**A Sociolegal and Institutional Approach to Charter School Oversight**

As discussed in Chapter 1, this dissertation employs a sociolegal and institutional framework to trace the motivating logics of charter oversight, and to attend to the multi-faceted role of law therein. The project begins from the hypothesis that law and legal demands are neither imposed entirely from above nor created carte blanche by authorizers and other participants in oversight. While the formal legal sources do set certain unequivocal requirements for charter school
operation, they protect local discretion in key areas: the suitability of pedagogical program, likelihood of school success, and other critical domains of school operation (EC §47605). I look to the circumstances and decisions of local discretion as particularly rich in the interaction of institutional logics, and I examine the consequences for charter operators. Formal law imposes certain requirements and boundaries to the oversight process, yet local deliberation and participation also shape the meaning of relevant education law and the measurement of school quality. These local circumstances include organizational characteristics of authorizers and school applicants, participation of third party actors (advocacy organizations, lawyers, and community members for example), community participation, and local political attitudes toward charter schools and market reforms.

Following from this constitutive attention, I focus on how law is used materially as a resource of consequence and also structurally to set the boundaries of oversight. This perspective suggests a methodological focus on charters’ use of law in oversight actions as well as the exercise of authorizer discretion, attending to the interaction of multiple institutional logics in the oversight space. Specific methodological strategies will be discussed in detail in the following chapter. By employing these sociolegal and institutional approaches, this project seeks to understand how authorizers and applicants interpret and create law in this area; how they build and challenge institutionalized understandings of educational quality and what makes a “good” charter school.
Chapter 3: Research Design & Methods

This chapter presents the methods and data sources for this study. I explain how charter oversight and legal logics are approached practically in this project through content analysis of formal legal sources, semi-structured interviews with participants, and case studies of specific oversight actions.

This study addresses the role of legal and alternative institutional logics within charter school oversight in California. The primary research questions, along with additional questions and the methods used to answer them, are detailed in the table below.

Table 3.1: Research Questions and Methodological Strategies

<table>
<thead>
<tr>
<th>Research Questions</th>
<th>Methodological Strategies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. How and where does law surface in charter oversight?</td>
<td></td>
</tr>
<tr>
<td>a. What are the sources of law in charter oversight?</td>
<td>Analysis of CDE charter data, statues, and case law;</td>
</tr>
<tr>
<td>b. Who are the actors in charter oversight?</td>
<td></td>
</tr>
<tr>
<td>c. How do actors use law in oversight actions?</td>
<td>interview &amp; case study data</td>
</tr>
<tr>
<td>2. How does law interact with other institutional logics</td>
<td></td>
</tr>
<tr>
<td>in the field of charter oversight?</td>
<td></td>
</tr>
<tr>
<td>a. What happens when legal logics encounter</td>
<td>Analysis of charter action data,</td>
</tr>
<tr>
<td>alternative logics of oversight?</td>
<td>observation of school charter,</td>
</tr>
<tr>
<td>b. How do diverse participants use legal logics</td>
<td>interviews &amp; case studies</td>
</tr>
<tr>
<td>in the context of charter regulation?</td>
<td></td>
</tr>
<tr>
<td>c. What are the implications of legal logics of</td>
<td></td>
</tr>
<tr>
<td>oversight for charter populations?</td>
<td></td>
</tr>
</tbody>
</table>

As Table 3.1 illustrates, this project employs a mixed-method, primarily qualitative research design that focuses on oversight in both its legal formulation and its practice on the ground. To understand the demographics of California’s charter population, I first relied on publicly available data from the California Department of Education to ascertain the charter school population at the state-level (number of schools, rough geographic distribution, organizational type, etc.), as well additional details regarding state, county, and local school district-level authorizers.22

The state database is a treasure trove of information, with an entry for each active and inactive charter, including its location and operational status, the contact information of school leader, organizational type, funding scheme, and responsible authorizer. For schools that have closed voluntarily or through authorizer action (non-renewal or revocation mechanisms), the database often includes a few sentences detailing the circumstances that led to closure. Using this information, I compiled a master list of operational and closed charter schools by individual authorizer as of January 2016. This initial compilation from the public database revealed the distribution of charter schools throughout the state as well as the local and county board authorizers with the largest charter populations. It also revealed

---

interesting patterns, such as small authorizers with proportionally large charter populations or noticeably higher rates of school closure. I used this master list extensively throughout the project, for reference and to focus the inquiry. One important finding from initial scrutiny of this database is that oversight by local school boards (as opposed to county or the state board) predominates; over 90 percent of charters are authorized by local school boards.

I then examined charter oversight actions in local context. Primary strategies here included the following: (1) content analysis of authorizer board agenda, meeting minutes and charter decisions, as well as observation of public hearings from the local to the state level; (2) in-depth case studies of three specific oversight actions, selected to represent different types of oversight action, and (3) 31 semi-structured interviews with participants in charter oversight. The interview sample included charter school leaders, authorizers, lawyers, charter advocates and community members.

This rich body of qualitative evidence provides both depth and breadth within the field of charter oversight. With respect to the primary research questions, it triangulates the role of law in the oversight process- by balancing official language of charter petitions and board recommendations against observed practice, and participants’ accounts against regulatory language of the formal legal framework. Through analysis of the same evidence, it attends to the alternative logics also present in the field space. The specifics of each approach, as well as their strengths and limitations, will be discussed in further detail later in the chapter. I turn now to the selection of California as a consequential site for this inquiry.

California as Consequential Site for Charter Inquiry

While this study required a selection of many different sites, the primary and most consequential choice occurred in the selection of California as focal state. California is a particularly advantageous site for an inquiry into charter oversight. In addition to its long history with the charter form and oversight structures, it boasts the largest population of charter schools in the nation. Over 1,200 schools serve more than 630,000 students (as of 2018), a higher proportion of charter enrollment than the national average of four percent. There is diversity across multiple dimensions of consequence, including a well-developed charter advocacy organizational network, from legal to financial to special education supports. Charters are present in rural, suburban, and urban areas; and there is diversity across charter organizational type, mission, pedagogy and curriculum, and resource level.

California is also a state with a high rate of charter school closure: approximately 25 percent of charter schools have closed since 1992, a fact that troubles advocates and points to the difficulties of successful school operation (nationally, the charter closure rate hovers around four percent for authorizers.
managing more than ten schools). The state has a tripartite structure of charter oversight: a decentralized model that places the powers of authorization and oversight within the existing educational infrastructure of local school districts, county offices of education, and the State Board of Education. The state does not currently allow third party authorizers. With over 300 active local school board authorizers, local discretion and policy differences at the district and county level actively shape the landscape of local educational choice.

California’s charter environment is amenable to the type of sociolegal inquiry outlined in the conceptual framework. The combination of decentralized oversight and local discretion, established appeals processes for local decisions, and well-developed advocacy networks at the state level are fruitful places to trace the thread of law, and to examine the effects of local context on regulatory decisions. While previous work on charter oversight has focused on oversight regimes comparatively across states or the reasons for individual charter failure (see discussion in Chapter 2), to my knowledge no work has yet focused more broadly on the role of law as motivating institutional logic in this area. In addition to this theoretical approach, this project will provide an updated empirical look at California’s charter oversight practices, hopefully a useful contribution since the last detailed treatment of this subject was conducted for the state’s Legislative Analyst’s Office in 1999 (Zimmer et al., 1999). This detailed report discussed the state’s charter population in terms of student achievement, governance, operation and accessibility. With respect to authorizers, it found that few were collecting additional quality indicators including student grades or dropout rates; the legal requirements and local expectations have changed considerably since then.

Despite the advantages of focusing on charter oversight in California, there are limitations to adopting a single-state approach. The local character of charter regulation across the United States makes it difficult to generalize from one state’s legal framework, as so many salient differences emerge locally. Moreover, the generally favorable environment and specific policy protections enjoyed by charter schools in California may be politically infeasible in other states. And despite recent federal incursions into charter policy through Department of Education initiatives, charter regulation is likely to remain a state and local project- the legacy of local control of education ensures this. One aim of this dissertation is not to catalogue all the approaches to oversight and declare one qualitatively superior, nor to craft an ideal charter policy for dissemination everywhere (as many charter advocacy organizations hope to do), but rather to examine the application and consequences of the motivating logics (legal, education, and market) as they shape the spaces and participants of charter oversight. For these purposes, the selection of California works well.

---

23 National Association of Charter School Authorizers: State of Charter Authorizing 2015 Report. Also, 51 charters closed in California in 2016-2017, the majority of which were coded as ‘voluntary closures’, as opposed to non-renewal or revocation.
Study Design

This section details the research design and specific methods used in this dissertation. Where specified, additional data is found in Appendix A, and implications and results of these strategies are explored in chapters 4-7 of the dissertation. Methods are discussed in the order research was conducted, although the process was in part iterative, as initial inquiry inspired elements of subsequent data collection, and data collection posed additional questions.

I. Content Analysis of Formal Legal Sources Relevant to Charter Oversight

In California, charter authorization and oversight are governed by the state’s Education Code (EC), primarily §47605, and by the California State Board of Education Regulations (CCR, Title 5, §11967.5.1). In the first phase of the project, I analyzed these sources both as authoritative legal documents and “social artifacts” (Suchman, 2003) in order to map the framework of charter oversight that exists from the state to the local level. This process also helped me understand the legal requirements for different oversight actions (initial petition, renewal, revocation), as well as the organizational appeals process that exists for contested decisions. I was particularly interested in the criteria that could be interpreted as discretionary as well as any specific references to the exercise of local board discretion. I also examined charter policies and organizational structures specific to county offices and local school districts later in the project, through a sampling strategy described in the next section.

In addition to the statutory provisions of charter oversight in the Education Code, I identified three court cases that dealt with controversies of charter oversight, culled from a larger body of cases related charter schools and chosen for the intersection of educational quality and local discretion. These I coded for evidence of the legal, education, and market logics in quality determinations; local discretion and control; the parties present and the arguments they employed.24

The resulting picture of charter oversight that emerges from an analysis of formal legal sources reinforces the practical challenges of decentralization. While there exists a clear structure of material and technical requirements, significant discretion is preserved to local authorizers in critical areas - the assessment of educational quality, operational fitness, and likelihood of school success. Relevant case law also reveals the points of tension that come with discretionary power, particularly when subjective criteria are wielded (or are seen to be wielded by certain populations) for political ends. The boundaries and logics revealed in the

24 These decisions included Court of Appeals decisions American Indian Model Schools v. Oakland USD (2014); California School Boards Association v. State Board of Education and Aspire Public Schools (2010), and California Supreme Court decision Today’s Fresh Start, Inc. v. Los Angeles COE (2013). It is interesting to note that this legal information, while certainly available through traditional legal sources, it is also assembled and presented for the charter operator constituency in an accessible format by a statewide advocacy group, the California Charter Schools Association (CCSA) as well as several law firms specializing in charter school legal support.
formal legal sources are discussed further in Chapter 4; Chapter 5 examines the tensions and consequences of local board discretion.

II. Analysis of Charter Oversight Actions

Following the examination of the formal legal sources of charter oversight, I then turned to charter actions of authorizers. Mapping the regulatory decisions of 300+ charter authorizers throughout the state presented a daunting task, and one that fell beyond the scope of this dissertation. In order to foreground the motivating logics and dynamics of contested decisions, I chose rather to begin at the top, focusing on the ‘supreme court’ of charter oversight, the State Board of Education (SBE) and its appointed charter advisory body, the Advisory Commission on Charter Schools (ACCS). Using meeting agenda, minutes, and webcasts of over 30 ACCS and SBE meetings over a two-year period (2014-2015 and 2015-2016), I tracked the following:

(1) Number and type of charter oversight actions considered (as well as whether the decision was contrary to internal recommendation)
(2) Local district or county presence and their arguments
(3) Participation of lawyer or advocacy organization and their arguments
(4) Qualitative examination of charter oversight structures and policies specific to the state-level

These categories were constructed to attend to the presence and interplay of institutional logics and to focus on the dimensions of law and legal action throughout. The data yielded gives insight into how charter oversight proceeds at the state level, the role of law in the organizational appeals processes, and professional legal and advocacy organizations in charter actions before the State Board.

Yet as discussed previously, counties and local school districts are the primary authorizers of charters in California. After examining charter actions at the state level, I turned to the regulation of charters by county offices of education. While 54 of California’s 58 counties have had some historical experience with charter schools, I selected the five counties with the largest population of charter schools. These included Los Angeles, Alameda, Sacramento, San Diego, and Santa Clara counties. For each county, I recorded the charter actions that came before the county board of education over a two-year period, in 2014-2015 and 2015-2016. These included new charter actions and appeals of actions denied by local

While these counties are perhaps not entirely representative of the “average” county’s experience with charter oversight, I wanted to ensure a critical number of charter actions to consider at the appellate level, and more charters are located in urban areas. The sampling strategy for local district captures more variation along this dimension, where it is perhaps most important since local school boards are the majority of charter authorizers.
school districts. To understand the outcomes as well as the differences in local charter policy environment within each individual county, I relied on similar data sources (board agenda, meeting minutes, regulatory decisions) and employed a similar coding scheme:

(1) Number and type of charter oversight actions (as well as outcome)
(2) Board decisions contrary to local district decision
(3) Participation of lawyer or advocacy organization and their arguments, where possible to discern
(4) Qualitative examination of county-specific charter oversight structures and policies

After collecting county-level data, I examined the practices at the local school board level. To capture the variation that comes with 300+ active local authorizers, I examined the oversight decisions and charter environments of 10 individual school districts, which ranged in size from LA Unified (responsible for 277 charters) to Twin Rivers Unified (5 charters). To ensure a sense of continuity as well as a critical mass of oversight actions to examine, I selected the two local school districts with the largest number of charter schools under the jurisdiction of the five counties previously selected (see Table 3.2). This strategy allowed me to track actions from the local to the county level, and to see if and how the actors and arguments changed as they entered the appellate phase of oversight. The unit of analysis here is the charter action itself.

Table 3.2: Selected Local Charter Authorizers by County

<table>
<thead>
<tr>
<th>Alameda</th>
<th>Los Angeles</th>
<th>Sacramento</th>
<th>San Diego</th>
<th>Santa Clara</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oakland Unified</td>
<td>LA Unified</td>
<td>Sacramento City</td>
<td>San Diego Unified</td>
<td>SCC Office of Education</td>
</tr>
<tr>
<td>Hayward Unified</td>
<td>Acton-Agua Dulce</td>
<td>Twin Rivers Unified</td>
<td>Mountain Empire</td>
<td>Campbell Union</td>
</tr>
</tbody>
</table>

From this sample of ten authorizers, nine are local school districts, and the tenth is the Santa Clara County Office of Education in its capacity as primary (rather than appellate) authorizer. As one might expect of large authorizers, charter-populous districts like Los Angeles and Oakland have special units and personnel dedicated to charter issues; smaller districts like Mountain Empire and Acton-Agua Dulce Unified do not. These differences are examined in more detail in Appendix A.

This ten-district sample was selected purposively to capture local authorizer diversity in geography and size, while also guaranteeing that each district had more than a passing experience with charter oversight. One lesson of this inquiry is the difficulty in describing the “typical” charter authorizer; the political nature of local school boards and variation in district size make this a challenging if not impossible task. As with the inquiry into state and county boards, I recorded the charter actions that came before each of the ten local authorizers during the academic year 2015-2016. For each individual action (and where possible), I coded for the following:
(1) Number and type of charter oversight action (as well as outcome
(2) Decisions contrary to internal recommendation
(3) Participation of lawyer or advocacy organization
(4) Qualitative examination of local oversight structures and policies

In summary, this strategy uses the existing structure of charter oversight in California to focus on the actions and outcomes of charter consideration at three different levels: local school district, county board of education, and state board of education. It assembles a body of evidence at each level of oversight, and ascertains the regulatory environments created in each- shaped by state policy, local discretion, as well as actor participation. This phase of inquiry set the stage for the interview and case study components of the project to follow.

III. Semi-Structured Interviews with Participants in Charter Oversight

In this phase of the project, I conducted a total of 31 semi-structured interviews with four different groups of respondents: (1) charter authorizers and internal staff (n=6), (2) charter school operators and board members (n=14), (3) lawyers and support organizations (n=6) and (4) representatives of charter advocacy organizations (n=7). The interviews began with a common set of questions designed to elicit general reflections toward charter authorization and oversight from the participants’ perspective. As a method, semi-structured interviewing is particularly suited to uncovering actors’ subjective understanding of and approach to charter regulation- including its legal, political, and social components (McCracken 1988; Weiss 1994; Luker 2008). When combined with other methods, interview data permits the researcher to balance subjective understandings against observed practice and the language of official policy.

Following from the study’s primary interest in the legal environment of charter oversight, the interview protocol employed both specific and open-ended questions: asking how participants encountered, referenced, and used law in charter actions. Central questions prompted reflection in several areas, including: (1) alternative understandings of charter quality in the context of regulation, (2) the legal environment of charter operation, focusing on the experience of charter oversight, (3) the guidance provided by the state education code and relevant case law, as well as the role of lawyers and advocacy organizations, and (4) “problems” of oversight and their resolution. Interviews also focused on the professional background of the subject as well as his or her participation in charter oversight. The full interview protocol can be found in Appendix B.

Interview participants were selected strategically in order to populate each respondent category enumerated above. To identify and contact charter operators, I relied on contact information from the aforementioned Charter Schools Database maintained by the California Department of Education. An initial attempt to obtain a random sample of 30 charter operators from the state database in the spring of 2014 illustrated a recurring response rate problem. Fewer than ten percent of those

26 Some individuals fell into more than one category.
contacted from the random sample responded, despite repeated attempts by phone and email. Only three individuals from this first list eventually agreed to an interview. Attempts to contact the operators of closed charters were almost uniformly unsuccessful; only one from this initial list responded and agreed to participate. Nor did the initial random sample size of 30 accurately reflect California’s concentration of charters in larger urban districts, nor the study’s focus on the salience of the legal logic and local discretion in oversight. Despite a generous research grant from the National Science Foundation, a truly representative random sample of charter operators with a convincing response rate lay beyond my current capabilities as an individual researcher. After time in the field, I now believe it would require a highly coordinated team research approach.

In place of a random sample, I relied on information from the oversight data collected in the first phase of the project to target charter operators whose schools had taken part in these actions during the past five years. From this vantage point, the sampling strategy was a “purposive snowball” (Loftland et al. 2006). I generated the samples for each category from previously collected data, contacts in the charter legal and advocacy world, and through the recommendations and entrée of previous participants. Purposive strategies do have limitations, in that they can make it difficult for researchers to design a sample that accurately captures existing diversity (rather than reflecting a collection of similar participants). The four different groups of interview respondents guard against this in part, and the clear themes emerging from the interviews, as well as redundancy (Luker 2008) of interview data in key areas (local discretion, problems of oversight, and the participation of lawyers and advocacy organizations in charter actions). Despite these safeguards, I cannot claim that the interviews were able to capture the full universe of perspectives on law and charter oversight in California.

In total, I conducted 31 interviews from spring of 2014 through the spring of 2017, both over the phone and in person. Interviews ranged from 30 minutes to over two hours. They were recorded with the subject’s consent according to IRB protocol, transcribed, and coded using the online qualitative data analysis program Dedoose.27 Broad code families were identified both inductively from the data itself, following from the primary and secondary research questions concerning the role of law in oversight, and with reference to the conceptual frames of institutional logics and law in action as drawn from the education and sociological as the research progressed through the interview and case study stages.

Particular coding attention was paid to the participants in oversight actions (lawyers, advocates, community activists, authorizers, etc.) and their arguments, legal language in discussions of educational quality, bureaucratic components of authorization and oversight, and any evidence of alternative institutional logics (educational, market) in oversight actions. The interview findings supplement the content analysis of formal legal sources and the data collected from state, county, community, and individual school level charters.

---

27 For in-person interviews, I used the recording function on my personal iPhone. Telephone interviews were recorded using the TapeACall iPhone app. Per IRB requirements, subjects were informed of their rights as participants and received a consent form for their records, either in person or via email (for telephone interviews).
and local oversight fora. Taken together, these data uncover the specific practices and interactions that constitute charter oversight, and they provide multiple ways into the interaction of logics in the construction of quality and the regulatory decisions of authorizers.

**IV. Case Studies of Oversight Actions**

Following the analysis of oversight data and interview components, I traced the oversight experiences of three different charter schools. While there are various theoretical and empirical justifications behind case studies as a research strategy and just as many practical ways to conduct them (Ragin & Howard, 1992), I used the case study method primarily as a means to go deeper, to immerse myself in the full record of oversight from the administrative and bureaucratic to community and emotional dynamics. The case study method permitted me to trace arguments and strategies from their specific local origin throughout other fora, including appellate oversight spaces. The empirical focus on specific cases does not preclude theoretical reflection, as multi-sited case studies (Yin, 2009) can reveal and flesh out areas of general conceptual insight (Eisenhardt, 1989), particularly when combined with other forms of data.

The three schools selected were not chosen as representative or archetypal cases; decentralized charter oversight makes it difficult to identify cases along the traditional lines of “typical” or “deviant.” Rather, a triangulated approach based on prior interview evidence guided the selection of the three cases. Given the focus on legal logics of oversight and their alternatives, I selected schools with particularly contested “legal” situations or problematic histories: they had participated in appeals of local district oversight decisions and experienced different outcomes. Other aspects influencing case selection included my access to records and participants, the charter’s organizational type and the political environment of the local authorizer, the school’s experience and resource level, as well as the cast of participants including any “repeat players” (Galanter, 1974) such as experienced charter operators, lawyers, and charter advocacy organizations. Also relevant to selection was the need to choose schools according to the depth and availability of the written record of oversight at the local level and beyond: these materials were the primary sources of case study and starting point of qualitative follow-up.

According to these criteria, I selected three schools: (1) One World Charter School of San Francisco (authorized in 2015 by the State Board of Education); (2) Westin Charter School in Richmond (closed in 2012), and (3) Viva Academy in Long Beach (closed in 2015). While the oversight experience of these three individual schools is a matter of public record, I used pseudonyms of schools and individuals connected to them at the request of several interviewees. The names of local school districts and county offices of education remain unchanged. For each school, I examined the official oversight record either of initial charter application (One World) or renewal application (Westin Charter and Viva Academy) at the local level as well as the record generated throughout any additional appeal fora. Where possible, this record was supplemented by interviews of key participants, including school leaders, parents, and authorizers. I used these materials to trace the
interaction of legal and other institutional logics throughout the charter oversight process, and to examine the authorizer’s use of discretion in evaluating and responding to each school’s petition. A brief oversight profile for each school is provided below.

One World Charter School of San Francisco opened in the fall of 2015, under the oversight of the State Board of Education. A non-profit school with a mission focused on students living in high poverty neighborhoods, One World originally sought authorization from the San Francisco Unified School District and was denied. Since San Francisco is both city and a county, the school appealed this denial directly to the State Board of Education and was approved for a standard five-year term. The school has a noticeably deep and experienced leadership bench: an 18-member Board of Directors with considerable corporate and charter school experience, as well a large advisory board and nine community partners ranging from the University of California, San Francisco to WestEd, a large education non-profit organization.

Westin Charter School opened in Richmond in 2007, under the oversight of West Contra Costa Unified School District. A single-sited, small high school with a family-like atmosphere and an atypical leadership structure of two principals, Westin was denied renewal by the local board in 2012. The school appealed to Contra Costa County Office of Education shortly thereafter and was again denied renewal. The school chose not to pursue the appeal to the State Board of Education, closing shortly thereafter.

Viva Academy, a dual Spanish/English immersion K-8 school in Long Beach, opened in 2000 under the oversight of Long Beach Unified School District. Successfully renewed by the district in 2005 and 2010, the school was denied renewal in 2015 by for failing to meet academic performance requirements. Despite especially vocal parent and community support for Viva’s continued operation, the local board’s decision not to renew the charter was upheld by the Los Angeles County Board of Education and by the State Board of Education.

My Role as Researcher

Despite their popularity, charter schools remain a controversial educational reform that inflames passions across the political aisle. When informed of my dissertation topic, friends and acquaintances would ask whether charters were “good or bad” and if I supported them, and I encountered only slightly more nuanced variations of these questions from participants throughout the course of research. Given the politicized nature of charter reforms, participants routinely tried to gauge if I were pro or anti-charter before offering their experience, or even before responding to the query for an interview. Several participants, including those from charter advocacy organizations and law firms, vetted me before taking part: asking for an abstract of the research proposal and potential interview questions beforehand. Participants were likely reassured of a certain impartiality by my affiliation with UC Berkeley, the additional legitimacy granted by the project’s funding from the National Science Foundation, and perhaps most importantly by the recommendation of others who had participated in the project. The stated interest
in the diversity and discretion of local oversight likely also resonated with state-level actors attuned to the geographic and local political differences that affect charter populations.

While most interviews were conducted over the telephone (in which my identity as a white woman was not readily apparent), the dynamics of in-person interviews were at times surprising. More than once I was mistaken as visiting personnel from the authorizing district, an interesting occurrence considering that most charter staff reported that district representatives rarely visited their campuses. My professional dress, demeanor, and UC Berkeley affiliation helped to secure trust (leading at times to additional access) in fora ranging from individual charter schools to school district offices to the oversight spaces themselves. It is worth noting that personal and institutional privilege likely smoothed the way for my inquiry. One might consider the differences in reception an unconnected person might receive if he or she were to pose similar questions regarding charter operation or performance. The reception of parents and community members at public hearings on charter oversight is a point of comparison in this respect, made all the more consequential by the personal investment of these individuals the oversight process.

**Limitations and Strengths of the Research Design**

This study had several limitations in research design and specific method. First, the study examined charter oversight practices only in California. While necessary for a project with limited scope, the single-state focus has consequences for offering generalized policy implications. As charter reforms are likely to remain a state and local project, the experience of one state is therefore of limited value, as specific policy changes to oversight structures may be politically impossible elsewhere. Even within California, only a small fraction of active charter authorizers and oversight actions were examined in detail; this choice limits the ability to generalize regarding authorizer practices. The chosen research strategies focused on assessments of educational quality within oversight, so they may overstate the role that these duties and responsibilities occupy within the totality of charter operation. Rather, this project sought the motivating logics and consequences of oversight in the construction of school quality-to bring theoretical insight as well as to understand how these fora operate practically.

Second, there were limitations in the sampling strategies of the interview and case study components. As previously discussed, while I initially tried to obtain a random sample for the interview portion of the study, an unsatisfactorily low response rate required a different approach, one more effectively tailored to the research focus on institutional logics and the consequences of their interaction. By focusing on authorizers, advocacy organizations, lawyers, and schools recently involved in oversight actions, the purposive sampling strategy for interviews and case studies sought thematic saturation around the role of law rather than predictive significance.

Lastly, while academic and lay audiences naturally want to be able to predict oversight outcomes, this study does not directly address causality in this way. That
would be a difficult task, considering the hundreds of potential charter authorizers in California and their dynamic political contexts. Rather, this work explores the nature and consequences of logics in oversight, and identifies the variables and mechanisms worthy of future inquiry, causal or otherwise.

Despite these limitations, the research design has clear strengths. Its primary contribution is the approach to educational quality as constructed through oversight processes and in the intersection of multiple logics. It reveals law's role in this area to be plural: operating though formal legal requirements and through local discretion, informal channels, and the actions of diverse participants: from professionals to parents and community members. It looks to formal legal sources, observed practices, and the subjective oversight experiences of individuals and schools. This scaffolding of method attends both to law on the books and law in action, and it provides checks on the findings that result from each method taken individually. The legal requirements of the Education Code and other formal sources are contextualized by attending to the bureaucratic processes of oversight, and interview and case study evidence further situate these actions by foregrounding the experience of participants.
Chapter 4: Institutional Logics in the Field of Charter Oversight

This chapter examines the charter school movement as both an organizational and strategic action field, arguing that oversight is a subfield critical to the movement’s legitimacy and structural elaboration. I present evidence for three primary institutional logics of oversight- the legal, educational, and market logics, as revealed in relevant legal frameworks and bureaucratic structure, and through diverse participation and relationships of oversight actions. I find the subfield of oversight to be more contested and contingent than formal legal provision suggests, with consequences for the evaluation of school quality and charter regulatory decisions. This chapter lays the groundwork for examining the interaction of logics in oversight spaces.

Charter Schools as Organizational and Strategic Action Field

Public schools have long provided an attractive site for organizational and institutional inquiry, drawing in scholars due to their public, democratic mission, and for the counterpoint they present to the analysis of private firms. Recently, the ascendance of accountability logics in education reform has led to a reexamination of longstanding theoretical constructs in this area: a reassessment of the “loose coupling” theory of organizational structure and practice, for example (Hallett, 2010), as well as an expanding attention to actors and dynamics previously on the margins: the boundaries between schools and their communities, for example, and the growing influence of “non-system” actors in education: non-profits, advocacy organizations, and others (Burch, 2007; Coburn, 2004). Centered on choice, accountability, and competition, the charter school movement arises out of and encompasses these new forces and areas of participation. In a way, the growth of charter schools has called into question the efficacy and viability of the “one best system” of traditional public education (Tyack, 1974).

Practical developments over the past 25 years lend themselves well to institutional and field-level inquiry of charter schools, particularly in the California context. The explosion of charters in the state, accompanied by the growth of charter advocacy and support organizations, authorizers, and charter law firms, illustrate that charter reforms have grown well beyond the natural constituency of parents and school boards. The decentralization of charter oversight ensures porous boundaries and overlapping areas of field activity, as well as a diversity of organizational practices and relevant institutional logics.

Field perspectives offer an attractive theoretical framework for digging into charter schools, as they offer a bird’s eye view of the activities and relationships that unfold among intertwined organizational participants. Field perspectives shift the focus toward the associations, boundaries, and logics of related activity- in this case the activities of charter oversight, while also keeping an eye on the power differentials and contingencies that develop among actors (Martin, 2003). DiMaggio and Powell (1983) described the development of organizational fields as a consequence of multiple factors, including interaction and information load among related organizations, as well as the development of mutual awareness among
participants that their actions and aims are linked. These factors are all present in charter school oversight.

Furthermore, the charter school “movement” - a phrase used strategically by advocates for decades, lends itself well to the concept of strategic action field as developed by Fligstein & McAdam (2011), and to a focus on the values and institutions revealed within them (Goldstone & Useem, 2012). The strategic action field (SAF), in Fligstein & McAdam’s conception, is a “meso-level social order where actors (individual or collective) interact with knowledge of one another under a set of common understandings about the purposes of the field, the relationships in the field (including who has power and why), and the field’s rules” (2011:3)- for example, the strategic action field of school choice, or that of charter reforms under the umbrella of school choice policies. While we might question to what degree the charter movement meets these criteria, this definition suggests what an alternative approach to field analysis could look like.

Strategic action field approaches point researchers to boundaries and to power differentials in relationships within the field. They help us make sense of observed tension, conflict, and “problem” moments: in the case of this study, contested charter actions, appeals, and school closure. These approaches also help us understand how the field evolves in and through moments of conflict. As DiMaggio notes in his analysis of institutional change in the organizational field of art museums, change is not a “taken for granted, non-directed, non-conflictual evolution” but rather a set of “intentional (if boundedly rational), directive, and conflict-laden processes” (1991:268). To this, the SAF approach brings in the participants and dynamics at the margins of traditional organizational action or core activities.

Institutional and field-level approaches are not new to educational research (Burch, 2007), but have yet to be systematically applied to charter school reforms. Richard Arum’s (2000) research on school communities as organizational and ecological fields provides a helpful analogue to the consideration of charter oversight as a field. Arum approaches school communities as fundamentally shaped by neighborhood characteristics as they interact with the framework set by larger institutional forces (or logics) provided by state regulation, professional associations, and market competition. He argues that field and institutional approaches to the school and its community shed new light on persistent inequalities in education, including racial segregation and resource inequality.

Charter oversight emerges as a core area of field activity in both organizational and strategic field approaches. Effective and rigorous oversight practices are tied directly to the movement’s legitimacy, public perception, and most importantly, to the educational landscape that emerges from regulatory decisions to open and close schools. Oversight is also a field task open to the influence of multiple institutional logics, which interact to create the variation in practice and outcome observed empirically in charter actions.

This chapter explores the institutional logics that motivate charter oversight in California, and it attempts to trace logics as they enter the field through participants, relationships, and formal legal sources. Situated within and arising
from field activity, the logics of oversight influence diverse oversight practices and help explain the divergent charter outcomes as well as board regulatory decisions.

**Logics of Charter Oversight**

This section examines the institutional logics present in the spaces, sources and actions of charter oversight. As addressed in Chapter 3 and consistent with field-level perspectives (DiMaggio & Powell, 1983; Scott, 2000), I take logics to be the bundles of ideas and practices that imbue organizational structures and give shape to a field and its activities. As such, logics are the “frames of reference that condition actors’ choices for sense-making, the vocabulary they use to motivate action, and their sense of self and identity” (Thornton, Ocasio & Lounsbury, 2012).

Logics filter into the oversight environment from many sources: from formal law, statutes and educational policy (Spillane & Burch, 2006), and from the participation of authorizers and charter operators, lawyers and advocates, non-system actors, and private citizens. Logics are also reflected in charter’s written materials and revealed in the organizational structures of both schools and authorizers. My goal in this discussion is to identify and track the motivating logics of charter oversight, and to lay the groundwork for examining their interaction and the consequences for charter populations. In short, I find that logics beyond that of formal legal compliance affect the practice of charter oversight.

From the data, I identified three primary logics of oversight: the legal, the educational, and the market-based logic. I first examine the market logic, one central motivating logic behind charter schools as an educational reform. Within the legal logic, I examine two distinct sub-strands: technical compliance and rights/justice; within the educational logic the sub-strands of traditional accountability and holistic quality. While the salience of these three logics varied among oversight fora and participants, they were present in both the formal and informal environment of oversight, gleaned from interviews, case studies, and the written records of schools and authorizers.

One central finding is that these three logics - the legal, educational, and market, interact to structure interpretations of educational quality and charter regulatory decisions. Each logic supplies different ideas regarding the purpose of oversight and its best practical execution; and privileges certain participants, evidence, and arguments over others. Logics do not bring about causal effects directly; rather, they emerge in and through the local contingencies and relationships created within the dynamic oversight fora. Below, Table 4.1 compares elements of the three logics mentioned (and relevant sub-strands), as gleaned from the sources of formal law, charter actions of selected authorizers, as well as interview and case study evidence.
### Table 4.1 Logics of Charter School Oversight

<table>
<thead>
<tr>
<th>Logic</th>
<th>Sources of Logic</th>
<th>Primary Actors</th>
<th>Evidence of Educational Quality</th>
<th>Effect on Regulatory Outcomes</th>
</tr>
</thead>
</table>
| **Market**             | **Written**: aspirational statutory language, policies of advocacy organizations, charter petitions  
**Structural**: school funding regimes and primacy of local district oversight | parents and community members, educational entrepreneurs and CMOs, CCSA and CDSC\(^{28}\) | private choice; compliance as understood in light of individual school’s curriculum and contribution to educational options | minimal when operational problems or academic underperformance is an issue;  
minimal in districts hostile to charters; more salient in appellate actions or in compliance “grey areas” - middling performance, etc. |
| **Legal (Compliance)** | **Written**: Ed Code, CCR, district specific charter policies, MOUs, CCSA policy papers, relevant case law  
**Structural**: Oversight appeals process, in internal district and county charter offices | authorizers, internal authorizer staff, and charter offices, charter operators, lawyers, CCSA | adherence to statutory requirements regarding student performance; charter operator fluency with performance and operational data | central & determinative across different authorizer spaces (district, county, state) in the majority of charter actions; typically ‘wins’ when encountering other logics; linked to educational accountability logic |
| **Legal (Rights/Justice)** | **Written**: Aspirational statutory language, charter petitions, advocacy organizations’ and community non-profits’ policies,  
**Structural**: charters’ access legal assistance; equity offices in district/authorizer infrastructure | parents, students, and community groups; advocacy organizations to a lesser extent | student satisfaction, equity, and increased access to diverse educational options | minimal in most oversight actions, despite friendly authorizer reception; yet may bring about a new hearing or appeal following improper procedure; can change educational landscape by mobilizing others to act or to protest, linked to educational (holism) logic |
| **Educational (Accountability)** | **Written**: Ed Code, specific authorizer policies, advocacy org. papers and frameworks, NACSA authorizing guidelines  
**Structural**: internal district organization and data gathering practices | authorizers and internal charter staff, charter operators and board members, lawyers, and CCSA | curriculum aligned to Common Core standards; satisfactory performance on achievement tests; teacher evaluation regimes | central to oversight actions across all authorizers and fora, reinforces legal logic of oversight and professional legal expertise and involvement; envisions school closure as proper outcome for poor academic performance |
| **Educational (Holism)** | **Written**: charter petitions, CDSC and CCSA school development materials, parent and community letters  
**Structural**: internal district structure- curriculum development and charter offices; public oversight hearings | charter operators, teachers and students, local and informal charter networks and collaborations | evaluated student work, faculty and parent satisfaction; availability of electives and enrichment across subject areas, rigorous teacher evaluation | most salient in establishment petitions, in which no track record exists to gauge compliance; appears often in conjunction with the legal logic (rights/justice sub-strand); envisions cooperative and collaborative relationship as solution to poor performance |

---

\(^{28}\) CCSA (Charter School Development Center) and CDSC (Charter School Development Center).
The market logic envisions public oversight of charters as a supplement to the check provided by school competition and private choice. This logic posits that increased choice will ensure educational quality, and that underperforming charters will close as students and parents exit for better options. In its purest form, the market logic privileges a grassroots local control of charter options: private choice above all else, and views complex oversight requirements as unnecessarily burdensome. While even the most ardent charter advocates do not envision public education transforming into pure market any time soon, the principles of choice and competition within the market logic imbue the existing legal framework and oversight practices. This logic privileges evaluative criteria that demonstrate community and individual support of charters, and it encourages the participation of those actors invested with the power to choose—primarily parents and students.

In the context of oversight, the market logic suggests local latitude in chartering decisions, trusting communities to determine satisfactory charter performance, and encouraging competition for scarce resources through an adversarial process. Yet observational evidence reveals that these elements of the market logic introduced significant problems into oversight fora. First, the emphasis on competition between public and charter options conflicted with the legislative charge to increase charter populations—many boards viewed the prospect of local charter growth warily and even as hostile intrusion. More charters nearly always meant fewer students and resources for traditional district schools. Second, in many districts, the emphasis on competition created an adversarial dynamic that affected the oversight relationship between boards and charters, making collaboration difficult. As one charter lawyer commented,

*If you think about what our law does, it has this really strange irony, right? It says, "Charter schools, we are authorizing the creation of you to create competition with the traditional school district system, but you must apply to your competitor to exist, and your competitor will oversee you, and decide whether you continue to exist." It’s kind of like Target having to get the approval of Wal-Mart before it comes in, then having to check in with Wal-Mart every five years to see if they can still stay there, and “Oh, by the way, Wal-Mart, if you are not using that warehouse space, we are going to take that, and we’ve got a better product, so we’re going to take your customers, and some of your employees are going to migrate over here, but only your best ones.’ It’s a bitter irony, and it’s statutorily created. The angst, that dark side is intentionally created by law (charter lawyer, Interview 29).*

Charter operators drew similar analogies about the competition that structured the relationship between charter and authorizer, and made oversight difficult and piecemeal. As one charter principal related,

---

29 See EC §47601.
Well, in some districts, it’s as if you are giving the power to open a Walgreens to CVS. School districts aren’t set up to monitor the quality of charters: there’s not a consistent standard for approval across the state (charter principal, Interview 17).

While interviewees identified several districts in which an innovative superintendent or coalition of progressive board members actively countered the competitive dynamic inherent in law, nearly all of them stated that competitive mindsets posed a problem to the charter movement at large, and to productive relationships between charters and their authorizers. Existing case law supports this assertion: cases like Today’s Fresh Start well illustrate the tensions that arise when concern over the scarcity of resources predominates. While this competitive tension was most pronounced among local authorizers—those closest to probable deficits in educational budgets, these tensions were eased in part at the state level, perhaps due to board composition that included members with firsthand charter experience.

Problems with the market logic also emerged when private choice conflicted with accountability concerns. In many appealed actions, authorizers had to consider whether parents could continue to choose a charter deemed failing by the official accountability measures. The case study of Viva Academy illustrates well this dynamic. Faced with closure of their school by the district and subsequent appeals to the county and State Board, Viva Academy parents argued that their choice to keep their children in Viva reflected their understanding of the school’s fundamental quality. As those with the deepest and most contextualized knowledge of the school, they argued their choice to remain ought to be respected (charter parent, Interview 25). Yet the primacy of legal and accountability logics, discussed in the following sections, ensured that arguments of choice and competition could extend only so far. The following chapter will examine how market logics surface in local authorizer discretion and among the participants of oversight.

Legal Logic: Compliance Strand

The dominant legal logic imagines charter oversight as a bureaucratic process focused on technical compliance with relevant formal law and policy. The logic posits that legal compliance will ensure high quality charter options. It privileges evaluative criteria with metrics easily quantified or clearly defined in law: student performance standards, elements of school governance structure, and operational and budget projections. It encourages and lends credence to the participation of lawyers and those with professional or specialized technical knowledge, while cabining the subjective experience of students, parents, and teachers.

30 There was considerable support among the disparate groups interviewed for expanding charter-authorizing power to third parties. While California does not permit third party authorizers currently, other states have experimented with opening up authorization to include community colleges, universities, non-profit organizations, etc.
While the salience of the legal compliance logic varied among the 15 charter authorizers sampled for this study, it was present in all charter oversight actions and dominant in the formal record. At each level of oversight, board members relied on legal logics rooted in compliance to assess a school’s quality and viability. For initial establishment petitions, this meant a selected attention to the most clearly defined of the 16 required elements of a new petition as required by the Education Code: number of signatures, school governance structure, budget and financial plans. For appeals of charter decisions, it meant a focus on the central legal criteria for renewal - the school’s past academic performance on standardized tests.

Legal compliance logics were strongest in districts with large charter populations to manage, and in contested appeals of local denials. As we might expect in an appellate process, the legal logic increased in salience as actions moved “up the chain” from local to county to state oversight fora. Appealed actions that reached state-level consideration by the ACCS and the State Board had the highest rate of participation by lawyers, as well as the most nuanced discussions of the formal legal dynamics of oversight. The ACCS and State Board frequently relied on affiliated legal counsel to explain the legal elements of the oversight process to the board, although sometimes counsel was called upon to advise how the board’s desire to approve a school outside traditional compliance parameters could be reached under the law.

The legal compliance logic was also found in the bureaucratic structure of charter oversight, in the adversarial orientation of public hearings and the quasi-appellate structure modeled on traditional courts (more on this in Chapter 6). Authorizers and other participants grappled with the limitations of these structural elements. While the law required authorizers to act like appellate bodies when considering local denials, the time between initial decision and appeal made this requirement difficult and impractical. Local negligence (and general antipathy toward charters) and new evidence frequently proved consequential in appellate hearings, causing problems for authorizers technically limited to an examination of the original petition.

In both the case of Viva Academy and One World School - two charters that appealed local denials all the way to the State Board, incomplete written records at prior levels forced the ACCS to improvise and admit new evidence. In the case of Viva Academy, a split 3-3 vote at the county level of review led to no official recommendation regarding the charter. In the case of One World, the local authorizer refused to provide any written findings regarding their denial, so all information could technically be considered new at the state hearing. Facing incomplete records and new information, authorizers routinely struggled with what to do with new evidence. Was it admissible? Did the legal requirements of the Education Code prevent them from considering new community support or changed financial plans? This confusion was shared by all but the most legally

---

31 EC § 47605.
32 That is, to accept the written findings of local jurisdictions regarding a charter school’s record and to focus on any issues of improper prior review.
33 Certain local authorizers held the reputation among charter operators as anti-charter districts, denying charter applications without written findings. In these cases, when the charter operators had prior knowledge of this fact, they would craft initial petitions designed for the next level of review.
knowledgeable participants. Did changes in appellate-level presentations constitute impermissible material revisions to the charter or were they acceptable technical amendments to the application? “We’ve been over this!” was a common refrain among staff and counsel (ACCS meeting minutes, 6.10.2014). Yet confusion over legal requirements remained, frustrating charter operators and authorizers alike.

While informal work-arounds through memos of understanding (MOUs) between charter and authorizer were often able to solve the problem of new information on a case-by-case basis, the idea of a county or state authorizer as traditional appellate body confounded many participants. How could changing enrollment or budget projections not be relevant to a school’s situation? What should be done when local or county boards openly flouted legal requirements to provide written findings in support of their regulatory decisions? The resulting confusion about legal roles further privileged actors with the legal knowledge and experience to plan for alternative arrangements and make the case for their desired solution. As a charter lawyer with 20 years of experience in these actions commented,

Any school district attorney can find a reason to deny if it wants to deny, and there are no sanctions put against the district for denying unlawfully. There’s not even a slap on the hands. There’s an appellate process, you go up to the county board, then you go up to the state board, and if they get approved on appeal, the district doesn’t get a talking to. It’s just, ”There goes,” and a lot of charter developers will meet with the superintendent ahead of time and say, "Hey, we’re going to submit a charter." That’s not required by law, but they’ll do that, and the superintendent will say, "There’s no way in hell my board’s going to approve a charter," and the developer will be dissuaded and go somewhere else. The concept of going to an adverse board does scare off quite a few of our developers (charter lawyer, Interview 29).

Among typical charter actions- those that did not progress to the level of contested appeal, the legal logic of compliance could be found in each step of the oversight process. It guided the preparation of the initial charter or renewal application- in the precise yet frequently boilerplate petition language tailored to the specific statutory requirements; in the review of charter documents by lawyers prior to submission to the authorizer, and in the participation of lawyers and advocates who, by their very presence, legitimated and sustained the adversarial structure of oversight. The founder of One World charter in San Francisco commented on how increasing legalization of charter authorization affected the drafting of the school’s initial charter:

[The charter] is 466 pages, so it’s longer than most…we have a large, active advisory board and many of them weigh in on different sections of the petition as well. While X was the main author, there are many, many co-authors.

---

34 As noted on the school’s website and complete with photographic evidence, SFUSD required 12 hard copies of the charter. Each copy weighed 10 pounds and was 4 inches high.
[Lawyers] have helped us with everything from our 501c3 application to charter review to charter appeal, employee contracts, and a pretty broad range of services (Interview 17).

From the other side of the table, boards’ embrace of the legal compliance logic varied, appearing stronger among those with larger charter populations and according to the degree of “legal exposure” in evidence: board members’ own professional background, the presence of lawyers, frequency of legal arguments and challenges from advocacy organizations, as well as available legal tools and presentations from internal charter staff. For example, some boards asked for (and received) special legal trainings on the duties of oversight, as evidenced by minutes from LACOE board meeting:

Ms. Jane Hughes, Project Director III, Charter Schools Office, provided a presentation that included a PowerPoint presentation on County Board Authority, Petition Appeals, Review Process, Review Team Process, Fiscal Review, Board Decision, and Review Challenges. In addition, she provided an evaluation tool (compilation of law, state code, LACOE Policy and LACOE Regulation), which the Review Team uses to standardize the review process (LACOE Board meeting minutes, 5.12.2015).

Trainings of this type conducted by internal legal counsel or staff were a common practice among larger authorizer with dedicated charter offices, and they emphasized compliance with Ed Code requirements. The charter staff of the largest authorizers (LAUSD, San Diego, Oakland) learned from each other and even occasionally brought such trainings to smaller authorizers within their orbit. As an ACCS board member stated when asked about meaningful differences in authorizing practices in districts with large charter populations,

I can tell you that the folks in Oakland went down to LA Unified and basically stole all their systems, in a good way: they use the same rubric, same protocols. They have the same oversight systems because Oakland copied them all (Interview 4).

There was also evidence of cross board contact and professional development facilitated by state-level professional and advocacy organizations,

While the logic of legal compliance was the dominant logic of charter oversight, it did not go unchallenged. Charter operators and parents were the participants most likely to push back against the logic of legal compliance as the primary proxy for school quality. Even authorizers occasionally reacted to the increasing legalization of the oversight process. One county board member, clearly frustrated by the reams of new information presented for Viva Charter’s appeal, requested that the following statement be formally entered into the meeting minutes,

*I hear from LACOE staff about the increasing number of charter school appeals and I wonder how it cannot help but tax the capacity of the Charter School Office, and perhaps the quality of its output. Denied charter schools unleash every possible means of new support and find every creative way to persuade our Board. The use of prestigious law firms and high-powered PR firms is becoming a necessity and unveils an even more sharply angled and multi-pronged approach to the appeal process. To conclude, in my opinion it is a disservice to the appellant for us to invite and sustain this. We and they should be narrowly focused on the specific reasons for denial* (LACOE board minutes, 01.20.2015).

This public statement is revealing for several reasons. First, it captures the administrative overwhelm that many local and county school boards experience in the management of booming charter populations, even those authorizers with the additional support of internal charter offices. Second, it recognizes the participation of lawyers and advocates as the new normal in charter actions, calling into question the value and legitimacy of their presence. Yet the last assertion- the idea that appeals ought to focus on the “narrow focus on the specific reasons for denial” reaffirms a basic commitment to logic of legal compliance, while arguing that authorizers should be the sole interpreters of such compliance- thus preserving board discretion in the matter. Too much external professional participation muddies the waters and board authority, it seems.

*Legal Logic: Rights & Justice Strand*

A legal logic focused on rights and justice is also present in charter actions of the sampled authorizers. In contrast to legal compliance, this strand sees oversight as a process that ought to protect individual and community voice in educational decisions. This logic privileges the evaluative criteria that demonstrate community involvement and benefit of the charter in question; it surfaces in evidence of parental and student satisfaction, satisfactory enrollment numbers, and community participation and testimony. While not nearly as determinative of regulatory outcome as the logic of legal compliance, I found evidence of the rights & justice strand all levels of oversight and among many different participants- from its natural constituency of students and parents to advocates and even authorizers themselves.

Notably, the rights and justice strand often did not correspond to formal rights recognized by courts, but rather veered into normative or aspirational
expectations of what the public system or charter experience ought to provide under ideal conditions (Mayo, 2014). In several instances of appealed charter actions, students and parents claimed the right to attend the school of one’s choice, even though no such right formally exists. As a student argued for the renewal of the charter he attended in front of the State Board,

*I have the right to be a Native American. I have a right to learn addition. I have a right to learn my own culture. I have a right to dignity. I have a right to go to college. And I have a right to pick my own school, and I pick this school. And that’s why I want you to renew our charter* (State Board meeting minutes, 5.7.2014).

In this example, the student’s comments illustrate a key principal of the rights & justice legal logic: connecting charter options to cultural recognition, choice, and individual dignity—critical aspects of the charter movement. These themes were most salient among charter schools with atypical school environments or curricular-cultural and bilingual language immersion programs, that set them apart from traditional public and other mainstream charter options.

The rights and justice legal logic extended beyond students and parents, to school personnel, advocacy organizations, and lawyers participating in charter actions. While the embrace of this logic varied among actors and oversight spaces, a common theme was charter advocacy as connected to the work of social justice. For example, several law firms provided pro bono legal services to charter schools with limited resources; a large statewide advocacy organization provides free information and support (apart from the benefits of membership) to certain incipient or established charters that serve primarily poor students. In interviews, advocates spoke of growing the “momentum of the movement”, and lawyers and charter founders saw their work as connected to broader goals related to desegregation, poverty, and the empowerment of communities of color.

**Authorizer Responses to the Rights/Justice Legal Logic**

While the legal logic of compliance dominated authorizer discussion and decision-making, the legal logic of rights and justice also appeared in oversight deliberations. Evidence from the selected authorizers reveals that rights and justice legal logics were most likely to emerge during the public comment portion of charter hearings. Open to all, public comment was a lively interlude that occurred before the board engaged in substantive discussion or formal decision regarding the merits of an individual charter, but after it heard initial presentation from schools and opposing parties.

Speakers held the podium for a short time (1-2 minutes), during which time they could speak on any aspect of the charter in question. In contentious, appealed charter actions it was not unusual for 25 or more speakers to participate in public comment. In the State Board hearing for Viva Academy, for example, the room was standing-room only, packed with supporters in matching t-shirts and homemade signs with slogans in Spanish and English. Yet public comment was also carefully structured to insulate board members from emotional appeals. Comments did not
require a response from the board, and as an observer, it seemed that public comment was frequently a time for board members to sit back and mentally prepare for the discussion of motions later in the meeting.

The introduction of the rights/justice legal logic during public comment had two primary effects. First, it could alter the tenor of resulting discussion by openly questioning or softening the focus on legal or technical compliance (Mayo, 2014). I found that such softening was more likely to happen in higher-order authorizers (i.e. county and state-level fora) considering appealed actions, in which the initial denial had been carried out by another authorizer. Also of consequence were large numbers of supporters giving emotional public testimony--thus increasing the pressure on the board to respond in some manner to the evidence of clear community support or dissatisfaction with prior procedure. In the example above in which a Native American student from a Los Angeles area charter claimed certain rights, a board member of the ACCS responded after the close of public comment:

*There have been lots of conversations about this school, and lots of conversations about the importance of their mission- both from a cultural perspective as well as an academic perspective...what came out of that was perhaps a route toward common ground. A route that would provide an opportunity for this school to continue to educate children in this interesting and profound way, but also for us to feel comfortable about the technical bits and pieces- about running a charter school successfully in this day and age...This motion is about trying to find the sweet spot between what will make this board and the Department of Education feel good about the compliance of this school and at the same time give them a chance to move forward (State Board meeting minutes, 5.7.2014).*

While community members were the most frequent proponents of the rights and justice legal logic, lawyers and advocates were also sensitive to the effect that public testimony of this sort could have on board members’ inclination to the “sweet spot” of emotional appeal and technical compliance, and they attempted to use it to their client’s advantage. As one lawyer reflected on her professional presence during public comment,

*We are there [at the hearings], getting a read of the board. What are their concerns, if they say anything, what is their body language like when they are hearing from families and children about the charter?...We are strategizing for the board meeting where action will be taken* (charter lawyer, Interview 29).

Second, the introduction of the rights and justice logic made contingent solutions to charter oversight more feasible, but only in borderline cases. While atypical arrangements regarding oversight were more likely to result when considerable public support existed, public support and rights claiming were not able to overcome clear evidence of documented school underperformance or serious operational problems. The experience of two of the three case studies confirms this. Both Viva Academy and Westin Charter had strong levels of community support as evidenced by parent and student presence at charter hearings, and Viva had also
considerable external support (including a large cache of letters from congresspersons, city officials, the education reformer Diane Ravitch, etc.) yet both renewals were denied on appeal for failure to meet statutory standards regarding academic performance. It was clear that both constituencies saw non-renewal as a profound injustice and a violation of their educational rights. As the board president and parent at Viva reflected on the process that led to the school’s closure, 

*The kids are doing well, but I think of all that money, all of the money invested in it over the years, and all of the money we spent on decided to get renewed— that’s taxpayer money! And it’s just gone, it’s vanished— it’s just gone! The city is no better for it, these kids are no better for it, these families are no better for it; I mean we were educating children and propping up families- like bringing up families and changing lives. Those lives are getting changed now at the district schools* (Interview 25).

From these examples, it seems that the power of the rights/justice legal logic resides in the margins of oversight; motivating community participation and investment in the charter form, yet limited in regulatory influence to the more discretionary, “greyer” areas of oversight. Even in the face of board desire to accommodate and respond to community preferences, the rights and justice legal logic must effectively bend to the requirements of legal compliance and traditional accountability metrics. I turn now to the second guiding logic of charter oversight, that of educational quality.

*Educational Quality Logic: Accountability*

The dominant logic of educational quality present in charter oversight is that of accountability for student performance, measured by performance on standardized tests. This is the legally established “first priority of all California charter schools.” ³⁵ The logic, now omnipresent in public education more generally, posits that tests scores reflect educational experiences accurately, and that, while imperfect, provide the best available proxy for performance and school quality. Like the logic of legal compliance, ³⁶ the educational logic of accountability privileges quantifiable evidence, as well as the participation of actors with special knowledge and experience with this evidence.

For California authorizers considering charter renewal applications, assessing quality through the lens of accountability long meant an exclusive focus on a charter’s academic performance index (API score), the official measure of student and subgroup performance on state standardized tests. Yet since the suspension of the API measure in 2014 due to the introduction of Common Core-based assessments, authorizers have operated in a murky landscape of multiple

---


³⁶ A natural affinity exists between the legal logic of compliance and the educational logic of accountability.
accountability measures, with no clear framework for comparing or discriminating among them.37

Among the charter actions I observed, charters seeking renewal presented nine different types of evidence to demonstrate educational quality through accountability language: including prior API scores in a single year or range of years, school accreditation by external organizations, performance on alternative assessments, enrollment numbers, placement in competitive high schools (for K-8 charters), graduation rates, and college attendance rates. Authorizers at all levels debated the admissibility of certain “alternative” measures apart from the traditional API scores, and the consequences of this debate were stark. When old API scores were unsatisfactory or non-existent, the board’s rejection of an alternative measure could mean a denied renewal and school closure.38

Into this unsettled environment stepped advocacy organizations with internally constructed accountability measures, rubrics, and recommendations, aggressively promulgated and readily available for use by authorizer board members. Three organizations in particular, the California School Boards Association (CSBA), the California Charter Schools Association (CCSA) and the National Association for Charter School Authorizers (NACSA) held considerable influence in authorizer conversations concerning school accountability. NACSA’s best practices of oversight were incorporated into the Department of Education’s directives on renewal, revocation, and closure, and CCSA’s internal accountability rubric and recommendations frequently appeared as evidence in charter hearings and board discussion. Constructed outside of public input, these metrics were introduced by the advocates in charter hearings, but also taken up by lawyers, board members, and district staff with connections to these organizations. While the consequences of third-party advocacy in charter actions will be examined more closely in following chapters, their status as independent arbiters of charter performance rankled many charter operators, who saw external advocacy in this realm as unlawful intrusion into a public matter: affording advocates special access and privileges in oversight actions and further strengthening the focus on test scores. As the charter board president of Viva Academy (a charter that appealed its local and county-level denial to the State Board) explained her frustration,

They [CCSA] inconsistently apply their criticisms or their authority or their lists...they were basing their whole thing on test scores, which were for tests that the state of California decided were no longer relevant. So they're old standards, old tests, and we have that gap year, so some of our test scores were a half a decade old. A lot has happened and changed in education and at Viva Academy in a half a decade. Nobody wanted to stop and look at that, and the CCSA relied on those.

---

37 The State Board approved alternatives to the annual API calculation, including the most recent API score, an average of the three most recent APIs, or alternative measures that show increases in pupil academic achievement for all groups of pupils (school-wide and significant student groups).

38 This was the case for the renewal appeal of Viva Academy, in which ACCS and State Board concerns about their performance were not satisfied by reference to success on alternative assessments or placement of students in a competitive high school selection process.
For some reason, the rest of the group did too... And CCSA came and testified at all of the hearings. And came and testified at our district hearing, they came and testified at the LACOE hearings, and they came and did that for ACCS and SBE. And they wouldn’t look at our alternative data that showed that we had some growth, but we didn’t have the test scores in this new era of like Common Core or whatever to demonstrate that we could do this (Interview 25).

For new charters with no established performance record, the educational logic of accountability could not be as strong a determinant in board action. Yet the logic still surfaced in the discretionary requirements to demonstrate a sound educational program and to show likelihood of petitioner success in implementation, as well as in the requirement to provide a “reasonably comprehensive” description of all 16 required petition elements.39

In new charter actions, accountability also acquired a proxy different from yet related to test data: the professional experience of the applicant charter operator and the quality of the presentation before the board. Years of experience in the public system or with other charter schools, stellar academic or professional credentials, substantive or long-standing connections to the district in question: these were all ways that new charters spoke to accountability concerns in the absence of hard performance data. In one case, a charter operator began his presentation in front of the ACCS with a Powerpoint slide full of professional and university insignia of all the school’s board members and corporate partners, with the symbols for Yale University and Harvard Business School front and center. In another, two women began their presentation in front of the State Board by recounting the experience of their combined 55 years in public education at the district and county level. With little quantitative information to go on except required signatures, start-up costs, and future projections, authorizers’ accountability concerns became linked with personal qualifications and professional capability.

While the primary thrust of the accountability logic is the focus on charter academic performance, an alternative current of the logic emphasizes authorizer accountability for charter decisions. All of the charter operators and lawyers interviewed for this study described the oversight process as in large part politically driven, in which unfriendly districts could effectively close their doors to charters should they so desire. The founder of One World charter in San Francisco, for example, explained that San Francisco Unified could be counted on to deny initial charter petitions, and so they crafted the petition with the ACCS and State Board members in mind (Interview 17).

Despite legal requirements for authorizers to submit written factual findings regarding the reasons for denial, there were no formal repercussions for the

---

39 Section 47605(b) of the Education Code states that a local board cannot deny a charter petition unless it issues specific, written factual findings that (1) the school presents an unsound educational program; (2) the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition; (3) the petition does not contain the required number of signatures; (4) the petition does not contain the affirmations specified in EC Section 47605(d); and (5) the petition does not contain reasonably comprehensive descriptions of all 16 required elements of the petition.
districts that failed to do so. The typical outcome in situations of local board resistance to charter presence- both in One World Charter's case and others- was primary authorization by the State Board for a term of five years. This tension created by the decentralization of authorizing powers- strong support for charter creation at the state-level, yet uneven support among the 300+ active authorizers, preserved the discretionary power of boards to construct the basic architecture of educational choice in their jurisdiction, and relied on the state board to right wrong denials on a case-by-case basis. While lawyers and charter advocates attempted to draw attention to authorizers particularly unfriendly to charters, in practice they were constrained by the fundamental legal and organizational practices supporting local control.

*Educational Quality Logic: Holism*

In contrast to the primary educational logic of accountability, the educational logic of holism posits that assessment of quality must go beyond academic performance data, and that it requires deep knowledge of the school’s purpose and practices. This logic appears in the oversight process in moments of collaboration over competition, in alternative evidence offered to demonstrate school quality, and in evidence of relationships among school, authorizer, and community. It privileges materials and practices that illustrate the depth and performance of school programs, and foregrounds the perceptions and participation of those closest to the ground: students, parents, and teachers.

In the context of charter oversight, this logic of quality through holism was most salient in charter actions facing closure for borderline unsatisfactory academic performance. Unlike revocations, where negligence or longstanding subpar performance was more clearly and copiously evidenced, the grey area of borderline renewal cases made the logic of holism more available and attractive to all participants. Faced with accountability data that called into question a school’s legal compliance, advocates for the charter in question naturally gravitated toward holistic measures as primary evidence of quality. For example, two of the three charter case studies considered fell into this borderline category, and both schools pointed to holistic measures of quality during local, county, and state board hearings. In its renewal appeal before the Contra Costa County Board of Education, members of the Westin Charter community stated that they continued to support the mission of the school despite its middling academic performance. As one parent commented on the authorizer’s response to this argument,

---

40 The logic of holism could also be found in new charter petitions that brought appeals following a local denial. The ACCS meetings were especially rich sites of holistic arguments, as parents and community members challenged the locally established reasons for denial. In the 2015 ACCS deliberation of Oak Grove Charter School, which had been denied both by the local district and county office of education, the public comment reveals a parental consensus that the reasons for denial were overly legalistic and wrong. As one parent stated: “The burden of this whole reapproval controversy revolves around hairsplitting definitions of site and resource that has nothing to do with the quality of education; we are killing it for no more than semantics!” (ACCS meeting minutes, 6.10.2015).
Westin wasn’t doing particularly well; it wasn’t doing particularly badly. What it had was the extra focus which was in its criteria for achievement… the social parameters that were going to lift them from gang land. It was an ordinary average academic performance. Where it fell down, I mean, where it would be a weaker school would be that it was a very small school. Meanwhile, the relation with the district board was a bit one dimensional in that the district had got in its head that if you do something special like that school, it’s a pain to have to deal with it...It’s okay as long as they do better than the other schools. One of the things that sunk [Westin] in the end is that the district head was absolutely convinced that it was a legal requirement that it had to be better than the average school (charter parent and board member, Interview 13).

While authorizers interviewed spoke of the need for a more holistic evaluation of charter performance, certain constraints ensured that measures of traditional accountability predominated in oversight actions. First, the legal framework in the Education Code was clearer and more specific regarding accountability demands; the language of holistic requirements was naturally more discretionary to specific authorizer. There were no uniform standards for holistic evaluation. Each charter offered slightly different types of evidence to speak to holistic quality, making it difficult for authorizers to compare or apply these standards across disparate cases. Second, the majority of local authorizers did not have the resources to invest in developing close relationships with charter programs of the sort that might yield deep understanding of a school’s strengths and weaknesses. A common refrain among charter operators of all stripes was “They (authorizers) don’t even visit our school!” Third, the close connection of holistic arguments to affected parents and students frequently led to an emotional cast of argument that generated sympathy from boards but did little to legitimize claims of holistic quality, or to ground them in concrete data sources.

The established legal framework and relevant case law further illustrate the ascendance of quality through accountability over that of holism. The intersection of these logics is especially visible in actions where a school’s academic performance is satisfactory- even above average, but other areas of school operation are problematic. For example, in the American Indian Model Schools revocation in 2011, Oakland Unified based its recommendation to close the school on a holistic assessment of school operation and financial improprieties, yet the school’s high academic performance ultimately insulated it from closure (though not without court involvement, a rare departure from internal bureaucratic oversight). Here, the specificity of the Education Code regarding academic performance superseded more

---

41 One important legal nod to the concerns of holistic quality was the requirement of the Local Control and Accountability Plan (LCAP), which charters were required to update annually with input from the greater school community. LCAPs included reflection on progress toward the charter’s goals, financial data, as well as qualitative information on school climate and progress as gathered from students, parents, and teachers. See EC §47606.5.
holistic tools of analysis, even as it paid them lip service. As an advisor to Oakland Unified in the AIMS case commented on the school’s situation,

They [AIMS] have a card in their pocket, and the card in their pocket is they get high test scores. If you asked somebody who maybe had a more comprehensive view of what education should be in a classroom, that person might think I wouldn’t send my child there because there’s a lot of drill. They just drill all day long. They don’t even get recess. There’s no PE. There’s just no, any type of activity except drilling at that school. It’s not hard to imagine that they get good test scores. I would never send my child there. They’re not getting a well-rounded education (Interview 11).

These three logics, the market, legal, and educational, can be found in formal law, charter petitions, and authorizer organizational structures and practices of oversight. In these sources the legal logic of compliance is primary, particularly in large and charter-populous districts. Yet logics are also revealed in the relationships and social exchanges that oversight creates among participants. In the next section, I examine these participants with two primary aims: first, to identify who the participants in oversight actually are and second, to examine the structural factors that matter in constructing the relationships in the context of charter oversight.

Participants in Charter Oversight

Who then are the primary participants to charter oversight, and how do they matter in the discussion of motivating logics? According to the charter provisions of the state Education Code (§47605-47608), oversight takes place between the charter operator and the relevant authorizer. When parents and teachers are mentioned in connection with oversight actions, their participation, consent or dissatisfaction is largely assumed: their signatures have been collected to support a new petition; or they have already assented to charter’s educational program and governance structure before formal oversight takes place.

The role of students is similarly circumscribed. While academic performance is the primary focus of oversight, concerns of students themselves are largely absent from Education Code provisions. Given charter arguments of grassroots action and community support, we might expect to see the presence of other parties in the legal framework, but statutes do not comment on or regulate the participation of other parties including charter lawyers, advocates, support organizations, or community members: all of whom participate in oversight actions. While we would not necessarily expect relevant statutes to consider all possible permutations of participation, the primary legal frame of oversight as between school and authorizer contrasts sharply with observed practice. Moreover, this assumption reflects the

42 “The authority that granted the charter shall consider increases in pupil achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal” EC § 47607 (a)(3)(A).
43 EC §47605 (a)(2)(A-B)
gulf between the movement’s embrace of private choice and an oversight structure lodged within the existing educational bureaucracy.

The portrait of participation expands when relevant case law on the subject is considered. In addition to the prominent role of lawyers- a professional presence expected when analyzing disputes, other groups emerge as tied to the charter movement and invested in oversight process and decisions. The legal record reveals considerable participation by professional and charter advocacy organizations: for example, the California School Board Association defends the prerogative of local charter oversight in one case; the California Charter Schools Association provides legal assistance to a Los Angeles charter school facing revocation in another.44

The most dynamic picture of participation in charter oversight results not from analysis of the formal legal record, but rather from scrutiny of oversight fora themselves. In these spaces the legal directives and practical work of charter regulation are carried out in local context, and here authorizers and charter operators encounter and respond to the communities they serve. Analysis of the oversight actions of 15 individual authorizers,45 ranging from local school districts to county offices and the State Board of Education, reveals the dramatis personae of oversight to be variable along several axes. Below I consider several elements that structure differential participation in the spaces of charter oversight: authorizer size, status and level of charter action, and general legal developments in charter law at the state-level and specific district of authorizer policy.

**Authorizer Size.** One variable relevant to participation in oversight actions is authorizer size. Urban authorizers (including LAUSD, Oakland USD, Santa Clara County Office of Education) are more likely to have larger charter populations as well as specialized, internal offices and personnel tasked with the management of charter petitions and oversight requirements. These offices evaluate charter compliance and performance, and issue reports and recommendations regarding charter creation, renewal, and revocation to the authorizer for action. Boards in large urban areas could not carry out their charter oversight duties without the assistance of these internal charter offices- the volume of material would quickly overwhelm them. While boards do not always agree with or endorse the recommendations prepared by their charter offices (or even fully understand the depth of analysis they provide), the relationship between board and charter office is usually a positive one, as meeting minutes reveal:

> Dr. R complimented the Charter School Office staff and indicated that the report to the County Board was a comprehensive and well-researched analysis and that connections were made that were not obvious. He also indicated that the research could be a Harvard education case study and is a fine example of the work that the Charter School Office does (LACOE board meeting minutes, 5.20.2014).


45 See Appendix A for additional detail on each authorizer.
The structural elaboration of internal charter offices among charter-populous authorizers has the additional effect of professionalizing and further standardizing charter oversight in these districts and counties, reinforcing the legal logic of compliance and the legitimacy and authority of those who forward it. Evidence from the sampled authorizers shows that lawyers and representatives of charter advocacy organizations are more likely to appear in actions before larger authorizers, even in the relatively low-stakes actions of routine matters and initial hearings where no formal action is taken.46

By contrast, most districts do not need (and usually cannot financially support) specialized charter offices to manage their charter populations. In these districts, one or two employees typically share the task of initial review and charter oversight, among other duties. While lawyers do appear in actions before smaller authorizers, particularly to advise the board on their legal responsibilities regarding charter oversight, their presence is atypical— and in some cases, decidedly suspicious. As one charter principal in a district with few charters stated,

*It would absolutely be odd [if lawyers came to the meetings]...I think the superintendent would be shocked if we brought in a lawyer. She’d probably ask me why we’re wasting our money, because they really wanted to sponsor us* (charter principal, Interview 8).

Among authorizers with smaller charter populations, personal relationships with board members carried more influence than external professional assistance, and in some cases could arguably be determinative. One charter operator in Chico reflected on a school’s attempt to leverage personal connections for a contested renewal application:

*They hired a retired county administrator to renew the charter....and he says, “I’ve got good contacts at the county, I’ll get your charter renewed, no worries,”...but the retired county administrator was not well liked at the county* (Charter operator, Interview 16).

The principal of a charter within another small authorizer struck a similar tone on the importance of the authorizer/school relationship, even in light of questionable school performance:

*It [the district concern about school’s performance] probably comes down to relationships...there just became a feeling of distrust between the two entities.* (Charter principal, Interview 12).

Charter leaders at all levels of oversight voiced the idea that relationships between schools and authorizers could influence assessments of charter performance.

---

46See Appendix A for a breakdown of lawyer/advocate participation by authorizer.
Charters petitioning smaller authorizers were more likely to have connections to the traditional public schools in that geographic area, either as community members or former teachers or administrators. In places where charters are sparse and educational budgets slimmer, these connections lent local credibility to petitioners. I observed this tendency across geographic regions and urban/rural settings, from the East Bay to small rural districts in Northern California and Los Angeles and San Diego Counties. In these places charter creation may more likely resemble the movement’s original intention to provide a flexible and innovative offshoot of traditional public education.\(^{47}\)

**Status & Level of Charter Action.** Participation in charter actions also varied by the status of charter action— that is, an initial petition or renewal or revocation, for example, and by the particular fora in question: local school district, county board, or the State Board of Education. Professional legal participation in *de novo* charter actions consisted of advice and charter document review, particularly in the technical areas of special education, governance, and financial and operational requirements. Lawyers played a more visible role on both sides in appeals of local denials, and most notably non-renewal or revocation actions, in which school closure was considered.

Moving “up” a level in the bureaucratic appeals process increased the chance that lawyers played a more substantive role. This is part due to the adversarial structure of the bureaucratic appeals process (considered in more detail in Chapter 6), as well as the additional requirements that structure each subsequent level of consideration. The State Board of Education, for example, has its own legal guidelines for the review and approval of charter petitions on appeal;\(^{48}\) and these (as well as the prior written record and findings from the district, county and state advisory commission level) encourage the specialized participation of lawyers or those familiar with additional policy and legal requirements. Charters appealing a local decision were disadvantaged without this assistance.

Appeals did not have a clear effect on the degree of community participation. In some cases, local denials of charters galvanized the affected school community, mobilizing supporters to attend or even to protest at county and state-level hearings. Yet just as often, hearings in Sacramento (a great distance to travel for many) were lonely affairs without many parents or students present. Often even the denying local or county board representative was absent at these hearings.

**General Legal Developments.** The expanding corpus of formal law and policy requirements relevant to charters made it difficult for schools to keep abreast of them on their own. This was particularly true for single-sited charters that were unlikely to have research or data-gathering capacities located internally within their organization, or the financial resources to obtain them externally. When faced with authorizer resistance, the success of these schools was often predicated on district

\(^{47}\) One exception to this is the growth of online and homeschool charter schools, popular alternatives in rural areas.

\(^{48}\) *CCR*, Title 5, §11967.5 & 11967.5.1
connections or assistance from charter law firms and advocacy organizations. As the operator of a single-sited charter in Berkeley described:

*The [local] Board was pretty strongly opposed and started saying so publicly. You had Board members saying in the press that they would never approve the charter, having never even read the charter. Then I started getting calls from [charter law firm] saying, “Wow, this is a hot spot. We really need to support you.” Someone from the Department of Education said, “Here’s my name. Here’s my number. When you go up for your charter, if you are denied call us and we will help you on the appeal* (charter principal, Interview 14).

The non-renewal and closure of Westin Charter reveals the challenges faced by single-sited schools that lack connections or the resources to overcome difficult authorizer relationships. It also speaks to the challenge of preparing the charter renewal application while also attending to daily school operations. As the charter board president of Weston reflected,

*There was no planning of the renewal process. Your renewal process should start in Year 1, and ours- we started the actual activities around writing and updating late in Year 5….but it goes far beyond the paperwork and the legal requirements that go with submitting a charter renewal. You- as the leadership of the school- have the responsibility to start building a relationship that is close with the school district...if you don’t build that relationship, you’re going to hit a wall come charter renewal. And that’s exactly what happened* (charter board member and parent, Interview 3).

The piecemeal development of charter law and additional district, county, and state-level administrative provisions encouraged and empowered the professional participation of lawyers and other specialized actors in oversight actions. Charter operators and authorizers were aware of this increasing “legalization” of charter authorization and oversight, and many viewed it as a development destined to create an uneven playing field. The particular mechanisms of this legalization will be discussed in Chapter 6.

*A Note on Community Participation and Logics of Oversight.* The written record and observational evidence of charter actions from the local to state level reveal a depth and diversity of community participation that cuts across geographic region, authorizer size, and school organizational type. This activity is not limited to pro-charter advocacy on behalf of an individual school, but also encompasses participation against specific charters and charters in general, typically on the grounds that charters weaken traditional public options. Most common community participants are parents, students, and teachers connected to the charter in question, although unaffiliated individuals also appear in oversight hearings: ranging from representatives of teachers’ unions and community organizations to a Native American religious leader to a Brown Beret dressed for combat.
Nor are these participants bearers of a single institutional logic. While we might expect legal claims to be the province of lawyers, community members also made legal arguments related to charter oversight and school choice (Mayo, 2015).

Conclusions

This chapter has examined three core institutional logics of charter oversight in California, and has shed light on its most common participants. By approaching oversight as an area critical to the charter organizational and strategic action field, I find the logics of oversight to be plural, dynamic, and dependent on local context, yet existing within structures that privilege legal compliance and the educational logic of accountability. While attention to the gaps between formal law and on-ground practice is not a new endeavor, the assertion that actors construct the meaning of charter quality throughout the oversight process presents an unsettling alternative to quality as a rational and objective fact. In the following chapter, I dive into the phenomenon of authorizer discretion in oversight actions, in order to examine how local context receives and shapes these logics of oversight, imbuing the regulatory decisions that result.

---

49 Generations of gap studies in the law and society tradition have shown that laws and regulations on the books often differ substantially from their on-ground practice (Gould & Barclay, 2012).
Chapter 6: Local Discretion in Oversight: Dynamics and Consequences

This chapter examines local board discretion in charter oversight actions. As part of local control policy, discretion gives authorizers the autonomy and flexibility to manage charter components of local educational landscapes. I find that local boards can and do use discretionary power politically, though not always in the same ideological direction. This chapter examines two common discretionary “moves” by charter authorizers and the responses of charters. Despite legal guidelines, local board discretion emerges as a primary driver of variable oversight landscapes; it poses challenges for charter legitimacy and educational opportunity across districts. Discretion in oversight is sensitive to local electoral politics and the strategic intervention of lawyers and other professional actors; it is also a critical site to glimpse the interaction of oversight logics.

At a small office in the Mission District of San Francisco, Mr. Dennis sat at a conference table strewn with One World Charter promotional literature. Gesturing to the bustling market stalls outside, he spoke of community support for the new school, the focus groups conducted in Spanish and Chinese, the curriculum designed and staff hired to meet the complex needs of students from southeast San Francisco. When the subject of the school’s charter application came up, he sighed with disappointment,

*I approached every [local] school board member, three would not even meet with me. It became clear we weren’t even going to have a shot. Some school board members were even trying to get assembly people and state senators to pass a law saying that charters cannot appeal to the state if denied locally (charter operator, Interview 17).*

One World’s board was confident in the quality of their petition: a former state education official had called it “the best charter she had ever seen”, yet they anticipated a cursory denial by the local board: “they have denied every charter since 2004.” The local board did indeed deny the petition in September 2014, by a vote of 6-1, and notably, without the written findings required by law. Following this denial at the local level, primary authorization by the State Board became One World’s goal. Professional connections to ACCS and SBE board members made Dennis optimistic about the school’s chances. Following the appeal to the State Board, One World’s charter was approved and the school opened in the fall of 2015.

As the experience of One World Charter illustrates, local board discretion can complicate the state-level policy environment favorable to charter growth and development. This discretion gives authorizers the autonomy to manage educational options in their jurisdiction, and the needed flexibility to sort out the practical matters that come with sharing money, facilities, and students with charter counterparts. Discretion is dynamic and political, subject to change with school board electoral cycles and the predilections of individual superintendents. It also presents a rich site to trace the competing logics of oversight discussed in the previous chapter.
This chapter examines local discretion in charter oversight decisions. First, I map the central areas of discretion identified in the legal framework. Second, I present and analyze two common “moves” of authorizer discretion in practice, and discuss the consequences of these for different constituencies: school communities, for the authorizers themselves, for incipient and established charters, and others. I conclude by discussing the relationship of local board discretion to the logics of oversight discussed in the previous chapter:

**Areas of Local Board Discretion in Charter Oversight**

What are the primary areas of local discretion in charter oversight? How far does the discretion of boards extend? In this section, I review the areas of discretion in oversight established in the Education Code and in local board organizational structure and practice. Local discretion as referenced and protected in the Education Code is connected to the type of charter action in question: new petition, renewal, or revocation action.

**New Charter Petitions.** For new charters, the Education Code states that the local authorizer should approve a new charter “if it is satisfied that granting the charter is consistent with sound educational practice” (EC § 47605.b). If a board wishes to deny a charter, they must establish one the five criteria below, addressing any deficiencies in a written report:

1) The charter school presents an unsound educational program for the pupils to be enrolled.
2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
3) The petition does not contain the number of signatures required.
4) The petition does not contain an affirmation of each of the conditions required.
5) The petition does not contain reasonably comprehensive descriptions of the 15 required elements.

These requirements are meant to protect a review of charter applications on the merits, yet the criteria in effect preserve significant discretionary power, particularly in the core area of educational program. After all, it is the local board (and their staff, where applicable) that will determine if an educational program is “unsound”, a petition not “reasonably comprehensive”, or the petitioners “demonstrably unlikely to succeed.” Furthermore, the statutory language that

---

50 These criteria also apply to charters seeking primary authorization at the county level and state level, see Ed Code Section 47605.6. It is also interesting to note that boards routinely deny charters without the required written findings, and without penalty.

51 These 15 required elements touch on all elements of charter operation, from the measurable pupil outcomes that the school will use, to employment and health and safety policies, to charter governance structure and dispute resolution (EC Section 47605.b). See Appendix A for a list of the 15 required elements.
references the school’s educational program- the first and most significant of the 15 charter requirements, requires both petitioner and authorizer to engage complicated educational debates with no clear consensus, on which reasonable people can easily disagree: requiring schools to address questions such as “what it means to be an ‘educated’ person in the 21st century” and “how learning best occurs.” One can imagine that different types of charters- a Waldorf or Montessori school or a school based on a ‘No Excuses’ model, for example, might have very different answers to these questions, as do individual board members and internal district staff.

Other significant areas of board discretion regarding the 15 required criteria for new charters relate to adequate school procedures in several domains: the measurement of pupil outcomes; the racial and ethnic balance of students; employment and teacher relationships, etc. Depending on the interest or predilection of board members or superintendents, authorizers may be more or less interested in scrutinizing applicant charters (and applying their discretion) on these specific criteria. In districts with large charter populations, internal charter offices and routinized charter procedures occur before board consideration recommendation, creating a bureaucratic “compliance check” aspect to initial proceedings.52

Renewals. The Education Code states that the most important factor in determining renewal is student academic achievement.53 While this requirement does not present as discretionary on first glance, recent changes in the way California measures school performance have increased board discretion in this area. This has occurred primarily through a provision that permits charters to demonstrate required increases in achievement through alternative accountability measures rather than through a uniform statewide metric.54

Schools’ use of alternative accountability systems makes the authorizer’s task more complicated and discretionary, as authorizers must also evaluate the metrics themselves as well as the school’s performance under them. This challenge was particularly pronounced during the transitional period of this study (2014-2016): during which time the traditional Academic Performance Index (API) metric was suspended and the replacement, the more comprehensive California School Dashboard metric, had yet to be implemented.

Following the suspension of the API measure in 2014, many charters seeking renewal lacked the data to satisfy the academic performance criteria specified in statute, and relied instead on alternative metrics of performance: graduation rates,

52 This is not to say that boards overseeing large numbers of charters do not exercise their discretion in initial actions, but rather that their discretion effectively begins from the starting point of staff analysis and recommendation. In districts with smaller charter populations, board members are more directly involved with each application from the start.
53 “The authority that granted the charter shall consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal.” EC § 47607.a.3
54 Use of API scores was phased out in 2014; California School Dashboard, the new and more comprehensive metric, was not adopted until 2017.
holistic assessments, school accreditation reports, parent satisfaction, etc. This diversity of indicators contributed to confusion and inefficiency during charter renewal actions, as boards spent extended time discussing the suitability of the alternative metrics themselves.

In tracking instances of board discretion, charter renewals are of particular interest when a school’s academic performance falls in the grey area of mediocre to slightly below desired (or roughly equivalent to the traditional public option in the district)- when there is no clear case for renewal or denial on academic terms. It is in this moment where the arguments of parents, advocates, and lawyers are perhaps most persuasive to board members.

Revocations. Revocations are arguably the least discretionary of charter oversight actions, yet there still exists ample room for board interpretation and discretionary action. Local boards determine if a school’s violations pose a “severe and imminent threat” to students and what constitutes a “reasonable” opportunity for the school to remedy them. As with renewals, the Education Code recognizes increases in pupil academic achievement as the most important factor in determining whether revocation is warranted. This grants the board additional discretion to determine if a school’s academic performance is sufficiently strong enough to override other serious operational problems. As a rule, revocations invite the most public scrutiny and require the most fact-finding and written documentation on the part of authorizers; board discretion (particularly departure from statutory requirements) is more limited here than in other charter actions.

“Who Will Guard the Guardians?”: Local Oversight and Bureaucratic Control

Local discretion is protected by the basic framework of oversight and by structural limitations imposed by the internal appeals process. An individual school may decide to appeal a local denial to the county or state board, but there exists no general remedy (besides litigation) for districts that fail to follow statutory requirements. Districts’ core practices in this area are thus insulated from additional or even routine bureaucratic oversight.

County boards and the state board do not have the resources or authority to identify problematic patterns or biases in over 300 charter-authorizing districts. Nor does an official mechanism exist to rein in boards that stray from established requirements out of negligence or antipathy. Rather, it is the charter applicants

55 See EC § 47605.
56 This was the issue at play in the American Indian Model Schools’ revocation by Oakland Unified School District in 2011. A dispute over the extent of local discretion in the case of a high-performing school was a primary reason for the appeal and eventual formal legal action.
57 Following from Shapiro’s (1988) assertion that judges are ill-equipped to follow the technical complexities of administrative decision-making, I argue that county boards and state boards face analogous, if slightly less pronounced, dynamics in their role as appellate bodies for local contested decisions.
58 Most common board deviations from EC requirements are neglecting to provide written findings of fact, a split decision, or no vote recorded.
themselevs (and increasingly advocacy organizations or other third-party actors) that must address problematic decision-making at the local level. The individual nature of the available remedy, as well as the increased participation of advocacy organizations, affects equity and charter access within and across districts: appeals can turn on access to legal resources, and the “repeat players” of oversight are advantaged in their resources, connections, and knowledge of the process (Galanter, 1974). I explore these dynamics and their implications in the following chapter.

Discretion from Internal Structure and Process. Board discretion also arises from outside statutory provision—through internal district organization, informal routines and relationships, and the affiliations and predilections of board membership. Differences in local board size and capacity, professionalism, and political attitudes affect the evaluation and management of charter populations. Yet the discretionary arrow does not point in only one direction. While boards enjoy relative freedom to establish internal charter routines and processes, they are also subject to the constraints of bureaucratic form, capacity, and resources: all of which channel and limit the forms discretion may take. It is impossible that the larger charter authorizers in the state could engage every applicant and existing charter in the type of close collaboration available in a smaller district; it is as unlikely that a district with few charters would invest in internal charter offices or the additional bureaucratic procedures that come with them.

Political Influences. In addition to district size and material constraints, political attitudes of board members and superintendents affect the exercise of discretion in charter oversight. Districts with a charter-friendly leadership can actively create an oversight climate designed to encourage and further attract individual charters and charter networks. Charter-friendliness is a valuable concept to track at different levels of oversight: from the financing of relevant local elections to the professional experience of board members to appointed positions on the Advisory Commission on Charter Schools and the State Board of Education. And among charter operators, the idea that school boards will “do what is politically expedient at the moment” is commonplace, as board members frequently see school board seats as a “jumping off place for higher office” (CMO Superintendent, Interview 5).

On the state-level ACCS, for example, board members are appointed to represent certain constituencies: charter schools, charter school administrators, and district board members among others.59 “I’m here for charter schools” or “I’m here for district superintendents” were common refrains in the cursory introductions that preceded board meetings in Sacramento, and their deliberations reflected a commitment to evaluating applications from the vantage point of that particular constituency.

Similar considerations applied to the appointed state board members and even to the elected office of State Superintendent itself. In 2014, for example, former charter network Green Dot Schools leader and charter advocate Marshall Tuck

---

59 The other groups represented on the ACCS Board are County Superintendents, District Superintendents, Teachers, one at-large position, and two liaisons to the State Board.
challenged incumbent Tom Torlakson for State Superintendent of Public Instruction in the most expensive race on the state ballot. While Tuck’s loss was interpreted as a setback for the charter movement statewide, it moved the concerns of California’s growing charter population and tensions with powerful teachers’ unions front and center. Advocacy organizations know that electing board members experienced with and sympathetic to charters is critical to growing populations and to shoring up the legal framework at all levels, from small local boards to the State Board of Education.

While boards with explicitly charter-favorable orientations constitute a small minority of authorizing districts, they loom large in the strategy of charter networks and charter advocacy organizations. These boards are characterized by collaborative rather than competitive orientations to charter management and oversight, and by their close connections to advocacy organizations and to charter networks themselves. In interviews across California, board members and charter operators cited the example of Franklin-McKinley Unified, a small district in San Jose whose charter policy was transformed by the collaborative vision forwarded by a now-retired superintendent John Porter. In 2014, 23 percent of students in the district were enrolled in charter schools, and the district entered into a District-Charter Compact that included $100,000 in grants to be spent in consultation with charters and community organizations. Yet even Franklin-McKinley struggled with managing its burgeoning charter population; the board’s denial of the controversial network Rocketship Education’s proposed expansion to a third campus illustrates that even pro-charter boards that want to collaborate can and do deny applications they undesirable in their district.

On the other end of the political spectrum, districts with pronounced anti-charter sentiments are more likely to see charters as unwelcome competitors for space and resources, or as a threat to traditional public schools. The competitive threat only intensified following the 2013 adoption of the state local control funding formula (LCFF), in which money follows the student to the public school of his or her choice. In these districts, oversight encounters tended toward the adversarial, and boards’ discretion more likely to run afoul of statutory requirements, as they did in the case of One World Charter in San Francisco.

The majority of charter-averse districts encountered during this study were located in the greater San Francisco Bay Area. Charter interviewees identified San Francisco Unified and other districts on the peninsula as hostile to growing charter populations; their reasons included the organized opposition of teachers’ unions, particular board members’ antipathy, and Proposition 39 difficulties in making suitable facilities available for charters. Interviewees’ sentiments are legitimated

61 The district subsequently joined a lawsuit against Rocketship’s proposal to open 20 new sites county-wide.
62 EC § 47614 requires that school districts make available, to all charter schools operating in their school district with projections of at least 80 units of average daily attendance (ADA), facilities that will accommodate the charter’s in-district students, and that facilities be “reasonably equivalent” to other district facilities. School districts may charge a charter school a pro-rata share of the facilities
in part by the oversize role played by Santa Clara County Office of Education in charter authorization: evidence that charters are approved by the county office after a local denial. As the case that opens this chapter illustrates, charters that expect a denial from the local board will craft their petition with an appeal to the county or state board in mind. Advocacy organizations play a critical role in this process, advising member schools on which boards and counties will prove difficult or amenable to new applications, particularly for charter networks with geographic flexibility.

Most districts’ attitudes toward charters fell somewhere in between friendly and actively hostile. They are guided by the district’s past experience with charters, the existing legal framework, individual predilections of board members and superintendents, and the nature of community participation in oversight actions. Such dispositions are subject to change with election cycles, at times dramatically so with the entrance or exit of a superintendent or if many board seats are open. Controversial charter actions - a messy or contentious revocation, for example, or a vocal parent community can alter local political feeling toward charters, and shape public hearings and board responses to conflict. Yet the pro and anti-charter local board extremes are instructive, as they point to the boundaries of discretion in charter oversight, as well as its manifestation in organizational structures and local board routines.

**Discretionary Moves of Authorizers**

In this section, I examine two discretionary moves made by authorizers in the context of charter oversight. I use the term ‘move’ here to denote a strategic action that anticipates and/or shapes the response of another actor, as in a game of chess. A move can be an opening position or a response to the position of another. While the moves discussed are not found in every board setting or charter action, they emerged as common currents in the oversight record and in the qualitative commentary provided by the case studies and interviews. My aim in the discussion stretches beyond classification to illustrate the repertoire available within each move, and to examine the consequences of these moves for charter operators. The final section of the chapter brings institutional logics into the discussion of board discretionary moves, examining how these shape the larger landscape of school choice and educational opportunity across California.

**Delegation.** A common move of boards engaged in charter oversight is that of delegation. In practice delegation takes many forms, from formal relationships with district charter offices to the informal ties of social and professional advice networks that encompass charter lawyers and advocacy organizations. As discussed previously, districts with large charter populations have internal offices dedicated costs, based on the ratio of space allocated by the school district to the charter school divided by the total space of the district. Charter schools shall not be otherwise charged for use of the facilities. *63 I argue that even an inherited organizational feature can be interpreted as a move; for example, reliance on internal charter offices in charter-populous districts.
to the concerns of oversight, while districts with fewer charters typically roll these duties into existing administrative departments or personnel responsibilities. In none of the boards sampled for this project did members perform the tasks of charter oversight entirely by themselves; in all but the smallest of districts this would prove an impossible task. In fact, minutes of local board meetings reveal that many board members were unfamiliar with the basic facts of their charter authorization and oversight duties. To this end, internal charter offices and staff frequently played a didactic role in meetings— instructing board members on the legal requirements of chartering responsibilities, as well as recommending proper courses of action for individual charter applications or renewals. Reliance on internal charter specialization was present at all levels, yet most pronounced in charter-populous districts and in the state-level fora of the ACCS and State Board of Education.

The working relationships of boards and internal charter staff were characterized by respect for the expertise of each, and board commendation of staff research capacity was a common preface to public hearings. One concern in the larger districts and county offices was that of an increasingly unmanageable workload, brought about by a deluge of charter applications and the growing complexity and length of petitions. A charter operator in San Francisco showed a picture of paper copies of the charter he was required to turn in as part of initial review; at over 400 pages, each copy occupied an enormous binder, and the stack took over an entire cubicle. In a hearing that resulted in a contentious 4-3 charter denial at the county level, a board member opined that charter staff were overworked and understaffed, and he urged the board “to just say no” to the possibility of more oversight responsibilities (Alameda County Board of Education meeting minutes, 8.12.2014). But it was not possible to “just say no” to applications submitted, and only three months later, board members asked internal charter staff to develop and implement additional internal criteria for measuring charter student achievement.

Even with help, board members struggled to make sense of the required materials and other evidence. Appeals of local district denials were logistically

---

64 Boards rely on internal units and individual staff to assess charter compliance, which conducting site visits, monitoring annual reports, and evaluating financial and operational data. They also manage application schedules, make recommendations to the board, and answer questions for all parties during public oversight hearings.

65 See Appendix A for a discussion of the internal oversight practices of each authorizer sampled for this project.

66 It was not uncommon to hear board members make inaccurate statements about charter schools or authorization practices in board meetings. While other board members or staff usually corrected these individuals, discussions occupied quite a bit of total meeting time. For example, the meeting minutes of one county authorizer recounted the following: “The Trustee noted that he feels that charter schools are publicly funded private schools. As he has sent concerns to staff, it has become unclear as to how much power the Board has as a chartering agency. Another Trustee... clarified the definition of a private school” (Alameda County Office of Education Board meeting minutes, 9.8.2015).
taxing for county boards and their staff. Appeals reopened recent, contentious decisions made locally, emotions ran high, and the rules for considering new information in appellate actions at this level were unclear or misunderstood by the participants. Counties with charter-populous districts within their boundaries (Los Angeles, Santa Clara) experienced this tension acutely, as they considered appeals much more often. As a LACOE board member opined in frustration after one emotional denial of a charter with significant community support,

*I hear from LACOE staff about the increasing number of charter school appeals and I wonder how it cannot help but tax the capacity of the Charter School Office, and perhaps the quality of its output* (LACOE Board meeting, 1.20.2015).

Further evidence of the challenge that boards face in this vein is the evidence that they rarely attend ACCS or State Board meetings to present the rationale for their oversight decisions. When representatives from Long Beach Unified came to Sacramento to speak against Viva Academy’s appeal of its denied renewal application, ACCS board members were so surprised to see them that one member commented,

*I’d just like to thank the district for showing up. We rarely see the district show up, and when they do they just say they don’t meet the criteria. And you took the time and had a relationship with them* (ACCS meeting, 6.10.2015).

Formal delegation in charter matters was clearest and most specialized in state-level oversight fora. Once appeal actions progress to ACCS consideration, the state Department of Education charter staff and internal legal counsel are responsible for synthesizing hundreds of pages of oversight materials: the original charter petition or renewal application, relevant findings of the local and county offices, memos of understanding between school and authorizer, material revisions or technical amendments to the charter in question, as well as the relevant legal and statutory requirements. Without these internal supports, state-level review of charter appeals would be an impossible task.

Boards also engaged in informal delegation in charter oversight actions. These practices took the form of calling on third party actors: lawyers or representatives of charter advocacy organizations, to seek their expertise and recommendation. Charter lawyers attending public hearings were asked to address statutory matters and questions regarding the appeals process, and when charter advocates were in attendance at public hearings, board members solicited their opinion on school’s relative educational quality, academic performance, and compliance. While advocates frequently attended hearings as part of a charter’s advisory team- in support a particular action, this was not always the case. At times they attended in the role of an independent monitor, to make a general statement

---

67 The two most common organizations called upon in this capacity were the California Charter Schools Association (CCSA) and the Charter Schools Development Center (CDSC).
during public comment, or to advocate independently for a school’s denial or non-renewal.68 A senior leader in CCSA commented that their internal frameworks were developed to address authorizer discrepancies and inaction:

*The accountability framework developed at the request of members: a small number of chronically underperforming charters was ruining it for all: one school sneezes and the legislature is prescribing penicillin for all. If authorizers did what they were supposed to do, then we would not be having these problems. State regulations were full of holes - swiss cheese, we would basically allow an authorizer who might want to keep a school open that should be closed. We felt we could come up with a robust, fair, and alternative look at accountability to honor the different types of charters. [There has been] a mixed bag of authorizer responses to this external voice calling for renewal or revocation - some continue to do what they want, other authorizers have thanked us (CCSA leader, Interview 15).*

And authorizers did rely on fact-finding from external organizations during their deliberations. For example, in the ACCS discussion of Viva Academy’s renewal appeal, a board member responded to the school’s evidence of academic performance by calling on the CCSA representative in attendance to respond:

*I want to hear from the CCSA data team about this...(following CCSA testimony, then addressing the Viva Academy team directly), while the association is an advocacy organization, this kind of work with schools on accountability measures and high quality - this needs to publicly recognized, whether you agree with it or not (ACCS meeting minutes, 6.10.2015).*

While individual board’s embrace of external evidence varied, board members typically received these materials during portions of the meeting devoted to reviewing internal formal reports (as opposed to open public comment), a fact that illustrates the integration of advocacy perspectives on charter performance.69

If delegation is an established structural feature that boards inherit, how can it be a discretionary move? I argue that discretion inherent in delegation exists in boards’ freedom to respond to its products: the latitude to approve a school recommended for denial, for example, or the reverse - to issue a strategic “non-decision,” ensuring that the action either dies or becomes the responsibility of another authorizer. While evidence of oversight actions shows that board departure from internal recommendation is not common, it does happen at all levels of

---

68 This is in accordance with CCSA’s ’Public Call for Non-Renewal’ a list published annually of charters that do not meet their Accountability Framework or Minimum Academic Criteria for Renewing.
69 Individual board member’s ties to advocacy organizations also support this informal delegation, as many board members had prior affiliations with schools that had worked closely with CCSA or CDSC, and maintained these personal connections and advice networks.
oversight, in both charter-populous and small districts.\textsuperscript{70} While the reasons for this departure are rarely entered into the formal record, observation reveals that authorizers act this way for different reasons: political opposition to charter presence in the district, for example; optimism about a school’s prospects and the sense of “trying to get to yes”; or persuasion by high levels of community engagement and attendance at public hearings. As such, discretion can be an entrance point for educational and market logics to counter the powerful claims of legal compliance and accountability.

Responses to Delegation. Charter operators are sensitive to board decisions that go against internal recommendation; discretionary denials are construed by operators as subjective and political. In some districts, a board’s history of problematic discretion is common knowledge among charter networks; savvier applicants enter into the process knowing that an appeal is the likely result. As discussed previously, this was One World’s experience with their initial petition to establish a charter in San Francisco; an anticipated local denial proved no stumbling block to approval at the state-level.

A second charter response to board delegation is a corresponding delegation of their own: relying on outside experts to frame, support, and present applications to the authorizer. Almost all charter operators reported using outside expertise in the petition or renewal process: lawyers, advocacy organization membership supports, and organizations specializing in technical areas of operations and special education compliance. Charter networks and management organizations held many of these functions in house, yet even single charters tried to scrape them together when resources were scarce or non-existant. As the principal of a single-sited charter in Berkeley described the help he received:

\textit{I’m the charter entity. It’s me. It’s not like Aspire or Rocketship [two large charter management organizations]. Those guys have legal teams and a bunch of resources. How do you do it without the financial resources? I quickly ran into that, so I cold-called Paul Minney [partner in a prominent charter law firm] randomly- ‘help, I’m dying over here!’ and he said ‘we will help you, whatever you need, we’ll help you- let’s get you to the point of authorization and then we will keep track of our hours, we will help you through the grant writing process’ so I could submit for the Public Charter Schools Grant- then we could backfill their hours} (charter principal, Interview 14).

Charter delegation is in part a response to the growing complexity of legal compliance, and in part a strategic recognition of authorizers’ respect for external authority. In addition to practical help, delegation provides additional legitimacy and connections to authorizing boards. School leaders rely on lawyers and advocates not only to fine tune the application product, but also to initiate informal

\textsuperscript{70} For example, in academic years 2014-2016, the State Board of Education decided against ACCS recommendation in three out of 20 oversight actions. For local level data on decisions against internal recommendation, see Appendix A.
conversations with authorizers, to "take the temperature" of boards prior to formal applications, and to smooth any hiccups in law or process.\textsuperscript{71} In the case of the Berkeley charter mentioned above, the intervention of charter lawyers proved essential to navigating a board environment publicly hostile to new charters.

Finally, there is the phenomenon of "authorizer shopping," in which experienced charter operators with geographical flexibility examine authorizer discretionary patterns and target districts amenable to new charters, or those with a less onerous oversight process. This can result in interesting anomalies: districts with few traditional public schools but burgeoning charter numbers (Acton-Agua Dulce and Mountain Empire Unified in southern California, for example) or the outsize role of county offices as primary authorizer in parts of the state (Santa Clara County Office of Education, for example).\textsuperscript{72} While statewide authorizer shopping is a strategy not available to the majority of charter operators (who intend to locate in a specific city or district), it is made possible in part by the availability of public databases and materials from CCSA and other advocacy organizations that detail the scope of board actions across the state. As a response to board discretion writ large, authorizer shopping is more the province of the resourced charter management organization than it is the single charter applicant.

\textit{Non-Decision.} A second discretionary move of local charter authorizers is that of non-decision. Non-decision can indicate a lack of board consensus, as in a split vote, or a vote untaken for scheduling reasons, but it can also reflect a strategic choice by the board to forward the matter without recommendation to an appellate forum. This action ensures that the district will not be the primary authorizer of the school in question (and thus not responsible for oversight), even if the charter is eventually approved to locate within its boundaries.\textsuperscript{73} Since there exists no bureaucratic mechanism to force local boards to make oversight decisions, non-decision is a strategy that boards can use to insulate themselves from oversight duties, without issuing a formal denial.

The consequences of non-decision are varied. First, non-decision by a local authorizer effectively converts further appellate review into a de novo review (in which county and state-level boards must examine the full application rather than the process alone).\textsuperscript{74} This taxes the oversight capacity of county and state boards, which were never intended to be primary authorizers of large numbers of charters, and further confuses their appellate role. Second, it contributes to the bureaucratic complexity of the process and necessitates that applicants seek all the external

\begin{footnotesize}
\begin{enumerate}
\item While most charter operators used some level of third-party expertise in initial or renewal actions, this assistance was an expense that not all operators were able to sustain. The consequences of these different resource levels will be examined in the following chapter.
\item See Appendix A for more information on each of the authorizers sampled for this project.
\item At the local and county level, non-decision by the board always means the action is forwarded to the next level; non-decision is not possible at the State Board.
\item Observation of ACCS meetings, in particular, illustrate that even the typical appellate actions (in which the board reviews the findings of a local and county board) are likely to veer into de novo territory, due to the time lapse between initial and appellate hearings, updated financial and enrollment projections, and other factors.
\end{enumerate}
\end{footnotesize}
professional assistance they can muster, further advantaging the resourced and networked schools. Finally, it illustrates the challenge of realizing the ambitious statutory charge to make charters integral to California’s educational landscape. After all, if local districts can opt out through non-decision, then charter growth may be more likely to proceed unevenly, limiting school choice opportunities to urban areas or charter-friendly “pockets” sprinkled throughout the state.

Charter Responses to Non-Decision. An example from one of the case studies will illuminate how non-decision can affect charter operators that pursue appeals. When Viva Academy in Long Beach appealed to the State Board in 2015, their renewal application had been denied by the local board and a non-decision by LACOE on appeal. Although the school leadership had anticipated the local board denial, the county appeal process and non-decision outcome was puzzling to Viva’s leadership. As a board member and parent described the process in an interview,

We did not know a thing about the county at all: how it worked, what the process was, how you get to the board members, etc. First you do this thing called a capacity hearing. We brought in our executive director, our school founder, another board member, and a third board member who is a professor in early childhood development, and then we brought in our attorney. They didn’t want us to bring in our attorney, but we brought in our attorney anyway.

We had to reach out to a friend for what to expect- it’s not like the county does that. And then, you are in the room for three hours, and they could ask you anything. And the interesting thing is that they are not really interested in your answers- the weirdest thing about all this is that your hearing is literally only ten minutes long- in the end, the fate of your school… Our school board representatives, you can’t get to them directly, you have to go through their secretary, they wouldn’t even meet with us. They wouldn’t answer questions. They didn’t want to hear from us. And it’s the same way with the LACOE board members…they totally blew us off and we tried.

They [the County Board] don’t know who we are. I think it’s time and case load. It’s just a lot to think about, and it’s all political. We hired this consultant- an attorney/lobbyist really, to help us through the LACOE appeal. It’s not like she put together information packets and got us sit-down meeting with each of the board members. She exploited her political connections to get to those LACOE board members who did vote for us. There are seven members of LACOE’s board, and the day we had our decision hearing, one of those members wasn’t there, and the vote split 3-3. What happens in the by-laws is that a tie decision is equal to a non-decision, and then in charter school land where there’s a non-decision by an appeals group, it kicks it up to the next level. The actuality is that we didn’t lose at LACOE but we also didn’t win at LACOE. We were very careful to make sure we didn’t say we lost when we went to the ACCS (Interview 25).
In Viva Academy’s case, LACOE’s non-decision further muddied the waters of the state appeal that followed. The school’s attorneys argued in front of the ACCS that there had been no official determination by LACOE, only the staff recommendation, and that the state should thus conduct an independent de novo review and not rely on previous fact finding. One board member responded testily that “Our legal counsel tells us again and again that we should not be looking at new data, we should be looking at the data that you presented at the local level,” and the school’s lawyer cut in quickly “You have wiggle room!” citing the discretionary provisions of the Education Code.

Ultimately Viva did not prevail at the ACCS or at the State Board of Education, where their appeal was unanimously denied in both places, and with it their argument to broaden the types of evidence that demonstrate sufficient student academic achievement. It could be argued that non-decision in this case, while an outcome of convenience for the authorizer, unnecessarily complicated the existing bureaucratic process of appeal and gave false hope to the school community. While non-decisions did not occur frequently in the actions examined for this project, when they did they were extremely upsetting to charter operators and parents, and further ammunition for the common charge that charter oversight is capricious and political.

As a discretionary move, non-decision assumes that subsequent fora are available and capable of solving the problem, and that they will review the evidence and assume the practical duties of oversight if necessary. To use a colloquial term, non-decision is one way for boards to “kick the can down the road” or even to remove the can from their responsibility entirely.

Institutional Logics of Oversight and Board Discretion

Moments of local board discretion are sites rich in the motivating logics of oversight, and they reveal how logics interact with one another to affect board decisions and regulatory outcomes. Examining discretionary moves can reveal just how boards weigh the claims of competing logics - how it is that they can embrace a view of holistic educational quality in one action, for example, while following strict accountability or legal compliance in another. Logics are also reflected in boards’ conversations and differential reception of the participants of oversight, from lawyers and advocates to parents, students, and community members.

This section examines two charter appeals in detail with a view toward the logics reflected in board conversation, discretion, and ultimate recommendation. While discretionary discussions occur at all levels of oversight, the examples examined here are drawn from ACCS and SBE consideration of establishment and

---

75 ACCS meeting minutes, 6.10.2015.
76 Ibid.
renewal appeals.\textsuperscript{77} I consider the actions as they unfold chronologically through the hearing, noting the appearance and interaction of logics throughout, the actors who carry and introduce them, and how boards respond and act.

**Oak Grove Charter School.** Oak Grove’s application to establish a charter school came to the ACCS following a denial by the local district and the Santa Barbara County Office of Education. Internal state Department of Education staff reviewed the appeal and recommended that the ACCS and SBE uphold the denial, arguing that the petitioners were unlikely to successfully implement the program, and that they were not compliant with Education Code regulations regarding location or facilities. While the school had submitted a technical amendment to correct this deficiency (one reflecting their status as a homeschool/independent study charter), the CDE’s internal recommendation argued that this amendment was a material revision and thus should not be considered on appeal.

The guiding logic of legal compliance was evident in the local district record. As a dependent charter seeking to switch to independent status, Oak Grove had asked several districts in the area if they would be willing to consider authorizing them, and one had agreed. On the eve of the hearing (which Oak Grove had expected to go their way), the Superintendent of a neighboring district informed the authorizing district that they had consulted their attorneys and would sue them if they proceeded with the authorization. The petitioners claimed that the district decided not to take a vote because they was afraid of litigation, and that no questions were asked about this unusual occurrence at the county appeal, which also denied their petition: “They said our hands are tied- it’s a legal issue. The lawyers said they would be breaking the law if they authorized us.”\textsuperscript{78} The denying district and county did not attend the ACCS meeting in Sacramento. Complicating the local denial was the fact that the superintendent of the district had sent an email to internal staff expressing the board’s “tacit support” for the charter despite their denial– a interesting discretionary move that perhaps reflects the board’s desire to avoid litigation and additional oversight duties, yet also to support Oak Grove’s application in an alternative venue.

The questioning by ACCS board members that followed tried to make sense of internal recommendation to deny the charter, and considered the school’s legal and operational compliance. One member questioned the relevance of a locational or facilities issue to the material elements required by the Education Code: “When we’ve considered this, it’s been about elements that would alter instruction or its delivery, and I haven’t heard a facility issue be one that would deny a charter. I am perplexed about that.” Several board members seemed stuck on the limits of the appeals process: the distinction between a technical amendment (permitted) and a material revision (not permitted), prompting an internal staff member to clarify, in a long legal tangent, the legal requirements regarding the findings of the local district

\textsuperscript{77} I focus here on state-level actions of the ACCS because they include consideration of the rationales of local and county decisions regarding the charter in question, and thus present the richest and most in-depth discussions inclusive of the prior record.

\textsuperscript{78} Observation, ACCS meeting, 6.10.2015.
and county. The body language of many board members seemed to suggest frustration with her answer. During this section of the meeting, the logics of legal and operational compliance were ascendant, and promulgated chiefly by internal Department of Education recommendation and the interpretation of the local record.

The period of public comment that followed began with similar legal concerns of compliance. The president of the Charter School Development Center (a frequent presence and speaker at ACCS meetings) addressed the facility issue through the lens of legal compliance: “We think the legal issue is straightforward: a school, not a location needs to be identified. The exact facility is not required to be identified, as there may be difficulty in securing facilities. This is a long-standing practice; many charter operators operate this way.” A representative of APLUS (Association of Personalized Learning Schools and Services) concurred with CDSC’s assessment. A CCSA representative commented that although they did not review the petition in question, the local and county finding was contrary to their interpretation of the law, as it would effectively outlaw virtual charters; they were of the opinion that the school’s revisions were an acceptable technical amendment rather than a material revision. A representative of the Special Education Joint Powers Authority in the area referenced her professional experience to argue that Oak Grove ought not to be considered an establishment petition at all, as it was an existing charter that merely sought a change in status—dependent to independent. When considered together, these professional third parties with considerable experience in charter oversight actions spoke first, tying their comments to the legal compliance logics as referenced and debated the first portion of the hearing.

During the second half of public comment, however, charter board members, students, and parents came to the podium, bringing with them a powerful rejoinder to legal compliance and the procedural history of Oak Grove Charter. On these matters, parents were clearly angry, and expressed strong feelings against the perceived discrimination and injustice experienced at the hands of traditional school districts. One parent challenged the logic of legal compliance directly, substituting one of educational holism: “The burden of this whole re-approval controversy revolves around hairsplitting definitions of site and resource that has nothing to do with the quality of education: we are killing it for no more than semantics!” Students and parents also embraced the logic of holism and school choice through the lens of personal experience. One student commented that Oak Grove serves a need for students who have been failed by traditional schools, and a parent praised the school community at large: “I’ve been in education 42 years, and what you have here is a community that really wants to be part of the school.”

Following public comment, the board engaged in debate synthesizing these perspectives as they worked toward a motion. Despite the internal recommendation to uphold local and county denial, the ACCS board voted 8-1 to approve the charter without the conditional approval of the facility (going against internal CDE recommendation). The State Board of Education approved the ACCS recommendation unanimously the next month, and Oak Grove received primary authorization from the State Board for a standard five-year term.
The subsequent history of Oak Grove Charter reveals continues to reveal the competition of institutional logics in oversight. After receiving primary authorization from the State Board, the school’s legal and operational status was challenged by a Court of Appeals decision interpreting a relevant section of the Education Code. The school once again petitioned local districts and was denied by six of them, and was again denied unanimously by the Santa Barbara County Office of Education in a meeting packed with community members and attorneys present for both sides. County board members received passionate testimony from students and parents, and praised the community for impressive levels of support. Before making a motion to deny the appeal, a board member reflected:

*I applaud your commitment, I love your energy and inclusivity of the school. It makes me feel like I wish there were more people as committed as you all are. It’s pretty clear, though, that the Education Code is very technical and dense, but it’s clear as to what the requirements are. This decision is not made from the heart. It’s made from the head* (Santa Barbara County Office of Education board meeting, May 4, 2017).

Several factors distinguish the regulatory experience of Oak Grove, and the interaction of oversight logics revealed therein. First, the school’s atypical structure (as a multiple-sited, individualized learning charter switching from dependent to independent status) proved to be a point of contention at the local and state level, as board members tried to work out how the authorization requirements of the Education Code applied to a non-traditional school form. At the state level, I argue that this muddied the waters of the legal compliance logic, making the board more susceptible to the claims of educational holism and private choice—eventually resulting in a discretionary action to approve the charter.

At the local district and county level, however—venues closer to the ground and with more professional legal involvement, the logics of legal compliance and quality through accountability proved ascendant: the head over the heart. While Oak Grove’s regulatory experience is not generalizable to that of all charters, it is relevant to charters with unusual school structures or to those that return to local consideration following a state approval. It also shows how removal from immediate local context can in some cases mute the dynamics that led to initial denial.

**Viva Academy.** While different in school structure and regulatory history, the experience of Viva Academy provides a counterpoint to Oak Grove’s, one in which strong arguments reflecting educational holism and private choice logics were not able to overcome traditional accountability and compliance. As discussed previously in this chapter, Viva Academy appealed to the ACCS and State Board following a renewal petition denied by Long Beach Unified and a non-decision by the Los

---

79 The decision found that the Education Code prohibited a charter school from operating resource centers outside the boundary of the authorizing district (but within the same county). As an individualized learning charter, Oak Grove’s resource centers were sprinkled throughout the county.
Angeles County Office of Education. A K-8 Spanish language immersion charter, Viva had been in operation since 2000 and had twice been renewed successfully by the local district.

At the ACCS meeting in June of 2015, the Department of Education’s internal report recommended denial on specific criteria drawn from the Education Code regarding academic and subgroup achievement: in addition to financial issues, the discretionary categories of “sound educational practice” and “successful implementation,” the school simply did not have the scores to merit renewal. The school’s leader argued that Viva met alternative measures of academic achievement, citing the school’s graduation rate and placement of students in competitive high schools. Their legal counsel also testified to this effect, and that the language immersion model could explain lower than average ELA scores. He emphasized the school’s model of continuous growth and improvement and sought to counter the legal compliance argument by asserting the school had received professional support in the first phase of renewal: “all three lawyers on the LACOE board support our school.” Parents joined school leaders at the podium to voice their overwhelming support for the school. One parent opined that “closing us would be a slap in the face to parents who know what they are doing when they send their kids to Viva. Moms are the first to know if their kids are being harmed.”

Viva’s ACCS hearing was unusual in that the denying local district was not only in attendance, but they had also prepared a lengthy presentation with data supporting their reasons for denial. Following Viva’s presentation, the representative of Long Beach Unified explained the rationale behind the district’s unanimous denial of the school despite impressive levels of community and parent support:

*Public schools are judged on achievement, and achievement should be the focus...Viva is the lowest performing school in the district, proficiency is low in ELA and math, and the school is included on a list [made by CCSA] for potential revocation by the State Board each year...if students were not at [Viva], then they would be at a better performing school.*

The public comment and board discussion that followed was uncommonly rich in evidence of the competing logics of oversight. Two representatives of advocacy organizations spoke first, each presenting different commentary on Viva’s performance and overall educational quality. The first, a representative of CCSA, explained their organization’s process centered on a traditional accountability framework, reiterating Viva’s substandard test scores, which the organization reviewed and then publicly recommended denial.

*We reach out to underperforming schools to prepare alternative forms of assessment to demonstrate success before renewal. They will use publicly*

---

80 In later discussion, board members questioned this assertion. As one board member noted, “There needs to be more of a conscious effort to explain the ‘elephant in the room’ of poor test performance with the compelling qualitative evidence, given your unique dual immersion school.”
available data to assess you unless you work with us to use alternative measures...ultimately we want to see academic gains and close the achievement gap over time. We were not able to make that case, so we did go forward with the call for non-renewal for this school. And we even did a third look- the first time ever- and found no evidence, and that trends of underperformance were likely to continue. There are some pretty concerning trends of underperformance among subgroups when compared.

The leader of the Charter School Development Center, however, focused on the difficulty inherent in evaluating schools with atypical curricular programs (whose programs might not match with testing regimes), especially in light of changing state academic performance standards and high levels of community support.81

This is a gut-wrenching decision of ‘Do you allow a school whose curriculum does not align well with standardized testing to continue?’ The legal nature of renewal threshold: we cannot implement that any more due to the elimination of STAR testing and API scores...We need to get this fixed, not just for this case, but it's going to come up again.

The following portion of public comment took almost an hour, and was packed with parents, students, and community supporters of Viva, all of whom traveled to Sacramento from Southern California. At one point, Viva’s leader asked to a sea of supporters, “Who took the day off work and drove up here at three in the morning?” As a whole, the school community’s testimony reflected the legitimacy of parent and student choice and the holistic understanding of educational quality over strict accountability: parents know the culture of the school, and they know that their children are learning. In the discussion and questions that followed, board members paid respect to the school community while reluctantly embracing the logic of accountability. As one board member commented,

I see the qualitative evidence, I hear the parents- finding a place that you feel good [about]. But the idea that it’s a dual language model and lower SES with lower performance, that doesn’t hold in my experience, because I led a school and we had an 857 API. Is there anything in the data that you can point to say ‘this is compelling’? I can’t find the comprehensive data point that they deserve the extra time. Forget what CCSA or Long Beach says, this is what you should pay attention to!

Another board member’s comments seem to preserve space for the potential exercise of board discretion in a difficult case:

I don’t know what will happen today or then [the State Board hearing to follow] but it’s a difficult position for us to be in. We want to see schools that

81 Viva had previously participated in CDSC’s boot camp for charter leaders. Interviews with charter operators revealed that CDSC is seen as more open than to holistic interpretations of charter quality.
have impact- the need is there- but I’ve got be convinced that there is a performance piece. This is the blessing of the suspension of the accountability [regime]: there’s an opportunity for your school to bring forward what schools have been clamoring for for years, and that is different ways to assess students that show performance.

Board members then gave advice to school leaders to rearrange their presentation for the State Board, and at the same time distanced themselves from the outcome: “Who knows what will happen? It is unclear in which vein this advice was meant to be taken, since the petition was likely to fail. Board members also seemed perplexed by the enormous cache of letters of support that Viva has submitted for consideration: letters from community members, politicians, even the education reformer and professor Diane Ravitch. One board member wrestled with the significance of this support in an exchange with Viva’s leader:

Board Member: How did you get all these recommenders? It is a very strong list with some very important people. I want to acknowledge: why are all these people standing up for you?

Viva Leader: These people have actually visited our school. I wish more people took the time to visit. We are a community-based school. There’s something about us: we are in a coalition- part of Long Beach Rising, a piece of community support, education, health, etc. and justice for the downtown Long Beach community. Families are invested.

Board Member: Well, we all care about your families and your children, that’s why we are here...and performance matters. It is the academic growth that is critical. I can’t imagine they would approve it given the school’s performance.

The school’s lawyer has the last word in the discussion, reiterating the school’s compliance under alternative accountability options available in statute, before a board member sighs in beginning the final motion:

I feel bad for the students and the families based on the motion I’m going to make. I move to recommend denial based on CDE’s recommendation. Those are reluctant motions.

During the roll-call vote, each board member voiced a “reluctant aye,” prompting the liaison to the State Board to reflect on the need to reform the renewal process in light of changing state standards and Viva’s specific plight:

I don’t think I’ve ever heard a reluctant aye as an option. If Viva turns out to be stronger at the State Board meeting, should we take that into consideration? Is it just about the arrangement of compelling presentation? What if the data just isn’t there?
Viva was unanimously denied renewal by the State Board of Education in July of 2015. In this much shorter hearing, Viva relied heavily on their legal counsel to throw weight behind the alternative accountability legal argument, and on parents to make the case for the trauma that school closure would mean for the community. Parents waved homemade signs and cried during their testimony, yet these arguments were unable to overcome evidence of school underperformance and the controlling compliance logic of oversight. More than a year later, a parent and charter board member voiced her anger at the whole process:

*It just sickens me. The ACCS board members, the State Board, they didn’t visit our school. And I think if you are going to shut down a school, you should have at least have stepped foot in it in the last couple of years. And I know that’s a tall order, but these are lives that you are talking about, and again, taxpayer money. If that’s the only thing that drives you is taxpayer money. If you can fly up to Sacramento every other month, you can drive down to Long Beach and visit a school before you decide to shut it down (Interview 25).*

These two cases, that of Oak Grove Charter and Viva Academy, show that boards actively wrestle with different types of evidence and the logics of oversight reflected within them. They puzzle over their own process, the requirements of law, and what compliance means for atypical schools or in times of academic standards transition. They weigh community support against academic performance, and the recommendations of professionals against parent and student testimony. Their discussions and decisions reflect the contention and interaction of the logics of oversight, and the discretionary power of boards to navigate and select among them.

This chapter has examined the areas and dynamics of board discretion in charter oversight actions, as well as two common discretionary moves of authorizers in contentious charter actions. I look to appellate hearings as sites rich in the interaction of oversight logics and places to track board interpretation and response. In the following chapter, I take up the idea of law as a material resource in charter actions, examining aspects of the legal logic itself: structurally reified through a growing ‘adversarial legalism’ of oversight, culturally ascendant through professionalization, yet also containing the seeds of resistance to strict models of legal compliance.
Chapter 6: Legal Logic as Structure and Material Resource

This chapter examines the ascendance of the legal logic in charter oversight along two axes: structurally through adversarial legalism, and materially as a legitimating resource for charters. I find that the legal logic sets normative expectations of process and participation that advantages resourced applicants and the repeat players of oversight. The consequences of structural elements and material disparities pose problems for the grassroots action and private choice assumed to be at the charter movement’s core, and for the public regulation of charter populations. While the primary thrust of the legal logic in oversight structures is to manage an increasingly complex compliance, the logic also contains the seeds of resistance to increasing legalism and to strict accountability as defined through academic performance.

The oversight record of Westin Charter School reveals a school unprepared to meet established renewal criteria. As a single-sited charter in the metropolitan San Francisco area, Westin’s leaders and board members openly discussed the steep learning curve they faced in managing school operation while preparing a complex renewal application. Start-up organizational support from the California Charter Schools Association eventually changed to testimony against the school at the local district level, and the legal counsel Westin hastily secured at the last minute could not counter the argument of unsatisfactory academic performance. As recounted in interviews with the school’s leadership, the lack of resources, poor advance planning, and high probability of failure at the state-level led them to abandon the appeal after the county denial. The school closed soon after, despite the protestations of parents and the greater school community.82

From a statutory perspective, Westin’s non-renewal was indeed the ‘correct’ outcome, as the school’s academic performance did not satisfy established legal criteria for renewal. Yet this interpretation glosses over the fact of strong community support and investment in the school, as well as the intervention of a powerful advocacy organization in the local hearing. It also downplays Westin’s academic performance in situ: in the context of other public options in the district, for example, or as evidence of local grassroots action and private choice.

These challenges are not particular to the oversight experience of Westin Charter. On the contrary, they are commonly present when schools’ experience or performance place them in margins of statutory expectation: charters that, to reference the language of discretionary ‘moves’ in the previous chapter, do not quite

82 On the role of CCSA in local board deliberation: A charter school organization was really supportive when we got started. They came out to our meetings and provided a lot of resources. The report made it really hard to make any kind of strong case for renewal because the Charter Association was saying, ‘By our metric, you are not an acceptable school and we don’t recommend you being approved.’ My guess is that had our relationship with the district been better…had we had our act together a little better we could have refuted the report or gotten them to change the report before it was published, but we didn’t do that (Interview 12).
fit within the established rules of the game, or actively choose to challenge them. For single-sited or non-networked schools with fewer resources, or for schools with atypical curricula, these tensions are heightened, as these schools lack internal specialization to devote to oversight or the means to outsource.

While the sample of charter actions examined for this project is too small to claim that these schools are more likely to encounter problems of oversight, case study and interview findings illustrate that non-networked charters can struggle to navigate the regulatory environment: both in terms of the substantive criteria as well as the adversarial, legalistic manner of oversight. This chapter examines the central components of the legal logic in charter oversight, as well as the tensions that result.

**Adversarial Legalism: Anchor of Structure and Process**

The legal logic permeates the field of charter oversight and the strategic action of its participants. In Chapter 4, I examined the compliance and rights strands of the legal logic within charter oversight. In this section, I focus on how the legal logic sets expectations of both structure and process of oversight, and the ramifications of these for the relevant parties. In this, I use as a springboard Robert Kagan’s concept of adversarial legalism. In a field dominated by what Kagan identifies as “politically legal argument”—here evidenced in the confluence of legal criteria and local discretion of authorizers, adversarial legalism presents a focusing frame for refining an understanding of the legal logic.

Kagan (2001) inquires into American adversarial legalism, which he describes as a method of policy-making, policy-implementation, and dispute resolution characterized by formal legal contestation and litigant activism. Unpacking the concept at the organizational level, he argues that adversarial legalism “is associated with and embedded in decision-making institutions in which authority is fragmented and in which hierarchical control is relatively weak” (2001:9, original emphasis). In the context of agency regulation, and despite political language that references cooperation between regulatory parties, the American style proves more legalistic, punitive, adversarial, and political than that of other economically advanced democracies (2001:186-187, emphasis added).

Adversarial legalism brings insight into the multi-faceted role of the legal logic in charter school oversight. First, the two primary conditions Kagan identifies—fragmented authority and weak hierarchical control, accurately describe the current structure of charter oversight in California. Decentralized authority is established in statute and preserved in local board control over charter populations. And as discussed previously, hierarchical review and control over local regulatory decisions is limited. Despite a robust appeals process of individual oversight decisions, county boards and the State Board cannot bring systemic changes to charter policy or affect regulatory decisions made at the local level; recurring

---

83 The case of Viva Academy, examined in the previous chapter, provides another example in this vein: what happens when a school with an atypical mission (bilingual immersion curriculum) encounters the more rigid statutory provisions for accountability.
problems must be addressed legislatively or through formal legal action. Or, as the experience of One World Charter illustrates, by knowledgeable and connected charter applicants who strategize to work around unfriendly boards from the beginning.

Examination of charter actions from this perspective extends Kagan’s findings of regulatory style into the hybrid field of market-based charter forms and school choice regimes. To what extent do the intersection of oversight logics here result in the “legalistic, punitive, adversarial, and political” model of regulation he identifies? And what are the consequences for participants? Although we lack here the international comparative lens that situates Kagan’s discussion of the American regulatory style, the diversity of authorizers (even within one state) makes comparison possible to a degree. Below, I examine the four dimensions that Kagan identifies- the legalistic, punitive, adversarial, and political aspects- in the context of available oversight logics.

**Legalistic.** Chapters 4 and 5 have discussed the legalism that comes with the complex requirements of charter operation, and the tensions that can result in hearings when compliance becomes a proxy for educational quality. They have also identified the factors that contribute to a more pronounced salience of the legal logic in oversight: authorizer size and relative charter population, presence of lawyers or legally-savvy third parties in oversight actions, and the degree of contestation (initial petition versus a contested appealed action, for example). These criteria will be discussed further below, in the context of adversarial practices of authorizers.

**Punitive.** To what extent is charter regulation by authorizers punitive? In short, the tools at their disposal are few. The most frequently employed punitive measure is the non-renewal of a charter at term for academic underperformance, and the strongest measure available is the undesirable, infrequent ‘nuclear option’ of revocation. There are few options that fall in between, and both authorizers and advocates lamented the lack of available intermediate solutions. During the establishment and renewal processes there are measures to resolve disagreements: technical amendments to the application and cooperative ‘memos of understanding’ that define district expectations of school operation, but little authorizer enforcement is available once during a school’s term. As a consultant to authorizers specializing in appeals and revocations explained,

*The law doesn’t give the district any hammer to do anything except revocation. The district can’t go in and say ‘you’re going to do this now, and you’re going to hire this person to do the books.’ They can’t- that’s not their responsibility, nor

---

85 For example, in Viva Academy’s hearing before the ACCS, even when the recommendation not to renew the charter became clear, board members continue to offer the school’s leadership advice and hedge a bit on what might happen at the State Board if the school followed it. Following a ‘reluctant motion’ to recommend non-renewal, the liaison to the State Board commented, “if the quality indicators happen to be stronger at the State Board meeting, then we should take that into account!” (ACCS meeting minutes, 6.10.2015).
their job to do that. They are a separate educational entity. [Revocation] is displacing lots of kids, and families are going to be upset. Usually when it’s financial, parents don’t get that part of it: they see their kid go off to school every day, and they are happy and they are learning. That’s all that should matter. Lots of districts are hesitant to push that nuclear button. It’s very frustrating from the authorizer perspective that there are no other steps that can be taken (Interview 11).

A theme that emerged in interviews with school operators was the lack of connection and disinterest on the part of the authorizing district. Boards were described as hands-off in the period between authorizing terms. Despite the required annual compliance visit, they were not particularly interested in strengthening the relationship between charter and district, even for high-performing charters:

They [local board members] don’t understand much about Montessori, even though we try to educate them as much as we can through our petitions...They say they want to visit, but....well, we did have one Board of Education member visit when she was running for office, but since then we have not. And for our renewal, we had our parents and students write letters to the Board of Education- we had tons of letters from parents, and they were all wonderful...No one has ever come out, which I am happy about. We try to stay under the radar, because we figure that is the safest place to be (Charter principal in Hayward, Interview 1).

We’ve invited board members. We’ve invited the superintendent. The superintendent has never set foot in this building, ever. We share space at the high school with District offices and they only walk through our space to complain about why there are- I don’t know- why a kid left a hairbrush in the bathroom or why was my staff in the lounge. That’s what our conversations are like now- it’s never been evaluative. They don’t come and observe our educational program. I’m required by the Ed Code to send my quarterly attendance reports and budget...They pretty much just sign off on it and send it over to the County (Charter principal in Berkeley, Interview 14).

Even in oversight actions resulting in school closure, parties did not use traditional regulatory language of punishment or sanction. Rather, authorizers voiced sympathetic concern for the parties involved, while invoking an objective adherence to legal requirements as an expression of the same concern for students’ best interest. For charter actions that were particularly contested- in which community support clashed with sub-par academic performance, closure was a “gut-wrenching” decision, a “rupture”, “something we really don’t want to have to do.” To speak of ‘punishing’ a school for low-performance in this context would be tantamount to punishing the students and larger community. One way to think of the divergence from regulation as Kagan considers it is that the alternative logics available in the educational reform space- the holistic educational and the market logic, soften
traditional regulatory language by foregrounding the human element — the experience of students in charters and respect for families’ determination of what makes a school “good” — even if regulators do not agree.

Adversarial. To what extent is charter oversight adversarial? The authorizers examined in this study consider charter petitions in hearings loosely modeled on conventions of formal legal action, grounded in the procedural requirements of the Education Code. Even small districts and districts responsible for only a few charters adhere to the following format of public hearings. First, district personnel (or internal charter office, if present) presents findings and a recommendation to the local board; a parallel presentation from the school’s leadership follows. Time for board questions comes next, as they sift through data concerning the school’s compliance record and educational program. Public comment and board reaction follow. Individual boards may be more or less strict with this basic format according to certain factors: the charter population of the district, local board custom or specific policy (more rural boards and those with smaller charter populations tended to be less formal), the length of the agenda for that day, or the individual petition in question.

Observational data show that the factors that heightened legalism in oversight actions also increased adversarial dynamics. The first factor is the degree of initial contestation: an internal district recommendation to deny a petition increases adversarial interactions from the beginning, since there is clear disagreement on the evidence. In charter actions where the district’s opening recommendation is one of endorsement or cautious approval (following adoption of certain technical amendments, for example, or pending a memo of understanding with the district), resulting discussion was likely to be shorter and more cooperatively focused on solving any issues with the petition. Charter operators typically knew ahead of time if the district were going to recommend denial or non-renewal to the board, and they came prepared to refute the authorizer’s assertions.

As a parent and board member of Viva Academy reflected on the local district process,

We went in completely unsurprised that they did not renew us. We pretty much knew that was going to happen. Not only sort of a gut feeling, but our CEO had gone in and met with the superintendent prior to the hearing. Our hearing was in December, and he met with the superintendent in August— in that meeting he met with him alone, and in that meeting it was reported to me that the superintendent said he did not intend to renew the charter. He would recommend non-renewal to the board on account of the test score issue— well,

---

86 The written materials provided for boards to consider were truly overwhelming in length. Charters petitions could be hundreds of pages long, and in the case of appeals, included all the findings from previous fora. Board questioning of petitions often revealed that they were unfamiliar with the full complement of reports and clearly relied on the oral presentation to make sense of the findings and recommendation.
punitively on account of the test score issue (Charter board member and parent, Interview 25).

Participation of lawyers and charter advocacy organizations also increased the adversarial tenor of oversight proceedings. As the legal requirements of chartering have grown more complex, professional legal presence in hearings has become routine, and in contested actions all but required. All of the charter operators interviewed for this study reported consulting a lawyer at some time during the establishment or renewal process; across the authorizers and oversight actions sampled for this project, lawyers were present more than 60 percent of the time. Many charter operators also relied on lawyers to advise them in informal meetings with the authorizer and in the public hearings themselves; this was particularly true in the charter-populous greater Los Angeles area. Legal advice ranged from document review of the petition to leading the school’s presentation in oversight hearings. All three schools examined in the case studies sought professional legal advice and brought a lawyer to oversight hearings, though there were differences in how integrated the legal advice was to the school’s general strategy, a difference largely correlated with available resources. These dynamics will be examined later in the chapter.

Authorizers relied on professional legal advice as well: the district’s own in-house counsel or a charter law attorney for certain specialized areas (special education, facilities requirements re: Proposition 39, etc.). As a charter consultant commented on authorizers’ use of lawyers,

It just depends on what it is. I always recommend they have an attorney look at things...it’s the safe thing for a district to do, but they don’t always do it. If it’s a fairly easy renewal because it’s been a charter in their district for ten years and they have a good relationship with the charter, and the charter has shown itself to be successful in education the students that they have, they usually don’t get a lawyer. If there is a Proposition 39 request attached to the renewal petition or any petition, then definitely they would have a lawyer because you have to nowadays when it comes to liabilities...I would say generally, overall, maybe 75-85% [of authorizers] also use an attorney. I find that most districts don’t use an in-house attorney because usually the in-house attorney isn’t up to date on charter law. So most of them will go outside the district [to a firm] that has charter experience (charter consultant, Interview 11).

In their study of the emergence and transformation of disputes, Felstiner, Abel & Sarat (1980-81) identify ‘agents of transformation’ as individuals or professions that channel problems or ‘injurious experiences’ into more formal disputing spaces—thus transforming them into legal problems. In charter oversight, lawyers and advocates are not exactly agents of transformation as Felstiner et al. conceive of them, but rather powerful agents of redirection, conduits of legal and accountability logics. Through their presence and professional legitimacy in oversight spaces, lawyers refer authorizers back to compliance frames when other logics intrude, thus reinforcing the primacy of legal logics for assessing educational quality and charter
school success. While boards occasionally expressed frustration with increasing involvement of lawyers in oversight spaces (a phenomenon that some viewed as a direct challenge to board autonomy on educational matters),\textsuperscript{87} the reception and integration of lawyers into portions of oversight hearings devoted to official fact-finding illustrates that lawyers and legal arguments enjoy a privileged status in these spaces.\textsuperscript{88}

Adversarialism also intensified as contested actions moved into the appellate phase. As discussed previously, the Education Code states that county boards and the State Board are not to consider new facts during an appeal, but rather to focus on the process that took place at the local level. In practice this charge routinely confused boards and charter operators: relevant information regarding enrollments, finances, and student performance frequently changed in the interim, affecting the material elements of the petition. Although the basic structure of these hearings mirrored those of the local authorizer, adversarial positions increased if the local authorizer attended county or state board meetings to present the case for their denial in person. Charters in this situation needed to respond to the recommendation of the appellate authorizer, as well as to refute the local authorizer’s findings. As one might expect, lawyers were more likely to appear in appellate actions at the county and state level than in local oversight hearings.\textsuperscript{89}

As the pyramid structure of disputes might suggest (Albiston et al., 2014), authorizer denial of a petition is a common point for charter actions to exit the disputing structure. Interview and observational evidence reveals that most schools that exit the appeals process would have preferred to continue, but are forced out due to dysfunctional school organization, a lack of resources, or evaporating community support. The case study of Westin Charter presents an example of this kind, in which an intended appeal to the State Board fizzled due to organizational disarray, little money, and the end of the school year. Although Westin received legal assistance throughout the process, the school leadership waited to retain a lawyer and her participation could not counter the powerful intervention of CCSA.\textsuperscript{90}

\begin{footnotes}\textsuperscript{87} From a LACOE board member in the discussion of Viva Academy’s appeal, “Denied charter schools unleash every possible means of new support and find every creative way to persuade our Board. The use of prestigious law firms and high-powered PR firms is becoming a necessity and unveils an even more sharply angled and multi-pronged approach to the appeal process. In my opinion it is a disservice for the appellant for us to invite and sustain this. We (and they) should be narrowly focused on the specific reasons for denial (LACOE board meeting minutes, 1.20.2015). \par
\textsuperscript{88} Particularly when compared to the reception of affiliated students, parents, and community members. \par
\textsuperscript{89} See Appendix A for data by individual authorizer. \par
\textsuperscript{90} In Westin’s case, the legal case for the school’s underperformance came directly from CCSA, who submitted a report to the district encouraging them not to renew Westin’s charter. As one of the principals of Westin recalled, “It was funny because they had worked out this new report card scheme that they thought would be favorable to most schools. It was put together to say that we understand that charter schools are small and they work with a diverse population that is not always representative of the whole district. We want to create a report card that really shows a value-added model... even though your scores may not be stellar, you can still show that they’re making improvement as to working out. We got this report card from them early in the school year, and it was pretty damning... The report really made it hard to make any kind of strong case for renewal because the Charter Association was saying, ‘by our metric you are not an acceptable school and we don’t
Another, though much rarer departure from the oversight structure is exit to the formal legal system. In no actions directly examined for this study did such a departure take place, although authorizers spoke colloquially about the possibility of litigation as a result of denial, and charter operators occasionally threatened to make a formal legal claim. As a parent and board member at Viva Academy reflected on legal contention with the school's authorizer,

>Viva was known for its very involved, dedicated, and active parents, and we showed up to that hearing where we knew what was going to happen: they were going to vote to revoke our charter in the middle of the five-year period, and so we ended up shutting down the meeting and being escorted out by security. They record those meetings on camera and show them on the public access TV, and they shut off the TV- they stopped filming it, and so they violated the Brown Act in doing that. We didn’t threaten them legally, but we could have- we told them that was not cool and you violated the Brown Act. But, either way, shutting down the meeting got them back to the negotiating table, and so we worked out a memo of understanding (charter board member and parent, Interview 25).

Existing legal decisions have shed light on when and how disagreements in charter actions exit to the courts. Following a contentious local revocation in Oakland, in *American Indian Model Schools v. Oakland Unified School District* (2014), the California Court of Appeals found that the requirement to exhaust all administrative options does not apply “if irreparable harm would result if judicial intervention were withheld until a final administrative decision is rendered.” And in *Today’s Fresh Start v. Los Angeles County*, the California Supreme Court found that the structure of oversight within existing bureaucracy did not constitute a biased regulatory system. Interestingly, the Court rejected the school’s characterization of the County Office’s general counsel as a “prosecutor” determined to revoke charters.

*Political*. The fourth aspect of adversarial legalism that Kagan considers is its political character, arguing that “regulatory rules and methods in the United States are more often enmeshed in controversy and conflict” (2001:1987). This rings true when considering charters within the larger constellation of educational reforms in the United States, and also at the micro-level of local authorizer practices. The previous chapter has discussed how authorizer discretion can be wielded politically, and how the local regulatory outcomes that result are protected in law and largely insulated from systematic scrutiny. From observational and interview evidence, the local district superintendent’s attitude toward charter growth and the participation of charter advocacy organizations set the tone for charter expansion at the local level, and explains- at least in part- the uneven expansion of charter schools across the state. Although this project does not examine in-depth the political dynamics at work within local district authorizers, the data suggest that moments of transition

*recommend them being approved. “If we had had our act together a little better we could have refuted that report” (Westin co-principal, Interview 12).*
(changes in superintendents or contentious board elections, for example) are times when competing logics are ‘out in the open’ and publicly contested: in teachers’ unions campaigning against pro-charter candidates, for example, or in state-wide advocacy organizations’ entrance into local politics through op-eds, campaign contributions, or other measures.

**Consequences of Adversarial Legalism.** Kagan identifies costliness and legal uncertainty as the two primary consequences of adversarial legalism. In matters of charter oversight, I add to this inefficiency (given the many other responsibilities of local, county, and state boards of education) and the conflation of educational quality with legal compliance.

Legalistic, adversarial oversight hearings have consequences for charter operators and school communities. Protracted renewal discussions occupy the time, attention, and financial resources of school leaders - all of which might be otherwise spent internally within the school or on other educational programs. Contentious appeals frustrate parents and students, who must plan for other arrangements should the school close, and whose personal responsibilities make it difficult to attend board hearings located far from their homes, “scheduled in out of the way places at inopportune times” (CMO employee, Interview 2). Parents from both Viva Academy and Westin Charter spoke of the ‘trauma’ and anger they felt during the oversight hearings, a frustration that came to a head when their schools closed.

I have also examined the confusion that results when board members and charter operators (few of whom have professional backgrounds in law) wrangle with legal compliance and procedural requirements in oversight actions. While protected discretion affords authorizers the ‘wiggle room’ to prevent a particularly undesirable result, authorizers do approach matters of educational quality predominantly through this frame of legal compliance. This stance systematically privileges the participation of lawyers, other legally-proficient participants, and those charters with legal resources or the means to procure them; it disadvantages charters with a less-developed internal legal capacity or fewer resources, as well as the holistic quality arguments typically forwarded by parents and students.

**Law as Material Resource**

In addition to setting structural and procedural anchors of oversight, the legal logic suggests that law is a powerful and legitimating material resource in a contested field space. It makes sense, therefore, to consider its distribution among participants, and the consequences if it is found to be unequal. Although there are exceptions, I find that in general, the more networked and experienced a charter’s

---

91 Charter operators interviewed frequently referenced the attitude of the district superintendent toward their school, illustrating the position’s importance: “he made his name on test scores, but has never been to visit us”, “friendly but distant”, “willing to work with us.”
leadership, the more likely they are to integrate professional legal presence into their relationship with the relevant authorizer, particularly if the school is located in a large, charter-populous district or county, or in appeals that progress beyond the local authorizer.

Professional legal assistance increases the capacity of overwhelmed charter leaders, but charter leaders also use legal resources strategically to signal their professionalism and capacity to the authorizer. Charter operators reported that they occasionally brought lawyers to routine meetings with the district to show the authorizer that “we had dotted our ‘I’s and crossed our ‘T’s” (Interview 11). And when present in county and state level appeals, a school’s legal team was integrated into presentations by school leadership - lending the impression of close and sustained collaboration (even if that had not been the case). The reception of lawyers in oversight spaces validated this strategy on the part of charter leaders; authorizers relied on their own internal counsel, but also the schools’ counsel to understand issues compliance and procedural requirements. In this way, charters who attended contested hearings without a lawyer were at a disadvantage in moments of board confusion, as they were less able to forward legal interpretations most beneficial to their school’s position.

In his study on why the ‘haves’ come out ahead in litigation (1974), Marc Galanter examined the structure of social action among parties, and constructed a continuum ranging from inexperienced ‘one-shotters’ to the most experienced “repeat players” in the process. This continuum is helpful in conceptualizing differences among the participants of charter oversight. As Galanter’s frame suggests, repeat players (charter lawyers, advocacy organizations, authorizers, networked charters or charter management organizations) have the most exposure and experience within oversight fora, and usually more financial and legal resources. They are able to play the ‘long game’ of oversight strategically when necessary: to ‘shop’ for the best authorizer across different geographical locations; to argue for the interpretation of a standard that might have an initial negative outcome but serve their purposes in the long run; to work around hostile local boards by using state-level connections. As Galanter notes, repeat players “have advance intelligence; develop expertise and enjoy ready access to specialists, enjoy economies of scale, and have opportunities to develop informal relationships with institutional incumbents” (1974:97). Schools within charter management organizations, for example, can rely on internal data-gathering and legal compliance units: mirroring the specialization found within larger authorizers.

On the other end of the continuum, ‘one-shotters’ (single-sited schools, parents, students, and affiliated community organizations) have limited experience navigating the oversight process, face a much steeper learning curve, and lack the resources and connections that advantage repeat players. While the assistance provided by statewide charter organizations increases the capacity of one-shotters,

---

92 A charter’s ‘network’ would be an interesting concept to track more formally through network analysis, but here I take it to mean either a formal tie to other schools (through a charter management organization, for example), ties facilitated or forged by advocacy organizations, or involvement with relevant peer schools as identified by charter leadership.
a school's acceptance of these benefits can come at a cost. For example, if a charter's performance dips or deviates from internally established standards, the organization's support of the charter may be withdrawn and non-renewal or revocation recommended to the relevant authorizer. The principal and board members of Westin Charter were surprised to learn that CCSA would be calling for the non-renewal of their school in the local and county authorizer hearings, even though the school had received legal assistance and support from them previously (Interviews 3, 12, 13). In terms of the logics of oversight, member schools' individual interests are subsumed under the priorities of the organization, and can thus be muted or lost in advocacy attempts to police and to shape the charter movement in its desired direction.

Most charters fell somewhere in between the neophyte one-shotter and the experienced repeat player. The majority of school leaders interviewed did not have significant legal resources internal to their organization, but rather relied on temporary legal assistance from one of three charter law firms on a contract basis. While pro bono legal assistance and legal materials were available through membership in advocacy organizations such as CCSA and CDSC, these resources were typically reserved for member schools that met geographic or student demographic requirements. Yet the availability of this limited assistance underscores the complexity of charter law and policies both at the local authorizer and state level, as well as the expectation that professional legal assistance is needed to navigate oversight actions successfully.

The primary legal logic of compliance and procedural requirements advantaged schools with internal legal capacity, the resources to procure capacity externally, and those able to cultivate and utilize political connections across authorizer levels. There is evidence that schools with deficiencies in one area—few or weak local connections, for example, may be able to balance by investing heavily in the other, but deficiencies in both areas typically spell regulatory trouble, particularly in the case of comparatively middling to poor academic performance. The contrasting experiences of Westin and One World Charter following local authorizer denials well illustrates this fact; Westin's leaders hastily sought legal advice when it became clear they were likely to be denied and floundered in the appeal to the county board, while One World's legally-experienced board leadership had anticipated local denial and planned well beyond it, honing their petition and legal strategy to target the approval of state board members. Although this project

93 CCSA has published a 'Public Call for Non-Renewal' each year since 2011. This document calls for closure for those schools that have failed to meet CCSA's internally constructed accountability framework and Minimum Criteria for Renewal. In 2017, this list included five schools.
94 CCSA operates a Legal Defense Fund for eligible member schools. This fund (1) litigates issues relevant to California charter school operation; (2) offers pro bono legal services for certain schools in the Los Angeles area (and reduced rate services for schools throughout California) in the areas of incorporation as a non-profit, corporate board structure and bylaws, tax exemptions; (3) offers loans to member schools facing 'unfair' treatment by the local authorizer, and (4) provides school trainings on relevant legal issues- facilities and Prop. 39 requirements, incorporation, etc. The legal services are provided by volunteer attorneys and supervised law students, and are available only to schools that serve a majority of poor students. Reduced rate legal services are provided by a private charter law firm based in Sacramento.
did not systematically address the relationship of schools’ organizational aspects to their academic performance, interview and case study evidence suggest that they likely relate to one another. Future research ought to explore this connection further, attending to how schools’ internal organization might influence authorizer judgments of educational quality.

A Note on Law as a Resource of Resistance. Although charters used legal resources primarily to navigate thorny issues of compliance (and to signal compliance to authorizers), law is also available as a resource for those who disagree with authorizer actions. This resource is connected to the sub-strand of the legal logic as grounded in the rights claiming/justice frame discussed in Chapter 4, and as such was not dependent on the presence of lawyers or particular facility with formal legal sources. In fact, it was most frequently used symbolically by less-powerful ‘one-shotters’ in the process: parents, students, and teachers who found themselves at odds with the actions of authorizers: Viva Academy threatening a Brown Act violation when they were escorted out of a contentious board meeting; a charter student arguing for the right to attend the school of his choice in front of the State Board; a community member alleging discrimination when a local charter that served a linguistic and cultural minority population was recommended for closure. While these claims did not result in formal legal action, they did get the attention of authorizers, softening the focus of strict compliance for a time, leading to cooperative discussion or action, even if the regulatory outcome rested on the bedrock of legal compliance. Attention to law as a resource of resistance thus reaffirms the “internal complexity” of legality as a “space of powerful action” (Ewick & Silbey, 1999:1040), where actors draw on multiple available logics of oversight.

This chapter has considered how the legal logic shapes the practice of charter oversight, reinforcing dominant chords of compliance and accountability: structurally through the lens of adversarial legalism, and materially as a legitimating resource unequally distributed among participants. In the next chapter, I offer concluding thoughts and discuss implications of this project for scholars, policymakers, and participants in the charter process.
Chapter 7: Implications and Conclusions

The chapter reviews the central findings of the research and examines both scholarly and practical implications. I discuss the project’s relevance to the participants in charter oversight, and conclude by offering general thoughts on the current practice of charter oversight in California as well as directions for future research.

This project has examined the role of law as a central motivating logic of charter school oversight in California. Analysis of charter actions from a diverse sample of local, county, and state authorizers reveals compliance and accountability for academic performance to be the dominant legal threads in authorizer regulatory consideration. If charters perform far below legally-established academic standards, or exhibit other serious problems related to operation or academic performance, authorizers typically close them by declining to renew the charter.

Yet as revealed in these oversight fora- from rural districts on the Mexican border to Los Angeles Unified to the State Board of Education, and in interviews with participants, charter quality and compliance are organizational aspects actively constructed throughout the oversight process. This construction is shaped by many factors: by clear and concrete statutory requirements, to be sure, but also by significant authorizer discretion, by the dynamic participation of lawyers, authorizers, and charter communities, and by alternative motivating logics of oversight that enter the field from the market and educational practice. To understand the role of law in charter oversight, then, is to look to its reception and interpretation by local board authorizers, and to attend to the intersection of legal logics with alternative ideas of oversight and educational quality.

In this project, I consider charter oversight as an organizational field critical to legitimacy of the charter form, as well as a field of strategic action- in which diverse participants forward distinct interpretations of compliance and educational quality. These arguments and perspectives bring forward the competing institutional logics of oversight, gleaned from an analysis of routine and contested charter actions, as well as interviews with participants. A central finding is that authorizers act as arbiters among logics and the regulatory outcomes they suggest: balancing legal compliance against justice and rights legal frames; accountability for performance against holistic quality and the significance of private choice.

A second key finding concerns authorizer discretion in regulatory decisions. This discretion, protected in statute, enables authorizers to shape the larger charter landscape at the local and state level. While the Education Code establishes objective requirements of charter operation and evaluation, it also preserves local board control in critical areas of evaluating school potential and educational quality. Authorizers determine if applicant schools are likely to succeed, if their educational program is of sufficient quality, and if established schools meet academic achievement requirements for renewal. In rare revocation actions, authorizers determine the extent of the violations and if they are egregious enough to warrant immediate action. Moments of authorizer discretion present especially rich sites to trace competing logics of oversight, as does the fragmented structure of oversight in which each local school district is a potential charter authorizer.
I identify two common board discretionary moves: (1) delegation, a structural and practical feature that shifts fact-finding and evaluative responsibilities to local district charter offices and personnel (and in some cases to powerful third-parties, participant charter advocacy organizations and lawyers), and (2) non-decision, in which local authorizers skirt contention or disagreement by “deciding not to decide”, thus removing the charter to appellate consideration. The data show that boards can and do exercise their discretion politically, although not always in the same ideological direction. In the context of the decentralization of oversight, discretion emerges as a key mechanism by which local authorizers embrace or resist the statutory charge to increase high-quality charter options in California. While denied schools may appeal regulatory decision individually, no hierarchical or systematic review of local board chartering decisions currently exists.

While the legal logic of compliance infuses authorizers’ substantive deliberation on matters of school operation and educational quality, it also forms the backbone of oversight structures and processes. Public hearings of contested actions are conducted in an adversarial manner that intensifies in appellate fora, reinforcing legalistic frames of compliance and privileging the participation of lawyers and other repeat players of oversight. In these spaces, law is a material resource unequally distributed among participants, where advantages accrue to the more resourced, networked charters and established advocacy organizations. These dynamics— an increasingly complex charter legal environment and the need for charters to secure professional assistance to navigate it successfully— contrast with the grassroots action and legitimacy of private choice assumed to be at the core of the charter movement.

The current legal framework of charter oversight in California thus creates an open stage for actors to debate evidence of school quality, the suitability of market logics in public education, and the legitimacy of the charter form itself. In this context, we see law emerge as a dynamic tool in the hands of diverse participants: permitting mobilization toward different ends: reinforcing powerful compliance and accountability frames; preserving board discretion over local educational options, and even resisting the intrusion of market forms and language into public education.

**Implications for Participants.** This research has implications for the diverse participants in charter oversight. For local charter authorizers— even those responsible for only a handful of charters, it suggests a more careful attention to how they exercise discretion in the determination of school quality, as well as how they receive the research and recommendations provided by third parties (lawyers and advocacy organizations). Small authorizers looking to improve their competency in the area would do well to strengthen ties with other small districts. While advocacy organizations and charter-populous districts do share best practices with other districts, their strategies do not necessarily reflect the capacity of the average charter authorizing district or special concerns they may face (the growth of virtual and homeschool charters in these areas, for example). Authorizers across the board need to reinforce lines of communication with their county and state.
board counterparts, particularly with respect to the substance and process of charter appeals.

For charter advocacy organizations, this research reaffirms their influence on charter policy as constructed locally and at the state-level, and it validates the efficacy of a multi-pronged strategy: to disseminate internal accountability and quality frameworks to authorizers, to create regional and local ties among charters to increase operator capacity, and to continue to argue for the legitimacy and legality of private choice. As California transitions to new state assessments and standards for evaluating school performance, their influence in these areas may increase, as authorizers look to gather information and craft best practices regarding new compliance regimes.

For new charter operators and communities, this research suggests careful evaluation of intended location with respect to local authorizer politics. Charters that anticipate difficulties or a hostile board environment (leading potentially to an appeal) would likely benefit from third-party assistance in hearings where possible or appropriate: from CCSA, CDSC, private legal representation, etc. The same applies for contested renewal actions, particularly if a charter’s academic performance is questionable, other operational tensions exist, or if the school intends to appeal or to argue for evaluation under an alternative accountability system. Findings from this project also suggest that, while boards can be sympathetic to legal rights and holistic quality frames, these arguments are rarely able to overcome problematic academic performance. Even when schools rely on lawyers to address compliance and accountability matters, they should continue to appeal to boards’ discretion by incorporating as many community voices as possible (students, parents, and teachers) - to point to continued local investment and satisfaction, as well as to the human consequences of closure.

Implications for Scholarship & Policy. The project contributes to educational research on charter quality by examining the oversight regimes responsible for evaluating charter quality and performance. It challenges the assumption that school quality is a set of objective organizational facts received and acted upon by regulators; rather, I argue that quality is constructed through the interplay of legal requirements, alternative motivating logics, local political context, and differential participation in the oversight process itself.

The research also examines the dynamics and consequences of decentralized charter oversight regimes. In California, in which the majority of charters are overseen locally (and in which every school board is a potential charter authorizer), local discretion and political context emerge as primary drivers of uneven charter growth across the state, despite statutory language identifying charter growth and school choice as central educational priorities. This work contributes to scholarship examining the continuing local control of education in light of increasing state and federal intervention, particularly in the context of school choice and market reforms to public education.

With respect to organizational theory and the study of law in organizational context, this project sheds light on the interaction of institutional logics in the field of education reform: characterized by hybrid arrangements of public provision and
market forms, by democratic accountability and by competition. Specifically, this study contributes to a plural understanding of the legal logic within organizational and field spaces: a logic centered on compliance and process yet open to rights and justice frames that reference equity and opportunity. Law emerges also as a powerful and legitimating material resource unequally distributed among participants.

For policymakers, this study points to the consequences of adopting a decentralized model of charter oversight, lodged in the existing educational infrastructure of local, county, and state boards of education. For states with smaller charter populations, California’s experience offers a glimpse into what rapid yet uneven charter growth at the local level could look like, and what issues might result: the need for boards to relearn oversight with each election cycle, confusion over legalistic appeals procedures, the outsize influence of lawyers and advocacy organizations, and the growth of specialized, internal charter offices to manage complex legal requirements.

While many interviewees contemplated extending authorization powers to universities or to state-wide charter boards (as in Arizona, for example), few actors saw this as a viable political reality in California, at least in the short term. For policymakers this suggests that initial codification of oversight structures may set a path-dependency, making expansion or reorganization of oversight authority more difficult in the political and practical sense. As the percentage of students in charter schools continues to grow in California and throughout the United States, rigorous public oversight will require critical attention from authorizers and politicians: attention to the consequences of uneven market growth and the implications for quality and educational opportunity.
References


Appendix A: Charter Oversight Data

This section presents the charter action data from the sample detailed in Chapter 3. I begin with data from state-level charter oversight fora: the State Board of Education and the Advisory Commission on Charter Schools. The policies and practices specific to each selected county office of education are discussed second, followed by discussion of the two districts within that county (the practices of the Los Angeles County Board of Education, for example, are followed by discussion of LAUSD and Acton-Agua Dulce School District practices). This study examines charter policies and actions from the State Board of Education, the ACCS, five county offices of education and nine local school boards.95

I. State Board of Education

The State Board of Education (SBE) sets K-12 educational policy in California, and as such is responsible for academic standards, curriculum, instructional materials, assessments and accountability structures. Its eleven members are appointed by the Governor and serve four-year terms. Charter oversight is only one area of their many responsibilities, but an increasingly significant one as charter populations continue to grow throughout the state.

The SBE considers appeals of charter denials from local districts and county offices of education. It also considers initial establishment applications from charters seeking a special type of authorization known as ‘statewide benefit,’ that permits operation in multiple locations throughout the state. Upon approval, the SBE then becomes the primary authorizer responsible for continuing oversight of these schools during the term of authorization (typically five years).

Given its responsibility for all areas of K-12 educational policy, the SBE relies heavily on the Charter Schools Division within the California Department of Education and the Advisory Commission on Charter Schools for research and recommendations regarding individual charter actions. Establishment petitions and appeals are frequently hundreds of pages long, and board members require a synthesis of the facts as well as legal context in making a decision. Housed within the California Department of Education, the Charter Schools Division has a director and staff of approximately ten people, pulling in legal expertise when necessary from the department’s office of general counsel.96 Charter action data from the State Board of Education is located below in Table 8.1. In total, I examined actions from 11 state board meetings during the academic years 2014-2016.

---

95 An interesting exception is the Santa Clara County Office of Education, which plays an outsized role in primary authorization. This is not the case for the majority of counties offices of education in the state; it is a choice that the SCCOE has made in light of local district resistance to charter schools.

96 The Charter Schools Division’s main areas of operation include the following: charter authorizer support and assistance, charter school numbering, renewals and closures, public charter schools grant program (including payments and expense reports), non-classroom based funding determinations, State Board of Education-approved charter schools, and State Board of Education items.
Table 8.1 State Board of Education Charter Action Data, 2014-2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Establishment</th>
<th>Renewals</th>
<th>Revocations</th>
<th>C. Actions</th>
<th>Contra ACCS</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-2015</td>
<td>7 (5)</td>
<td>3 (2)</td>
<td>1</td>
<td>21%</td>
<td>2</td>
</tr>
<tr>
<td>2015-2016</td>
<td>6 (1)</td>
<td>2 (2)</td>
<td>1</td>
<td>25%</td>
<td>1</td>
</tr>
</tbody>
</table>

In this table (and in the tables that follow), the establishment and renewals column contain the number of charter petitions of this category considered by that authorizer in the identified calendar year; the number in parentheses is the number approved. With the exception of two renewal actions of schools that received primary authorization from the State Board, all actions considered were appeals of local and county level denials. The C. Actions column denotes the percentage of SBE agenda items related to charter oversight: this contextualizes charter oversight in the context of other SBE responsibilities. The ‘contra’ column denotes the number of SBE charter decisions reached against ACCS recommendation (i.e. an SBE denial of a school that the ACCS had recommended for approval, or vice versa).

The data show that actions related to charter operation and oversight constitute approximately a quarter of SBE agenda items, and SBE decisions deviated from ACCS recommendation approximately 15 percent of the time. Quantifying the participation of lawyers and charter advocates at this stage proved a difficult task, as they were routinely present in different capacities: integrated into the presentation of applicant schools, attending as counsel to a testifying district or county authorizer, the State Board’s own counsel, charter advocacy organization representative who made legal arguments, etc.

II. Advisory Commission on Charter Schools

The Advisory Commission on Charter Schools (ACCS) was established by the State Board of Education in 2001 to advise and assist the State Board in carrying out its responsibilities for charter school funding determinations and oversight, particularly in the areas of charter establishment, renewal, and revocation. For both appeals and new charters seeking state-level authorization, the ACCS receives a CDE report and evidence regarding the school’s application, conducts a public hearing, and concludes by recommending a course of action to the State Board.

Of its nine members, eight are appointed by the State Board to serve two-year terms, and the ninth member is appointed by the State Superintendent for Public Instruction. Members are appointed to represent the interests of the following constituencies: school district superintendents, charter schools, teachers, parents, school district boards, and county superintendents. Two liaisons from the State Board of Education also usually attend ACCS meetings. The ACCS meets five times a year in Sacramento, and it is supported in its mission by the staff of the Charter Schools Division within the Department of Education. ACCS charter action data for academic years 2014-2016 is located below in Table 8.2. In total, I examined 19 charter actions that took place in ten ACCS meetings:
### Table 8.2 ACCS Charter Action Data, 2014-2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Establishment</th>
<th>Renewals</th>
<th>Revocations</th>
<th>C. Actions</th>
<th>Contra Rec</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-2015</td>
<td>7(6)</td>
<td>2(1)</td>
<td>1</td>
<td>38%</td>
<td>6</td>
</tr>
<tr>
<td>2015-2016</td>
<td>7(6)</td>
<td>2(2)</td>
<td>0</td>
<td>41%</td>
<td>7</td>
</tr>
</tbody>
</table>

The establishment and renewals columns contain the number of charter petitions in this category considered by the ACCS in that calendar year; the number in parentheses is the number approved. Of the 19 charter actions considered over the two-year period, 16 were appeals of local and county denials; the ACCS deviated from the local authorizer decision in 13 of these actions, or 81% of the time. This high rate of departure from local regulatory decisions illustrates the state-level commitment to aspirational, statutory language to increase charter access across the state, as well as the power of discretion in interpreting legal compliance and the potential for educational success. The C. Actions category denotes the percentage of oversight agenda items (as opposed to other common ACCS tasks involving material revisions to charters and funding determinations).

Lawyers and representatives of charter advocacy organizations were frequent participants in ACCS meetings: accompanying petitioners, testifying in their own right, and engaging and advising ACCS board members on legal requirements and responsibilities. The circumstances and consequences of their participation is discussed elsewhere in this dissertation.

### III. Los Angeles County Office of Education

The Los Angeles County Office of Education (LACOE) has an internal Charter School Office and nine person staff with the following oversight duties: (1) accepts charter petitions and revocation/non-renewal appeals and facilitates the petition review and appeal process; (2) coordinates the monitoring and oversight of charters authorized directly by the county; and (3) provides information and technical assistance to county and district-authorized charters.97 As of April 2018, it is the primary authorizer of 13 charters. For schools in Los Angeles County that appeal a local district denial of their charter, LACOE provides online guidance, including forms and policy documents, as well as documentation of county board policies and administrative recommendations.

I examined the minutes of all LACOE board meetings in the academic years 2014-2015 and 2015-2016, coding for all charter matters that came before the board during this time (including preliminary hearings and motions requiring a board vote), the overall charter approval rate, and evidence of participation by

---

lawyers and charter advocates. The table below summarizes the data collected.\textsuperscript{98} The charter actions category denotes the number of agenda items related to charter oversight. Appealed actions come to the county following a denial or non-decision by a local school district. The last column provides the number of actions in which the County Board reversed a local school board’s denial of a charter.

**Table 8.3 Los Angeles County Office of Education Charter Data, 2014-16**

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Appeals</th>
<th>Approval Rate</th>
<th>Contra District</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-15</td>
<td>26</td>
<td>0</td>
<td>8</td>
<td>50%</td>
<td>2</td>
</tr>
<tr>
<td>2015-16</td>
<td>20</td>
<td>1</td>
<td>7</td>
<td>33%\textsuperscript{99}</td>
<td>2</td>
</tr>
</tbody>
</table>

This table reveals several points of interest: (1) LACOE’s charter actions are nearly all appeals of local district denials, with very few primary authorizations occurring at the county level (2) the approval rate is approximately 31 percent, (3) charter advocates are present and influential in these spaces- a finding we might expect from a large, urban, and charter-populous county, and (4) the Board overrules local district decisions approximately 30 percent of the time. Another point of interest from this forum is that internal charter staff lead informational sessions to board members concerning their legal powers and responsibilities to charter schools:

_Ms. Judy Higelin, Project Director III, Charter Schools Office, provided a presentation to the County Board that included a PowerPoint presentation on County Board Authority, Petition Appeals, Review Process, Review Team Process, Fiscal Review, Board Decision, and Review Challenges. In addition, she provided an evaluation tool (compilation of law, state code, LACOE Policy and LACOE Regulation), which the Review Team uses to standardize the review process. She shared a third document, the Charter School Petition Review Form (CSPRF), with directions given to a petitioner, who wish to appeal a district decision to the County Board. She mentioned that the CSPRF is posted on the LACOE website so that all appellants have access to the document (LACOE Board meeting, 5.12.2015)._\n
In LACOE meeting minutes there is also evidence of cross-board communication. Board members with a particular interest in charter issues frequently shared their findings and additional materials with fellow board members in the region:

_Mr. Boyd indicated that he attended the California County Boards of Education (CCBE) 2015 Fall Conference on September 11-13, 2015. He__

\textsuperscript{98} It should be noted that charter actions do not denote the number of schools considered, as each school’s petition can have multiple board actions associated with it: initial public hearing, report to the board, recommendation, decision, etc.

\textsuperscript{99} In an additional two charter oversight actions in 2015, the Board had a split vote 3-3, which resulted in no action being taken. The schools still able to bring an appeal to the State Board of Education in this case.
said that the conference was one of the best he has attended. Mr. Boyd shared copies of handout materials of two workshops he attended: Santa Clara County Office of Education: The Charter School Process – Effective Practices for Challenging Responsibility and materials from Atkinson, Andelson, Loya, Ruud and Romo: Navigating Appeals of Denial of Charter Renewals and Revocations. Mr. Boyd said both workshops were standing room only (meeting minutes, 9.15.2015).

Los Angeles Unified School District

As the largest school district and charter authorizer in the state (and the largest charter authorizer in the nation), the Los Angeles Unified School District (LAUSD) has developed significant additional district-specific policy and resources to guide school operators through a complicated and time-sensitive initial petition and renewal processes. The Charter Schools Division (CSD), operating under the oversight of the District’s Division of Instruction, is responsible for the “activities related to the District’s efforts in developing, approving, overseeing, and renewing Charter Schools as required by law.” With more than 50 staff members, the division assembles the reports and recommendations that come to the board for action. The CSD includes specialists on charter governance and fiscal oversight, Proposition 39 issues (public provision of charter facilities), and other areas of charter operation and legal and technical compliance.

The Charter Schools Division within LAUSD provides materials to assist charter leaders navigate district procedures regarding school creation and renewal. The most comprehensive of these is the 61-page “Administrative Procedures for Charter School Authorizing” that addresses in detail the specific requirements and timelines for charter schools seeking initial or renewal authorization through LAUSD.

For new charters, the CSD requests that operators submit a letter of intent to apply. If the petition passes a quick initial review, it receives a full internal review by a team that includes instructional and fiscal staff, as well as legal counsel. As stated in the Administrative Procedures handbook, the Division’s review focuses on the 16 material elements required by the Education Code, as well as a fiscal review, in-person capacity review, and due diligence background checks. Afterward, the petitioners have the opportunity to revise the charter in light of feedback, after which the CSD will recommend approval or denial to the Board, and the Board will vote.

For ongoing oversight and charter renewals, the CSD has developed a district protocol that includes annual site visits and school monitoring. In the early years of a school’s tenure, this monitoring is focused on implementation and compliance, later transitioning to assessing the claims within the renewal petition at the end of the five-year authorization period. In addition to school site visits, LAUSD offers an

---

100 As of September 2016, LAUSD oversees 274 active charter schools that serve over 138,000 students.
101 See http://achieve.lausd.net/Page/397.
orientation meeting for charters approaching renewal, as well as model timelines for the proper submission of renewal materials.

The renewal process requires document review and self-assessments by charters alongside the traditional renewal application. Renewal recommendations from the CSD are determined by a “fixed process” that takes into account three items: (1) the minimum standard for Charter Renewal (defined by the criteria set forth in the Education Code, Section 47607; (2) a sound educational program and capacity to implement; and (3) a reasonably comprehensive renewal petition. While these last two categories appear more discretionary at first glance, the CSD has tied them to a specific rubric that encompasses past performance (Item 2) and future plans for the renewal term to come (Item 3). The CSD publishes a recommended timeline for renewals, beginning in March of the charter’s penultimate year of authorization.

In addition to these materials for applicant and established charter schools, the CSD and district have produced additional written guidelines for use by board members: the “Policy for Charter School Authorizing” for the use of internal district staff and Board of Education members. These guidelines review the district’s legal role as a chartering authority as well as the state and district processes for charter creation, oversight, and renewal.

I examined charter oversight actions that came before the district Board of Education in 2015-2016 (ten board meetings). The data are found below in Table 8.4.

Table 8.4  Los Angeles Unified School District Charter Data, 2015-16

<table>
<thead>
<tr>
<th>Year</th>
<th>C. Actions102</th>
<th>Establishment</th>
<th>Renewal</th>
<th>Revocation</th>
<th>Contra</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>56</td>
<td>15(8)</td>
<td>41(41)</td>
<td>0</td>
<td>4</td>
</tr>
</tbody>
</table>

These data illustrate the volume of charter actions that come to LAUSD in a single year. During one academic year, the board approved approximately 50% of new establishment petitions, and all of the renewal petitions- though many of these were approvals were issued conditionally pending clarification of existing understandings with the district, technical amendments, or material revisions. The board reached a decision contrary to internal recommendation four times.

Qualitative examination of board minutes reveals LAUSD board hearings to be uncommonly rich in community and professional legal participation. Aside from the formal charter oversight actions considered, advocates, parents, students, teachers and teachers’ union representatives, lawyers, and others participated actively during public hearings and comment. The board considered and debated all aspects of charter operation: from financing and locational decisions to litigation in process (CCSA was in the process of suing the district over several facilities issues during this time), to board resolutions fleshing out the role and responsibility of

---

102 Often public hearings and board reports and decisions were split into separate meetings; in this category I counted board consideration leading to an oversight decision as a singular charter action. This did not include actions considering material revisions to existing or proposed charters, or public hearings in which the board did not make a decision.
LAUSD as the nation’s largest charter authorizer. CCSA representatives were a frequent presence in these actions, and even at times addressed the board during public comment on general charter issues, sparring with representatives of teachers’ unions. In October 2015, for example, a CCSA representative addressed the board on the topic of ‘Public School Choice’; in the afternoon the Executive Director of SEIU Local 99 expressed the concerns of the district’s labor union partners regarding the Eli Broad Foundation’s proposal to expand charter schools, “speaking of the dangers of politicizing and privatizing public schools” (LAUSD Board meeting minutes, 10.13.15). The competing logics of oversight were very much out in the open in these meetings, and often directly referenced and contested by board members and other participants. If meeting minutes are an accurate barometer of how a board allocates its time and attention, then charter school concerns form a core area of practice within LAUSD.

**Acton-Agua Dulce School District**

A small district serving fewer than 1,500 students in north Los Angeles County, Acton-Agua Dulce School District (AADUSD) operates only three traditional public schools, yet is the primary authorizer of 18 charters. This discrepancy, along with the fact that many of these charters serve students outside the district’s boundaries, has received the attention and the ire of neighboring districts, including LAUSD, Santa Clarita, and Pasadena Unified, all of whom have filed lawsuits against the district alleging that AADUSD’s actions violate the state charter school act.103 The district has struggled financially and was found to be close to insolvency after an audit by the Los Angeles County Office of Education; there is evidence that the high level of charter authorization is one way to shore up the budget, as the district charges charters up to a seven percent management fee.104 In terms of charter oversight, the district has two individuals in the central office directly responsible for advising the board on charter matters: an Assistant Superintendent and a Director of Charter Schools. Table 8.5 presents the charter data for 2014-2015, the only data that the district provided.105

<table>
<thead>
<tr>
<th>Table 8.5</th>
<th>Acton-Agua Dulce USD Charter Data, 2014-15</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year</strong></td>
<td><strong>Charter Actions</strong></td>
</tr>
<tr>
<td>2014-15</td>
<td>2</td>
</tr>
</tbody>
</table>

AADUSD is a small district that presents a clear contrast with the practices of larger districts along multiple dimensions, including depth of record keeping, accessibility, and bureaucratic process related to charter oversight. While only one year of data is


104 The district’s 2014-2015 reveal that charter oversight fees pay for several district positions and consulting fees (3.12.2015 board minutes).

105 AADSD does not link to board agenda or minutes on their website, and these materials were not easily available. Despite multiple phone and email attempts to secure two years of board minutes, only 2014-2015 agenda and minutes were provided.
not ideal for comparison, it does reveal several interesting points about motivations and charter process in this district. First, the revenue the district receives from charter oversight is being used to fund positions and consultants in the district’s traditional schools, and this may underlie the charter friendly attitudes in the district (and desire to continue to attract students from outside its geographic boundaries). Second, lawyers are present here as well, and particularly in the contentious charter petition of the Albert Einstein Academy for Letters, Arts, and Sciences charter, the approval of which resulted in formal legal action by neighboring Newhall School District.106

IV. Alameda County Office of Education

The Alameda County Office of Education (ACOE) has a small internal charter schools office tasked with providing oversight and support to the charter schools it authorizes (nine schools as of April 2018). They also provide county-level materials for applicant and established charters, including administrative procedures for petitions, renewal protocols, checklists for appealed petitions, as well as annual reports on the demographics and performance of county-authorized charters. ACOE is also the administrative site of the Charter Authorizers Regional Support Network (CARSNet), a project funded by a federal grant that seeks to develop the capacity of “small” authorizers. Table 8.6 presents the ACOE charter action data for 2014-2016.

<p>| Table 8.6 Alameda County Office of Education Charter Data, 2014-16 |</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Renewals</th>
<th>Contra Internal Rec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-15</td>
<td>3</td>
<td>0</td>
<td>3(2)</td>
<td>0</td>
</tr>
<tr>
<td>2015-16</td>
<td>2</td>
<td>0</td>
<td>2(2)</td>
<td>0</td>
</tr>
</tbody>
</table>

Review of ACOE meeting data revealed several interesting observations. While professional legal presence was muted in the oversight actions themselves, on two occasions, board members invited charter lawyers and advocates to address them specifically on charter legal and oversight issues; this additional training was part of the board’s mission to support school districts as charter authorizers in the region (meeting minutes, 10.13.2015). In debate, board members occasionally seemed confused about their role as charter authorizer, or even about the legal status of charter schools:

Trustee also noted that last week there was a ruling from the state of Washington declaring charter schools unconstitutional. Trustee noted that he feels charter schools are publicly funded private schools. As he has sent concerns to staff, it has become unclear as to how much power the Board has as a chartering agency. At some point he would like to discuss this in more detail. Another Trustee responded that the ruling

106 AADSD board meeting minutes (1.8.2015). See also the California Court of Appeals decision Newhall School District v. Acton-Agua Dulce Unified School District (2015).
applied to a narrow point of law, and it is expected to be appealed. He clarified the definition of a private school (Board meeting, 9.8.2015).

An interesting rumination on board discretionary practices occurred during a public hearing for a charter seeking renewal. Following a strong presentation, which the Board president declared “the best charter presentation he had ever seen”, other board members asked for clarification about the guidelines for determining pupil performance increases as the most important determining factor for renewal, referencing the recent legal conflict that had transpired with the American Indian Model Schools case. One of the board members then asked the staff to please develop internal criteria for student achievement and other factors (ACOE meeting minutes 2.10.2015).

**Oakland Unified School District**

With a population of over 50,000 students, Oakland Unified School District (OUSD) is the largest school district in Alameda County, and one of the largest in the state. As of 2017, it is the primary authorizer of 35 charter schools, and 26 percent of its students attend a charter school: a much higher proportion than the state and nationwide average of around seven and five percent, respectively. The Oakland Board of Education has seven voting members and meets in full session approximately twice per month.

Within OUSD, charter oversight is the responsibility of the district’s Office of Charter Schools (OCS). With a five-person staff, the OCS is responsible for managing the flow of charter applications received by the district throughout the year, reviewing new petitions and assessing the performance and programming of charter schools up for renewal. OCS recommends approval or denial of a charter’s application to the OUSD board, and it keeps tabs on Prop. 39 requirements (16 charters are currently in district-run facilities). They also serve as a primary point of connection and oversight between district leadership and the charter schools operators themselves. The following chart presents charter oversight action data for OUSD in 2015-2016:

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Renewal</th>
<th>Revocation</th>
<th>Contra Int. Rec</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>6</td>
<td>1(1)</td>
<td>5(5)</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

In 2015-2016, OUSD's board approved all six of the establishment/renewal petitions it considered. In no case did their decision deviate from the internal Office of Charter Schools recommendation. While the portrait that emerges from this year of data is one of perhaps surprising agreement, board meeting minutes reveal that consideration of charter issues is decidedly more complex, encompassing multiple hearings on material revisions and MOUs with existing charters, negotiating complex facilities use agreements, and drafting official board resolutions relevant to general charter operation. For example, the Board urged applicant and established
charters to comply with a board resolution that enumerated certain district-specific equity goals such as:

- Locating in the highest need-areas
- Demonstrating commitment to high comparable performance for all identifiable groups of learners, and the elimination of the achievement and performance gaps
- Demonstrating commitment to serve all children regardless of characteristics and identified needs and their involvement and full participation in all programs and activities within the school
- Providing access and high-quality support services or programs for all student populations, including English language learners, high risk students, students with mild-moderate needs, and students transitioning out of alternative schools
- Providing access and high-quality support services for students with severe needs, guided by an equitable allocation process of programs and corresponding resources
- Demonstrating parent support for the charter and ongoing parent engagement
- Partnering with the District to implement a unified and coordinated enrollment system (drafting of Board resolution, meeting minutes, 12.16.2015).

In the charter actions and hearings examined, board legal questions were addressed directly by charter petitioners and internal OCS staff in consultation with district legal counsel. Meeting minutes reveal evidence of contracts for professional services to assist in managing the district’s charter populations and in the creation of district-specific charter policies: a local attorney was contracted to provide legal advice on charter matters, and a consulting firm in Iowa was contracted to “assist the District team with generating a prototype of a charter school performance framework, to create a best practice guide on data sharing practices between charter schools, other third parties, and the district, assist the Director of the Office of Charter Schools on the creation of a handbook for charter reauthorization, specifically regarding the use of the school performance framework in making a renewal recommendation, and overall advisory and technical assistance on the 2016 rollout of the SPF wake-up” (Board meeting minutes, 2.10.2016).

**Hayward Unified School District**

Located south of Oakland in the greater San Francisco metropolitan area, Hayward Unified School District (HUSD) is a medium-size district that in 2016-2017 enrolled just over 20,000 students. It operates 29 traditional public schools and is the primary authorizer of five charter schools, two of which are affiliated Montessori schools. HUSD does not have a dedicated internal charter oversight office; reports are prepared and submitted to the board by district staff personnel.
Charter oversight action data for 2015-2016 is located below in Table 8.8:

**Table 8.8 Hayward Unified Charter Oversight Action Data, 2015-2016**

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Renewal</th>
<th>Revocation</th>
<th>Contra Int. Rec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>3</td>
<td>1(0)</td>
<td>2(2)</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

In 2015-2016, HUSD’s board considered and approved the renewal of two charters and denied the establishment petition of one charter. In the latter action, the petitioning school brought their attorney (from a Sacramento charter law firm) to speak directly to the board regarding the legal requirements of the ED Code, and to challenge public comment from community members arguing against increased charter presence in the district. Following the board’s denial of the charter at the subsequent meeting,\(^\text{107}\) the lawyer spoke against the board’s findings, arguing that they went beyond established legal requirements— for example, a “cookie cutter petition” is not a legal reason to deny, and that petitioners did not legally have to submit contingency plans in certain operational areas (HUSD Board meeting minutes 4.13.2016 and 5.11.2016). Other areas of charter consideration included facilities use negotiation (particularly in light of increasing enrollments due to the closure of a popular charter school in nearby Oakland), and existing memos of understanding between charters and the district.

V. Sacramento County Office of Education

The Sacramento County Office of Education (SCOE) is the primary authorizer for only two charter schools. Its County Board of Education has seven elected members, each of whom serve a four-year term. In terms of charter oversight, the board president reported that board’s general counsel conducted trainings for members on the legal context of charter appeals, and that internal county office staff evaluated the petitions and presented findings and recommendations to board members for decision (Sacramento County Board President, Interview 27).

SCOE’s internal charter structures are comparatively less developed than those found in the Los Angeles or Alameda County Offices of Education, for example, most likely due to the overall charter presence in the region, the volume of charter applications handled, and number of appeals considered. Table 8.9 presents the SCOE charter action data for 2014-2016:

**Table 8.9 SCOE Charter Oversight Action Data, 2014-2016**

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Appeals</th>
<th>Approval Rate</th>
<th>Contra District</th>
</tr>
</thead>
</table>

\(^{107}\) A chief criticism of the petition was that it had not been sufficiently tailored to the Hayward USD student population. In the evaluation rubric and recommendation prepared for board consideration by district staff, it was noted, “This is a cookie cutter petition. The exact petition has been submitted in other areas of California. Not a word in this section was changed between petitions. It shows that no thought was given to the student population within the Hayward USD community” *Charter Petition Evaluation Rubric for Hayward STEM Academy*, May 2016.
Although the Sacramento metropolitan area is a fairly charter-populous one, county-level actions of charter oversight are not particularly frequent. Yet board meeting minutes reveal significant attention to and engagement with charter legal and operational issues. Board members reported to the board on their participation in charter task forces on the topics of authorization and appeals, sponsored by CCSA, the California School Boards Association, and the California County Boards of Education.

A revealing moment of legal significance occurred when the Board considered the appeal of a new petition that had been denied by a local school district: boards wondered aloud about the legality of considering new evidence, and the petition was ultimately denied. In a later meeting, a board member reported that the school had appealed to the ACCS and the State Board:

*He stated that he joined Superintendent Gordon in attending the State Board of Education meeting on May 6, during which the Paramount Collegiate Academy appeal was heard. Mr. Geeting shared a brief history of the appeal, stating that when the appeal was heard before the state’s Advisory Commission on Charter Schools, the panel recommended that the charter be denied by the State Board, consistent with the recommendation of California Department of Education (CDE) staff. However, between the Advisory Commission meeting in April, and the State Board meeting in May, the CDE staff reversed its recommendation and instead recommended that the charter be granted. Following nearly an hour and a half of consideration, the State Board accepted the staff’s recommendation that the charter be granted, even though it did appear clear that some key charter documents had not been considered by the San Juan Unified School District and had been delivered to the County Board on the day of SCOE’s public hearing and decision (Board meeting minutes 6.14.16).*

**Sacramento City Unified School District**

Sacramento City Unified (SCUSD) is the 13th largest school district in California, with an enrollment of approximately 48,000 students. As of 2018, it is also the primary authorizer of 16 charter schools. The SCUSD board has seven voting members who serve four-year terms, and the district also has an internal charter schools department. This department sets district guidelines and policies for establishment and renewal petitions, evaluates petitions and recommends a course of action to the board, and serves as a liaison between charters and board members. SCUSD charter oversight action data for 2015-2016 can be found below in Table 8.10:

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-15</td>
<td>3</td>
<td>0</td>
<td>3(0)</td>
<td>0%</td>
</tr>
<tr>
<td>2015-16</td>
<td>1&lt;sup&gt;108&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
<td>100%</td>
</tr>
</tbody>
</table>

<sup>108</sup> This action was a renewal petition for a county-wide charter (one directly authorized by SCOE).
Table 8.10 SCUSD Charter Oversight Action Data, 2015-2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Renewal</th>
<th>Revocation</th>
<th>Contra Int Rec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>1</td>
<td>0</td>
<td>1(1)</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

During this interval, the SCUSD Board considered and approved one renewal petition; two public hearings for new establishment petitions took place during this interval but are not recorded here since no board vote occurred. Charter oversight has a comparatively light footprint in meeting minutes of board discussion, particularly for a district with a sizeable charter population; the only issues recorded in discussion were the aforementioned public hearings and a material revision to an existing charter. In the one renewal action that came before the board, petitioners brought along their attorney (from a charter law firm), who engaged the board regarding the legal requirements of renewal.

**Twin Rivers Unified School District**

Twin Rivers Unified School District (TRUSD) is located in northern Sacramento County, enrolls approximately 27,000 students, and is the primary authorizer of five charters (three are part of the same school organization). The Board of Trustees has seven elected members and is advised on charter school matters by district staff within the Charter School Programs Department. Charter oversight action data for 2015-2016 are located below in Table 8.11:

Table 8.11  TRUSD Charter Oversight Action Data, 2015-2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Renewal</th>
<th>Revocation</th>
<th>Contra Int Rec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>2</td>
<td>0</td>
<td>2(2)</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

In 2015-2016, TRUSD considered and approved the renewal petitions of two charter schools. Other charter issues considered include charter locational decisions, recruitment practices as reflective of area demographics, academic performance, and schools’ LCAPs (Local Control and Accountability Plans). The minutes of board meetings do not reveal professional legal participation of particular consequence.

VI. San Diego County Office of Education

The San Diego County Office of Education is the primary authorizer of only one charter school, but handles appeals of denials from 42 potential local district authorizers. Within the Office, the Assessment, Accountability and Evaluation Department provides information, professional development and technical assistance to districts and charters within the county. Notably, the Board has adopted county-specific administrative policies and regulations explicitly pegged to Ed Code and CCR requirements, as well as Attorney General Opinions and relevant court decisions) relating to the review of petitions and the preparation of internal
written findings regarding charter performance and compliance (Policy No. 0310, 0310.1).

In addition to the County Superintendent of Schools, the Board consists of five elected members who represent different geographic areas of the county; the Board met in regular session approximately once a month. For research and reports, the county pulled in personnel from many departments to form an advisory committee, including representatives from district financial services, legal services, human resources, risk management, special education services, student services, and external legal counsel (see consideration of Audeo Charter School II, board meeting minutes, 3.9.2016). Charter oversight action data for 2014-2016 are located below in Table 8.12:

<table>
<thead>
<tr>
<th>Table 8.12 SDCOE Charter Oversight Action Data, 2014-2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>2014-15</td>
</tr>
<tr>
<td>2015-16</td>
</tr>
</tbody>
</table>

During a two-year span, SDCOE considered two petitions for establishment appealing a local district denial; it rejected them both. It also approved the renewal of a county-authorized charter. Lawyers were present for the petitioners in both appealed actions. SDCOE is noteworthy among charter authorizers for its developed internal administrative guidance with respect to charter oversight, and for the ‘committee of experts’ model it pulls together from different departments to examine the petitions it receives.

**San Diego City Unified School District**

San Diego Unified School District (SDUSD) is the second largest school district in the state, enrolling approximately 130,000 students as of 2017. It serves as the primary authorizer for 48 charter schools. In terms of charter oversight, the district has an internal Office of Charter Schools that manages charter application cycles, evaluates establishment and renewal petitions according to legal criteria, and presents findings and recommendations to the Board of Education. In addition to the District Superintendent, the local Board of Education includes five elected members that serve four-year terms.

In terms of additional charter-specific organizational capacity, there exists a dedicated Charter School Facility Committee that is tasked with providing recommendations concerning the “acquisition, construction, reconstruction, rehabilitation, or replacement of charter school facilities” in the context of Prop. 39 requirements; this group consists of five charter board members and two members with specific expertise in this area. The board also scheduled four regularly scheduled “charter meetings” during the year, dedicated to holding public hearings

---

109 One of the three actions considered in 2015-2016 was the approval of a renewal petition for a county-authorized charter.
and considering board regulatory action on charters. District charter oversight action data for 2015-2016 are presented below in Table 8.13.

**Table 8.13  SDUSD Charter Oversight Action Data, 2015-2016**

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Renewal</th>
<th>Revocation</th>
<th>Contra Int Rec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>6</td>
<td>1(0)</td>
<td>5(5)</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

During this period, SDUSD considered (and denied) one application for a new charter school within the district, and approved the renewal application of five existing charters, ratifying the internal recommendation in all cases. Other charter matters considered by the board included much deliberation and planning around facilities use by charters and district policies around the ‘voluntary surrender’ or closure of a charter during an established term of operation.

**Mountain Empire Unified School District**

The Mountain Empire Unified School District (MEUSD) is located in southeast San Diego County, along the border with Mexico. It operates seven traditional public schools, serving approximately 2800 students (as of 2017) across a rural, sparsely populated geographic area of more than 660 square miles. As of 2017, MEUSD is the primary charter authorizer for six charter schools, and 44 percent of students in the district attend a charter school, perhaps the highest proportion of students in charter schools in the state.

The surprisingly high presence of charters and their approval in this rural district is tied to a recent political scandal: the case of Steve Van Zant, a former MEUSD Superintendent who was found to have violated the Political Reform Act by accepting personal stipends for each charter the district approved, drawing in charters from outside district boundaries and lining the pockets of his personal charter consulting firm on the side.110 Since Van Zant’s departure in 2013, MEUSD’s policies concerning charter authorization and oversight have faced additional outside scrutiny, both from the county and from charter advocacy organizations that see authorizer transparency, accountability, and standardization as critical to the charter movement. MEUSD’s Board of Education has seven elected members who serve four-year terms, and they receive reports and recommendations from district personnel.

**Table 8.14  MEUSD Charter Oversight Action Data, 2015-2016**

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Renewal</th>
<th>Revocation</th>
<th>Contra Int Rec.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>n/a</td>
</tr>
</tbody>
</table>

During the 2015-2016 academic year, no charter oversight actions come before the board. They did, however, engage the topic of charter operation and oversight

---

repeatedly on the subject of facilities use, declining charter enrollment numbers (that would directly affect the oversight management fees MEUSD receives from charters), and the case of a charter that returned to its “correct” geographic authorizer, leaving the orbit of MEUSD- perhaps a legacy of the illegal policies adopted by previous district leadership. Board staff were primary participants and discussants in these items; there was no professional legal or charter community presence of note.

VII. Santa Clara County Office of Education

The Santa Clara County Office of Education serves as a primary authorizer for 23 charters (as of 2018) and handles appeals of local denials from 32 potential local district authorizers under its jurisdiction. SCCOE is known throughout the region and the state for having a particularly accomplished and active internal Charter Schools Department, and a comparatively high rate of authorization on appeal from local district denials. (Several of those interviewed explained this in the context of local districts “hostile” to the local introduction of charters). Meeting minutes from other boards as well as interviews suggest that SCCOE staff have provided trainings on compliance and county-level oversight to other boards in the area; two of their stated organizational goals are to provide training and support, and to “identify and showcase innovative practices.”

In addition to the county superintendent, the County Board consists of seven elected members who serve four-year terms. The internal Charter Schools Department has a staff of seven, and in their own words “coordinates the programmatic and fiscal oversight for charters approved by SCCOE.” The office serves as a resource for the county’s charter schools, school districts, state and local agencies as well as families and communities.” The charter oversight data for 2014-2016 are reported below in Table 8.14.

Table 8.14 SCCOE Charter Oversight Action Data, 2014-2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Charter Actions</th>
<th>Establishment</th>
<th>Appeals</th>
<th>Approval Rate</th>
<th>Contra District</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014-15</td>
<td>8(^{111})</td>
<td>0</td>
<td>6(4)</td>
<td>75%</td>
<td>4</td>
</tr>
<tr>
<td>2015-16</td>
<td>5(^{112})</td>
<td>0</td>
<td>1(1)</td>
<td>100%</td>
<td>0</td>
</tr>
</tbody>
</table>

Analysis of board meetings shows that SCCOE has one of the most active county-level charter agenda in the state. Charter concerns appear in almost every meeting, and board members frequently report on their visits to school sites throughout the county. During this interval, the board hosted a Charter Schools Workshop, a Charter Summit, numerous charter “study sessions,” and charter authorizer collaboration meetings; they also considered quarterly and annual charter reports from county staff, district leaders, and charter operators themselves. Lawyers, CCSA

\(^{111}\) Two of the 8 were approved renewals of schools authorized by SCCOE.

\(^{112}\) Four of the five actions were renewals of existing countywide charters authorized primarily by SCCOE.
advocates, and even representatives from the National Association of Charter School Authorizers (NACSA) are present in oversight actions, and a separate board meeting is scheduled to receive annual reports from all county-authorized charters. Although the minutes reveal that the county board has a somewhat contentious relationship with some leaders of local districts, their due diligence and organization in charter oversight responsibilities is evident.

**Campbell Union School District**

Campbell Union School District (CUSD) is a K-8 district in Santa Clara County that operates 12 schools and enrolls approximately 7,500 students, as of 2018. CUSD’s Board is composed of five elected members, each of whom serve four-year terms.

CUSD is unusual in that all of the district-run schools are ‘conversion’ charters: traditional public schools that have legally transitioned to charter status, yet continue to be administered by the district. (Most charter schools in California are “start-up” charters that approach the local authorizer independently and operate with significant autonomy from the district infrastructure). Conversion status provides district leaders more flexibility, particularly with respect to state funding and resource allocation, curriculum, and student enrollment, although most outwardly visible aspects of school operation remain the same: school leadership, teaching staff, etc. As a result of this unusual district conversion arrangement, board discussion of charter matters was both quantitatively and qualitatively different from that of other local boards. In place of a table of charter action data, I consider below the charter matters discussed by the board during the 2015-2016 school year.

The only recorded charter concerns that came the board during this interval were proposed revisions to board policies and administrative regulations on the authorization of district-dependent conversion charters (meeting minutes, 3.10.2016, 3.31.2016) and charter school oversight (meeting minutes, 8.18.2016). These changes were not discussed or debated in particular depth; the goal was rather to update them with respect to the Education Code and new federal legal requirements. Notably absent were the typical participants of oversight encountered in almost every other authorizer forum: advocacy organization representatives, petitioners, community members, lawyers, all the accoutrements of charter adversarial legal structures as discussed in Chapter 6.

**Concluding Thoughts on Oversight Action Data**

- The snapshot of oversight data gathered for this project illustrates the variation present in California’s charter landscape. From the urban centers of Los Angeles and Oakland to the suburbs of Sacramento and the rural desert near the Mexican border, charter oversight is guided by the same legal requirements, yet is also very much a local affair, shaped by the context of local board policy, practice, and custom. Are board members professionals or part-timers? Does the volume of charter applications require a dedicated
charter office, and how does that office operate if there is one? How often are board members expected to visit charter schools? Do county boards typically defer to the oversight decisions of local districts, or are they more proactive? Are lawyers and advocated typically present, and how are they received by other participants? These are discretionary matters, and as such, they provide a window into where and how differences emerge in the state-level environment of charter growth and access.

- According to meeting records, most oversight decisions do not appear to be contentious (at least when examined at the level of board voting patterns or recorded board discussion - not necessarily true of community perception), and in the majority of actions the recommendation of internal authorizer staff is ratified by the board. County board connections to individual staff at the local district level were described by some interviewees as weak (as were state board connections to county board staff), and this may explain county or state willingness to look past a denial emanating from “lower on the chain” in the case of an appeal, even if legally appeals are to focus only on process rather than the substance of the petition.

- On account of its size, professionalized board, and charter population, Los Angeles USD is like no other authorizer in the state, and different dynamics likely apply to oversight practices there. This study did not focus in particular depth on LAUSD’s charter practices and organization, which deserve much more attention in their own right - both for the effect its practices have on other authorizers in the region and state, but also for how LAUSD navigates unique concerns (facilities use in particular) in the context of an entrenched and somewhat inflexible educational bureaucracy trying to encourage innovation.

- Professional legal presence and advocacy participation is highest in urban and charter populous areas, though these individuals are also found in support of routine renewals in which positive board action is expected (i.e. uncontroversial petitions or charter-friendly boards). CCSA representatives are active in board spaces across California, both in support of their members and in board trainings on authorizing responsibilities.

- This sample purposively targeted authorizers with a critical mass of charters operating within their boundaries. Yet even within this sample we see that many authorizers have limited experience with oversight actions during a particular time span. Given the electoral cycles of board members and the length of most charter terms, it is likely that board members in the ‘average’ authorizing district (perhaps with only a handful of charters) have little experience in the particular legal requirements of charter authorization and oversight. This may explain the push of advocacy organizations and more-capable authorizers to conduct peer trainings on the subject.
Appendix B: Interview Guide

Law and Institutional Competition in Charter School Authorization

Semi-structured interview script for use with charter authorizers and charter board members

1. Authorizer and Charter Background
   a. How long have you sat or did you sit on [local, county, state, or charter school] board?
   b. What is your professional background?
   c. What role do charter schools play in your district/county?
   d. What proportion of time does the board devote to charter school issues?
   e. How would you describe general attitudes toward charters in your district or county?
      i. Accommodating? Hostile?
      ii. How these opinions differ by subgroup - Teachers? Administrators? Parents?

2. General Chartering Process (Petition, Renewal, Revocation/Closure)
   a. Where do charter petitions come from? Who usually initiates the process to get a school going?
   b. What types of reasons do those people give for starting a charter school?
   c. Do lawyers or advocacy orgs ever get involved in the process? How/when/where/in what role? How common is their participation?
   d. What do you look for in a successful charter school application?
      i. How do you assess charter viability and potential for educational success?
   e. Have you ever denied an initial petition? Tell me more about the kinds of things that would result in a denial?
      i. Do these denied petitions come back for reconsideration? Are they usually improved?
   f. Once a charter opens, is there any oversight prior to renewal (visits by the board, etc.)?
   g. Tell me about the typical renewal process for charter schools.
   h. Have you ever dealt with a situation that required revocation or the threat of revocation? If yes, tell me more about that situation.
   i. How does the board evaluate charter applications for renewal?
      i. Who oversees the process? How and when does it take place?
j. Has the board ever disagreed about the decision to grant, reauthorize, or revoke a charter? What happens then?

k. Has your district or county ever dealt with an appeal of a denial or a legal action on the part of a charter school? If so, please tell me more about that.

l. In your experience, why does a charter school fail? Where do they go wrong?

m. Can you recall a particularly difficult or strange authorization action? Tell me about that experience.

n. How much do the requirements in the Ed Code regarding authorization, renewal, and revocation play in your discussions and decisions to grant or renew a charter school?

o. From where you sit, what are the advantages of charter schools? What are the drawbacks?

p. Do you see any problems with the current model of authorization?

q. Do you think the process/appeals process is basically fair? Why or why not?
   i. What changes to the system might you propose if called upon?

r. Do you ever discuss charter school policy or authorization procedures with those outside your district or county (charter authorizer’s association, etc)? If so, where or with whom?

s. Do advocacy orgs ever participate in these actions? Tell me about their role.

t. What is your opinion regarding third party authorizers of charter schools (mayors, universities, etc.)?

u. In your opinion, how do contested authorizations, renewals, or revocations affect students?

v. Does the board deal with charter school issues outside the concerns of authorization or oversight?

3. Legal Concerns

a. What are the most important legal concerns that the board typically encounters or deals with, either related to charter schools?

b. In your opinion, how do charter schools present the potential for legal problems?
   i. Can you tell me more about such problems? Or when they do or do not?

c. Do charters’ legal issues differ from legal issues of traditional public schools?
   i. How so?
d. How is the Ed Code referenced or appealed to during charter authorization proceedings?
   i. When does it come up?
   ii. Are certain actors more likely to reference it than others?
       Who? When?
   iii. [Present with sections of ambiguous language]. What does this mean? How do you interpret this?

   a. Can you tell me more about the situation of [school name or particular action]?
   b. Would you describe this action as routine, atypical, or somewhere in between?
   c. As far as you remember, was there any contention or disagreement among the parties or board members regarding the decision? What did it concern? What happened?
   d. Who were the primary participants in this action? What did they do?
   e. Any other participants of consequence that you remember? What did they do?
   f. How did the board reach the ultimate finding? How did you feel about the decision?
   g. Were legal concerns ever raised during action or discussion regarding this action?
      i. Who raised them?
      ii. When in the process were they raised?
   h. If an analogous situation occurred again, would [action] be the likely outcome? Why or why not?

5. Responding to and Collecting Documents
   a. [Share selections from the Education Code regarding ambiguous charting criteria.] Have these provisions ever come up in board conversations or charter decisions?
   b. If yes, how and when? If no, what do you make of them? Are they relevant to your task as authorizers?
   c. Are there any organizational documents regarding the chartering process in your district, such as pamphlets or additional publications that you think it would be helpful for me to see?

6. Collecting Names of Other Relevant People
a. Is there anyone else you think I might interview about charter authorization or [particular action]?
b. Do I have your permission to mention your name in approaching this person?
c. Anything else you would like to share with me today?

Semi-structured interviews of charter school lawyers

1. Professional Background
   a. How did you become a charter lawyer? What led you to the work?
   b. How long have you been practicing in this area?
   c. What are the most satisfying/trying parts about your work with charter schools?
   d. In which districts/areas of the state do you practice most frequently?

2. Authorization actions
   a. When do lawyers typically get involved in charter school actions (initial petition, reauthorization, denial, appeal)?
   b. How common is professional legal participation in your experience?
   c. Describe your typical charter school client (mom and pop, cmo, conversion school).
      i. What legal services do you provide? How do clients usually find you?
      ii. What proportion of your work would you say is tied to petition, reauthorization, or revocation matters?
      iii. Do you ever do pro bono work for charter schools?
   d. Describe your typical participation in client authorization and reauthorization hearings.
   e. Have you ever participated in an appeal or revocation hearing? Tell me about that experience.
      i. Ask about the appeals process between district and county-level dynamics.
      ii. Can you recall a particularly difficult or strange authorization action in which you were involved? Tell me about that experience.
   d. How much do the requirements in the Ed Code regarding authorization, renewal, and revocation play in the official fora of authorization? How frequently are they referenced?
   e. From where you sit, what are the advantages of charter schools? What are the drawbacks?
f. Do you see any problems with the current model of authorization? Do you think it is fair?
   i. What changes to the system might you propose if called upon?
g. What is your opinion regarding third party authorizers of charter schools (mayors, universities, etc.)?
h. Do you ever work directly with charter advocacy organizations (California Charter Schools Association, etc.)? How and when do you work together?

3. Legal Concerns
   a. What are the most important legal concerns that charters must deal with?
b. How do charters’ legal issues differ from legal issues of traditional public schools? How so?
c. How is the Ed Code referenced or appealed to during charter authorization proceedings? Are other legal decisions ever relevant in this context?
   i. When do they come up?
   ii. Are certain actors more likely to reference it than others? Who? When?
   iii. [Present with sections of ambiguous language from Ed Code/authorization documents]. What does this mean? How do you interpret this?

   a. Can you tell me more about the situation of [school name or particular action]?
b. Would you describe this action as routine, atypical, or somewhere in between?
c. As far as you remember, was there any contention or disagreement among the parties or board members regarding the decision? What did it concern? What happened?
d. Who were the primary participants in this action? What did they do?
e. Any other participants of consequence that you remember? What did they do?
f. Tell me more about your participation. How did you feel about the decision?
g. Were legal concerns ever raised during action or discussion regarding this action?
h. Who raised them?
i. When in the process were they raised?

j. If an analogous situation occurred again, would [action] be the likely outcome? Why or why not?

5. Responding to and Collecting Documents
   a. [Share selections from the Education Code regarding ambiguous chartering criteria.] Have these provisions ever come up in board conversations or charter decisions?
   b. If yes, how and when? If no, what do you make of them? How are they relevant to your tasks?
   c. Are there any organizational documents regarding the chartering process in your district, such as pamphlets or additional publications that you think it would be helpful for me to see?

6. Collecting Names of Other Relevant People
   a. Is there anyone else you think I might interview about charter authorization or [particular action]?
   b. Do I have your permission to mention your name in approaching this person?
   c. Anything else you would like to share with me today?