

Building Board Governance Capacity to Improve Charter School Accountability in
Minnesota

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Shane Weinand

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Abstract

This paper discusses how building the capacity of charter school boards of directors to govern more effectively could contribute to improving accountability in Minnesota. State legislation has enacted an elaborate system of charter school accountability that is intended to submit schools to accountability from three main sources: bureaucratic authority, market and performance. Yet, more than 15 years after the first charter school opened in Minnesota, there is compelling evidence to suggest that this system is not effective. Though many stakeholders play a role in this failure, charter school boards of directors play a unique role in holding schools accountable, as they lie at the confluence of regulatory, market and performance accountability. They have a statutory obligation to conduct fiduciary oversight to ensure that their schools conduct themselves legally and responsibly. The board is a key party in a performance contract with the school's authorizer. Unlike other stakeholders in the charter school accountability system, boards of directors have decision making authority at the school site level. Given this unique role, charter school boards have a unique opportunity to help build capacity for better charter school accountability in Minnesota. This paper outlines a vision for how charter school boards of directors can build their own capacity for effective governance by systematizing fiduciary oversight, building capacity for policy development and effectively evaluating performance. This increased capacity can help improve how charter schools in Minnesota are held accountable.

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Introduction

The nation's first charter school opened in St. Paul in the fall of 1992, and from there the charter school movement spread rapidly throughout the country as a promising new reform in public education. Today, 42 states and the District of Columbia have passed charter school laws, and more than 4000 schools around the country serve more than 2 million students. Though Minnesota was a leader in this important innovation, charter schools have not yet improved upon the performance of traditional public schools in the state. A 2008 evaluation report conducted by the Minnesota Office of the Legislative Auditor determined that charter schools are performing worse than traditional public schools on standardized tests and other academic outcomes. When these results account for race and socioeconomic status, charter schools perform at approximately the same levels as traditional public schools in the state (OLA 2008). Charter schools are not yet delivering on their promise to improve public education outcomes in Minnesota.

Charter schools make a fundamental tradeoff in order to exist. They are submitted to greater accountability in exchange for greater autonomy to develop new and innovative programs. In order to hold charter schools accountable, Minnesota lawmakers have developed a complex system of accountability that submits schools to three types of accountability: bureaucratic, market and performance. Charter schools are held accountable by bureaucratic authorities including an authorizer, the Minnesota Department of Education, the state legislature, and a board of directors. Bureaucratic authorities are responsible for ensuring that schools are conducting themselves in a legal and fiscally responsible manner. Additionally, charter schools are held accountable by an educational market that places them in competition with traditional public schools and private schools for students. In Minnesota, public education dollars are tied

to students, and so charter schools must recruit and educate enough to be fiscally sustainable. As such, each school must distinguish itself in the education marketplace. Finally, a school's charter is a contract with its authorizer that promises a certain level of performance enumerated in academic and non-academic goals. Failure to achieve this level of performance can result in a revocation of the charter and the closing of the school.

Despite this multifaceted system, there is evidence to suggest that charter school accountability in Minnesota is ineffective. Though there are many stakeholders that can share some of this blame, charter school boards of directors are uniquely positioned to help improve the accountability system. Charter school boards of directors sit at the confluence of all three types of accountability. They have a statutory obligation to conduct bureaucratic oversight and ensure that their schools conduct themselves legally and are fiscally responsible. Additionally, boards are a conduit to the marketplace, because they are elected by the parents that choose to bring their children to the school. The board is also a key party in a performance contract with the school's authorizer. The authorizer holds the board accountable for achieving contracted results, but the board holds the School Leader and staff for ensuring the goals are met. Finally, charter school boards have the authority to make decisions for the school site that can directly lead to change. Though they are in a unique position to affect positive improvements in the accountability system, many boards do not have the governance capacity to do an effective job.

There are several key problems that lead to poor governance by the boards of directors of many Minnesota charter schools. Boards suffer from a lack of systemic capacity to organize and prioritize the many fiduciary governance tasks for which they are accountable for. Charter school boards are also susceptible to conflicts of interest with parents, teachers and other staff that often serve. Finally, charter school boards routinely mistake managing for governance as

they delve deep into the minutiae of the day to day actions of the school. This distracts them from their fundamental work of holding schools accountable.

Given their unique role in holding schools accountable, charter school boards of directors have a unique opportunity to improve charter school accountability in Minnesota. In order to accomplish this, boards of directors must overcome their lack of systemic capacity by creating effective systems of oversight. They must overcome conflicts of interest and mistaking management for governance by developing policy that establishes clear roles and expectations. And, they must put it all together by evaluating performance effectively. Taken together, this increased capacity can have a profound impact on the effectiveness of charter school accountability in Minnesota.

Vehicles for Charter School Accountability in Minnesota

Charter school accountability in Minnesota occurs through a complex, multifaceted system that requires many actors to play key roles. In their work “A Framework for Understanding Charter School Accountability”, researchers Gregg Garn and Casey Cobb establish a multifaceted framework that provides a foundation for understanding charter school accountability as it’s practiced in Minnesota. They identified bureaucratic, market and performance accountability as three key vehicles that are utilized to hold charter schools accountable (Garn and Cobb 2001). Indeed, charter school legislation in Minnesota establishes a system of accountability that utilizes all three of these vehicles to oversee charter schools. Charter school legislation has established bureaucratic authorities that are familiar to the traditional public school system. These key actors are responsible for ensuring that schools operate legally and that they are using public resources responsibly. Additionally, Minnesota charter school legislation established a public education marketplace in Minnesota that, for the

first time, pit traditional public schools against new schools that were unencumbered by many of the previous regulations. Yet, this same legislation required new schools to sign a charter with an authorizing body that acts as a legal contract for performance that the school commits to achieving. What follows is a greater exploration of how these vehicles for accountability are manifest in charter schools in Minnesota.

Bureaucratic Accountability

While charter school legislation in Minnesota broke ground by creating the nation's first public education marketplace and placing primacy on school performance, the legislation also recognized the prudence of enlisting bureaucratic authorities to protect the public's investment by holding schools accountable. In their work, Garn and Cobb define bureaucratic accountability as, "agencies of government which promulgate rules and regulations intended to assure citizens that public functions will be carried out in pursuit of public goals voiced through democratic or legal processes," (Garn and Cobb 2001). Towards this important end, legislation has created several bureaucratic relationships to provide the necessary oversight to ensure that charter schools are fiscally responsible and operate within legal guidelines. While these agencies play key roles in performance accountability, they are concerned more for process and procedure than results in their roles as bureaucratic authorities. Key actors who exercise bureaucratic accountability are the Minnesota Department of Education (MDE), the state legislature, school authorizers and boards of directors.

The Minnesota Department of Education plays several key bureaucratic accountability roles with charter schools. In order to access state funding, which comprises the vast majority of their budgets, schools are subject to MDE reporting requirements. These requirements include

timely submission of student attendance reports, and compliance with ADA and other state and federal legislation that govern school facilities and practices. Failure to accommodate these requirements results in a delay or cessation of funding. MDE also holds schools accountable for fiscal health by requiring an annual audit of financial practices. Charter schools are also responsible for state mandated testing, and they are part of Minnesota's report carding system that publishes performance information for all schools each year. As such, the MDE also enforces punishment for schools that are not meeting Adequate Yearly Progress (AYP) in academic and nonacademic areas.

Many of these requirements are also true for traditional schools, but charter school law creates an additional bureaucratic authority. Charter schools are required to establish a contract with an authorizing agency that provides oversight for its practices and performance. In Minnesota, several entities are considered allowable authorizers. They include; a public school board, a degree granting college or university that is governed by the MN State College and Universities board, the University of Minnesota or charitable organizations that report an end-of-year fund balance in excess of \$2,000,000 (Minnesota Statutes 2009).

One of the chief duties of an authorizer is to solicit, "signed agreements from charter school board members to comply with all federal and state laws governing organizational, programmatic, and financial requirements applicable to charter schools," (Minnesota Statutes, 2009). Additionally, authorizers are required to establish, "the criteria, processes, and procedures that the authorizer will use for ongoing oversight of operational, financial and academic performance," (Minnesota Statutes, 2009). Each of these terms is articulated in the charter contract that the authorizer signs along with the school's board of directors. Once the contract is in force, the authorizer's most important duty is to ensure that the school is meeting

these terms. When the school falls short, the authorizer has the authority to sanction the school and ultimately revoke its charter for poor operational, financial or academic performance.

In contrast to traditional public schools that are governed by a larger district, charter schools are incorporated as independent nonprofit organizations. As such, they are governed by a board of directors that is elected by the teachers and staff and the parents and legal guardians of the students who are enrolled at the school (Minnesota Statutes, 2009). Unlike the MDE or school authorizers, boards of directors of charter schools have the authority to make site based decisions that can directly impact daily operations of the school. As a party to the charter contract, boards of directors are ultimately accountable for ensuring that the school is fulfilling the terms of the contract by operating legally and as a responsible fiscal custodian. If the school falls short of these terms, boards of directors have the authority to hire and fire the school leader, teachers and staff and to change organizational priorities through policy and budgeting.

Market Accountability

Charter school legislation in Minnesota was a ground breaking innovation, because it established the first marketplace for public education that would allow parents and students to choose the school that they wished to attend. Underlying this innovation is the notion that charter schools can be a “disruptive technology” that develops new models for education and provides a competitive incentive for the traditional public school system to improve their results as well (Christensen 2000). The legislation indicates two key purposes for charter schools that put them in direct competition with traditional public schools. Charter schools are intended to compete with traditional public schools by “improving pupil learning and student achievement” and “increasing learning opportunities for pupils” (Minnesota Statutes, 2009). For the first time,

independently operated, tuition free schools received the opportunity to offer new and innovative programs that allow teachers to teach and students to learn in new ways. These programs are now allowed the opportunity to compete for students with the traditional public schools that held a monopoly prior to legislation. This competition forms the foundation of the public education marketplace in Minnesota.

Legislation helped shape this marketplace by establishing a funding arrangement that allows charter schools to collect state and federal aid based on the number of pupils it is able to enroll and continue to serve (Minnesota Statutes, 2009). Like any typical market, then, it is characterized by consumer control and supply and demand, as parents and families are able to exercise their own choice to attend the public school they feel would best meet their child's needs. In this market, parents and families are the key market actors that hold schools accountable. If the school's programs, performance, mission or small class sizes generate enough demand amongst families, the school will thrive. If, however, the demand is not there, the school will lack the financial wherewithal to remain in operation. This is how the market can further hold schools accountable, as market accountability for charter schools occurs when "consumers choose between schools, with the bad schools presumably closing if the pupils decide to leave," (Garn and Cobb 2001). Charter school legislation has established the marketplace to expose schools to this new form of accountability, and in this way, it has engaged families in school accountability.

Performance Accountability

While bureaucratic accountability is concerned with inputs, rules and regulations, and market accountability is concerned with consumer demand, performance accountability is

concerned with the school's outcomes. Simply stated, performance accountability occurs by referencing a, "set of indicators or statistics that provides information about how well schools are performing," (Garn and Cobb 2001). Performance accountability in Minnesota charter schools is driven by the charter contract that outlines the indicators of success for which the school will be held accountable. Authorizers and boards of directors are the parties to the charter contract, and as such, they are the key actors that hold schools accountable for performance.

In addition to establishing the school's bureaucratic accountability for operating legally and with fiscal discipline, the charter contract determines the performance levels that the school agrees to meet. The authorizer and the board of directors are required to articulate several academic and nonacademic goals within the charter contract and define indicators of success. Many academic goals are related to student achievement on standardized state tests for reading, science and mathematics. These measures help schools learn how their students score compared with other students in the state. Some academic goals use other norm referenced tests to determine individual student growth. These measures help schools identify the growth that individual students achieve over time. Nonacademic goals can vary dramatically in topic from school to school, as some relate directly to the school's mission or vision. In their study, Garn and Cobb found that, "among suggested measurable nonacademic goals are indicators of presence and participation, citizenship and personal social-adjustment", (Garn and Cobb 2001). These goals are typically established by the board of directors (with input from the school leader and staff) and confirmed in the contract by the authorizer.

The school authorizer, in addition to being a party to the contract, is also statutorily obligated to outline its processes "for making decisions regarding the renewal or termination of the school's charter based on evidence that demonstrates the academic, organizational and

financial competence of the school,” (Minnesota Statutes, 2009). These processes provide the roadmap for how they will handle schools that are not performing adequately towards achieving their contractually stated goals. Authorizers have the authority to sanction schools and ultimately revoke the charter contract if schools fail to perform.

The board of directors plays a key role in holding schools accountable for performance. As a party to the charter school contract, it is ultimately accountable for achieving the levels of performance for which the school has agreed. Boards can direct the performance of the school by allocating resources through the budgeting process, by establishing policies and procedures for evaluating performance and exercising its authority to hire and fire the school leader, teachers and staff. Even though boards do not participate in the day to day operations of the school, they play a strong role in ensuring that their schools are performing adequately.

This multifaceted accountability system has led to a new definition of public schools as, “open to all who wish to attend it (i.e. without regard to race, religion, or academic ability); paid for with tax dollars (no tuition charges); and accountable for its results – indeed, for its very existence – to an authoritative public body...as well as those who enroll (and teach) in it,” (Finn et al 2000). Charter schools differ from traditional public schools, because they have emphasized the importance of market and performance accountability while continuing to recognize the importance of bureaucratic oversight and accountability. The fundamental tradeoff that charter schools agree to is greater autonomy to develop innovative programs and new ways of educating in exchange for greater accountability for results. They are free to pursue the means they think best suited to student success, but they are obligated to achieve specific and measurable results as stated in their charter contract. This tradeoff is intended to ensure that strong performing schools will generate demand for their programs and thrive. Poor performing

schools, on the other hand, will fail to generate enough of a market for their programs and will subsequently close due to a lack of student enrollment or from external authorities making the determination for them. In their study of charter school accountability, Greg Garn and Casey Cobb identified Minnesota as having a strong accountability system. The reasoning they cite is, “Using multiple forms of accountability servers to expand and strengthen an accountability system,” (Garn and Cobb 2001). While that may be true, there is evidence to suggest that the combination of bureaucratic, market and performance accountability are not effective in holding Minnesota schools accountable.

Is Charter School Accountability Effective in Minnesota?

In June 2008, the Program Evaluation Division of the Office of the Legislative Auditor (OLA) for the State of Minnesota released an evaluation report of charter school performance in Minnesota. The OLA’s researchers analyzed academic and financial data from schools, conducted interviews with school leaders and sponsor representatives and visited 14 schools around the state. Their findings assert that charter schools continue to underperform when compared with traditional public schools. The OLA report indicates that, “In 2007, a greater percentage of Minnesota charter schools failed to make ‘Adequate Yearly Progress’ and students in charter schools generally did not perform as well on standardized academic measures as students in district schools,” (OLA 2008). When several demographic factors and mobility rates are taken into consideration – on average charter schools have greater minority, special education and mobility rates – the OLA recognizes that, “differences in performance were minimal,” (OLA 2008). These results bring into question whether or not the statutory purposes of charter schools, improving student learning and increasing learning opportunities for students, are being fulfilled.

This also brings into question how the three vehicles of charter school accountability are manifest.

It is unclear how the bureaucratic authorities are performing in their accountability roles. Since 1991, 30 charter schools have been closed. That number represents more than 17 percent of the 173 schools that have opened (OLA 2008). There isn't solid data available to indicate why each of those schools was closed, but a 2003 OLA evaluation of charter school financial accountability noted that poor financial management was a contributing factor in 15 of the 16 school closures to that point (OLA 2008). Additionally, on two measures of financial performance, negative fund balance and statutory operating debt, charter schools performed at a similar level as traditional public schools between 2003 and 2007. This suggests that bureaucratic authorities, authorizers and the MDE in particular, are exercising the authority granted them to sanction and close poor performing schools in some cases.

Yet, the OLA's 2008 report suggests that, "oversight of charter schools is unclear and complex with duplication in some areas and gaps in others," (OLA 2008). Furthermore, they note that "charter school authorizers vary in the amount of oversight they provide and in their ability to provide it," (OLA 2008). In 2007, there were 53 organizations that authorized the 143 operating schools. Many of those authorizers are actively involved in their schools, and they attend board meetings, review financial reports and other materials throughout the year. Many authorizers have limited capacity to exercise their bureaucratic accountability functions. One authorizer interviewed by the OLA admitted to not having adequate resources to conduct their oversight duties. The report also indicates that the MDE has not always adequately reviewed the school evaluations that authorizers submit, and that the MDE's roles with respect to school oversight are unclearly defined in statute (OLA 2008). Boards of directors are also inadequately

trained in financial management of schools, and many directors do not attend training that traditional school board members are required to attend.

It is similarly unclear if the market accountability mechanisms are substantial enough to hold schools accountable for improving student's learning. Garn and Cobb warn us that market accountability can lead to a narrow definition of success. They argue that, "If the children were happy and the parents were satisfied, regardless of the degree and breadth of learning that took place, market accountability mechanisms would be fulfilled," (Garn and Cobb 2007). This appears to be what we are seeing in Minnesota. The OLA discovered that even though charter schools underperform traditional public schools, the share of the market served by charter schools has steadily increased. In every year from 1992 to 2007, the number of operational charter schools increased, and by the end of 2007, 143 schools were operating in Minnesota. At the end of 2007, they served more than 24,000 students, or roughly 3% of all students in the state (OLA 2008). Given the poor performance of schools cited above, this data runs counter to the argument that the market will hold poor performing schools accountable by not enrolling their children. However, Garn and Cobb have indicated that, "In reality, few market based accountability systems have been set up for public education and, consequently, support for this form of educational accountability has been ground in economic theories rather than by empirical evidence," (Garn and Cobb 2001). It may simply be too soon to tell whether or not market accountability will be effective in holding schools accountable.

In 2009, the Minnesota legislature updated the charter school law in ways meant to improve the system of accountability. The new law clarifies the MDE's role in charter school oversight. It also defines clear expectations for authorizers and created a system for MDE oversight and approval of them. While these changes are important steps forward, they are

systemic in nature, and it will take a great deal of time to learn their effects. For the most part, they are also external to the organization. The MDE and school authorizers have the authority to sanction or close schools, but they do not have decision making authority at the school site. This limits their ability to hold schools accountable for performance. As such, even these improvements do not address improvement in accountability at the organizational level.

Schools have the resources to measure performance continuously throughout the school year, rather than just at renewal or annual review time. If schools find evidence that they are not performing well in the course of the year, they can hold themselves instantly accountable by trying new tactics or employing new strategy. Charter school boards of directors are the only stakeholders in the accountability system that has decision making authority at their schools. Given this unique role in charter school accountability, boards of directors have a unique opportunity to build the capacity for improved accountability. This will require boards of directors to build their own capacity for improved governance of their schools.

Charter School Governance in Minnesota

Boards of directors play a unique role in the system of charter school accountability in Minnesota, as they are the only stakeholder that operates at the confluence of all three vehicles of accountability. Additionally, charter school boards are the only stakeholder in the accountability system that both hold schools accountable and are held accountable for performance. They are clearly a bureaucratic authority that is statutorily obligated to ensure that the school operates within the law and exercises sound fiscal and operational judgment. Unlike the MDE and authorizers who are also tasked with bureaucratic oversight as well, boards of directors are in very close proximity to the school. Oftentimes, board members are teachers from the school or

parents of enrolled students that have a direct line into the school. This proximity to the school makes boards the first line of charter school accountability.

Boards of directors also play a unique role as a conduit to the public education market. The charter school statute states that, “Staff members, teachers, and all parents or legal guardians of children enrolled in the school are the voters eligible to elect the members of the school’s board of directors,” (Minnesota Statutes 2009). In this way, charter school boards are directly accountable to the market actors that can elect new decision makers if the school fails to perform. Additionally, boards are required to have representation from a parent of a student that is enrolled, so they are actually comprised of family members that choose to send their children to the school.

Charter school boards play a substantial role in holding schools accountable for their performance. They are a party to the charter contract that establishes agreed upon levels of performance, and so they are directly accountable to the authorizer for achieving those results. Unlike authorizers, however, they have direct decision making authority at the school site. Boards solicit input from leaders and staff, but they have the final authority to establish and fund priorities through adoption of a budget. They establish policies and procedures that guide the school’s operations. Boards also have the authority to hire and fire staff if performance is subpar.

Boards of directors at these schools can use their proximity to the school, their role as a conduit to the market and their decision making authority at the school site as points of leverage to dramatically improve how schools are held accountable. They are the first line of accountability, and they have the authority to guide operations at the school site in a manner that

is not available to other stakeholders in the system. They can demand evidence of performance and immediately force action in a new direction when that performance falls short. They can render immediate accountability by hiring a new leader or teachers or by funding a new curriculum that better serves students. This role is incredibly important to holding schools accountable, but it takes strong, sophisticated boards of directors to be effective.

To be sure, the role of a charter school board member is a demanding one to fulfill. Directors must wrestle with the complications of market accountability to parents, students and staff that have unique and often irreconcilable expectations of the school. In addition, the bureaucratic accountability mandates that envelope charter schools are cumbersome and complicated. They must also handle such diverse matters as human resources, complicated financial management and student disciplinary actions at the organizational level. Much is expected of charter school boards, and resources are thin. In this endeavor, there are three major trends that emerge that are a harbinger of poor board performance. Taken together, these trends make successfully navigating the difficult relationships necessary to hold schools accountable extremely difficult. Boards exhibit a lack of systemic capacity to govern, conflicts of interest and mistaking management for governance.

Lack of systemic capacity to govern

As previously stated, charter school governance is a complicated endeavor. In addition to skills and knowledge directly related to governance, charter school board members are expected to have a working knowledge of many topics including finance, human resources, marketing, student performance, all of the state and federal statutes that govern operations and the facilities and many more. When faced with all of these responsibilities, boards sometimes fail to create

the systems necessary to ensure that they are paying attention to the things that matter most. Lacking systems of governance, however, perpetuates poor performance by the board. In “The Five Dysfunctions of Charter School Boards”, Brian Carpenter identifies “failing to develop its own capacity” as a key dysfunction of charter school boards (Carpenter 2007). In his opinion, boards of directors do not spend enough time and resources developing their own capacity to govern by developing the skills and tools necessary to focus on the important issues, namely academic and financial performance. Instead, boards spend “unbelievable amounts of time on insignificant things, or at least things that are far less significant than student achievement,” (Carpenter 2007). In my own anecdotal experience participating in hundreds of board meetings is that basic fiduciary tools such as meeting agendas, minutes, financial reports are inconsistently compiled and rarely reviewed or understood by members.

Charter school boards do not demonstrate acumen to establish disciplined policies that set the framework for what is expected of the school. Brian Carpenter explains this problem with the following example; “The board may or may not have a policy manual. If it has one, the management may or may not adhere to it. Even if management is following it, the board has no system to monitor management’s compliance,” (Carpenter 2006). Without this framework, policy work amongst boards can be reactive to suggestions from staff and other external entities such as the state and authorizer. Furthermore, it is rare that charter school boards utilize an evaluation system that effectively determines whether or not the school leadership is performing up to the expectations set by the board.

The chaotic nature of charter school governance consumes many board members and draws attention away from the development of important systems that ensure strong governance. This lack of systemic capacity reduces the likelihood that charter school boards have the tools

necessary to sort through the immense amount of detail to effectively determine whether or not schools are performing at a desirable level. This compromises their ability to hold schools accountable.

Conflicts of interest

Until charter school legislation was updated in 2009, charter school boards were subject to the “teacher majority rule”. This required more than fifty percent of board members to be teachers from the school. The OLA report concluded that “requiring a teacher majority on charter school boards creates a conflict of interest,” (OLA 2008). The law now requires only one licensed teacher to be on the board along with one parent or legal guardian of a student who is enrolled at the school. Though the magnitude may have lessened with this change, conflicts of interest remain.

From my own anecdotal experience, it is not uncommon to hear a charter school board member reference their “board member hat” and their “teacher hat” or their “parent hat” during a meeting. This refers to the lens through which they are looking when they are making decisions. Board members often play multiple interested roles in the life of the school. If they are a teacher, they are also concerned about the impact that board decisions will have on their jobs and pay. If they are a parent, they are concerned about the impact of board decisions on their own children. Effective governance requires that board members use their experiences to inform board deliberation but ultimately can act objectively for the good of the whole school. This is not always a realistic expectation. In his work *Charter School Board University*, Brian Carpenter states that, “school employees cannot be objective,” (Carpenter 2006). He continues by pointing out a particularly vexing position that many board members are put in when they, as teachers in the school, are

forced to perform the governance task of evaluating the performance of the school leader. Of this Carpenter suggests, “It is nonsense to think that a teacher can be the school head’s organizational subordinate and superior at the same time”.

This is one of numerous examples where a teacher’s job may come in conflict with their duty to govern in the best interest of the school. That a teacher could potentially be forced to make the calculus between what is best for their job versus what is best for the school is a conflict of interest that can lead to poor decisions. While these are not legal conflicts of interest, they are very real, practical conflicts of interest. Though the statute has changed, it will take a great deal of time for boards to stop relying on the service of many teachers that work in the school. And, even then, the statute still calls for teachers and parents to be part of the board. These self-interested perspectives can diminish the effectiveness of governance and threaten the board’s ability to hold the school accountable.

Mistaking management for governance.

Famed governance theorist John Carver notes that “Modern governance is not simply modern management practiced by a governing board. To be sure, the principles of management and governance are closely related. But governance is more than management writ large,” (Carver 1996). There are countless activities that occur at schools each day and countless more decisions that were made to inform those activities. The vast majority of those decisions are left to staff by necessity and best practice. Yet, it is very easy, and common, for board members to stray from their governance responsibilities to weigh in on the many decisions that affect the school each day. Board members have opinions about how staff does their jobs, what students are reading, what they are eating for lunch and what curricula the school implements. This leads

to trouble, because the board does not have the capacity to “manage the managers”. Brian Carpenter recognizes this when he says, “whenever a board performs the roles, tasks and responsibilities of management, it becomes dysfunctional,” (Carpenter 2006)

As Carpenter sees it, the proper relationship between the governing board and staff is, “The board says *what* it wants; the management determines *how* to achieve it,” (Carpenter 2006). The board, simply put, cannot possibly have the resources or the expertise to understand what happens in the school each day and the best possible decisions for improvement. When boards delve deeply into the detail of the school, they cause two key problems. First, they interfere with the staff’s ability to effectively do their job. Professionals are hired to do a job, and a meddling board undermines their credibility. Second, meddling boards undermine their own ability to establish expectations for *what* the school intends to accomplish, because they are distracted by work that the staff is already conducting. When this happens, everyone is managing and no one is performing important governance work.

Building the Capacity for Improved Charter School Governance

Charter school boards of directors face significant challenges to overcome the dysfunctions cited above and generate improved governance. This task is made more difficult by the sheer amount of tasks, activities and results that boards must oversee, yet there are a number of efforts these boards can undertake to create the clarity necessary to govern more effectively. In order to improve their ability to play their bureaucratic accountability roles, boards must find ways to organize and prioritize the numerous fiduciary oversight duties that they face. These fiduciary duties include the responsibility to, “prevent theft, waste or misuse of resources; ensure that resources are deployed effectively and efficiently to advance the organization’s mission,”

(Chait et al 2005). Systematizing fiduciary oversight can help boards to ensure that they are adequately informed about the school's performance in many key areas without draining limited time from board gatherings. There are some simple systems, such as consent agendas and board action calendars, which will help boards build better capacity in their bureaucratic accountability role.

Boards can lay the foundation for performance accountability by articulating the organization's purpose, clearly state performance goals and specific, written policies. Boards can also work within a policy development framework to effectively delineate governance from management in an effort to overcome the tendency to become distracted from the important work of governance. Boards can combat conflicts of interest by establishing policies on governance process that define how the board makes decisions and speaks as one body. Policy development can help the board improve its ability to conduct performance accountability.

Finally, boards can get serious about developing systems to evaluate performance. By implementing a framework using multiple measures, including relative, absolute, student gains and mission-specific performance, boards can develop a holistic and sophisticated system for evaluating the school's performance on multiple levels. What follows is an exploration of three key recommendations for boards to implement as they seek to build their capacity to govern more effectively and, by extension, improve the charter school accountability system in Minnesota. These recommendations are to systematize fiduciary oversight, build capacity for policy development and develop systems to evaluate performance.

In their bureaucratic accountability role, charter school boards of directors conduct many fiduciary oversight functions. Fiduciary oversight is fundamental to charter school governance. Fiduciary governance, “typically involves oversight of audits, budgets, investments, compensation, facilities, fundraising, and executive performance and enactment of policies and practices that discourage waste, prevent abuse, or promote efficiency.” (Chait et al 2005). The Minnesota Attorney General’s Office refers to fiduciary responsibility as the, “duties of care, loyalty and obedience,” (MN Attorney General 2009). Effective fiduciary governance provides the map to understanding whether or not charter schools are demonstrating fidelity to their mission, acting as effective stewards of public money and providing academic value to their students.

As previously stated, charter school boards of directors are responsible for performing a vast array of oversight functions, and doing an effective job is a challenge. These boards oversee vast amounts of public resources and a great many students, but they often lack the systemic capacity to deal with all of their fiduciary responsibilities in an organized and efficient manner. The challenge of fiduciary oversight is made even more difficult by the reality that board positions are filled by volunteers that have other responsibilities consuming their time. Additionally, boards do not spend a great deal of time together. These realities make it crucial for boards to spend their limited time together working on the most important tasks.

There are several fiduciary tools that are fundamental to effective oversight, and they must be used consistently and regularly. Financial reports help boards understand and monitor how the school is using the financial resources of the school in pursuit of the school’s mission. Meeting minutes are the formal record of board proceedings and decisions. Reports from the School Leader can offer important updates on activities occurring at the school, and committee

reports allow the board to verify that committees are working towards their charge. In addition to these reports, charter schools are accountable for meeting many externally imposed deadlines each year. The MDE, authorizers and even the legislature have established key dates and deadlines related to annual reports, audits, student counts and other key activities that occur in conjunction with prescribed deadlines each year. In the absence of an organized system to proactively ensure compliance, these deadlines can be easily missed in the chaos of normal school operations. While these reports and deadlines are important and offer useful information, they can dominate board meetings in ways that pull boards away from other significant responsibilities. This is reflective of what Brian Carpenter terms board's tendency to, "spend unbelievable amounts of time on insignificant things, or at least things that are far less significant than student achievement," (Carpenter 2007). There are, however, simple governance systems that can help organize this information into a manner in which boards can ensure compliance.

In order to build their capacity for bureaucratic accountability through effective fiduciary oversight, charter school boards must develop systems to organize and prioritize. A *consent agenda system*, for example, is a powerful tool to ensure that boards have the resources of time and data necessary for effective fiduciary oversight. When used properly, "consent agendas facilitate board focus on the things that matter most," (BoardSource 2006). Effective use of a consent agenda system requires sufficient preparation to allow board members the opportunity to review key reports, including meeting minutes, financial, committee and School Leader reports prior to board meetings. If, throughout this review, board members identify key questions or issues that deserve further review, those questions can be brought to the board's attention. If there are not significant questions or issues that surface in board members' reviews, then the board need not spend their limited time reviewing these documents during the meeting. This is a

very efficient means of ensuring that boards are able to conduct their fiduciary obligations, while preserving time at board meetings to explore other priorities.

Boards of can also play a key role in assuring that their schools are accountable to the many external deadlines for which they are obligated. According to Board Source, a leading organization on effective nonprofit governance, establishing a *board action calendar system* can, “help the board stay on track and ensure that all of its legal, financial, and other tasks get accomplished in a timely manner,” (Board Source 2009). Effectively implementing a board action calendar system requires the board to proactively identify the key deadlines and obligations that the school must accomplish in any given year. Once identified, key dates and deadlines can be arranged in a calendar format that prompts the board each month to monitor and verify that the school is meeting relevant deadlines. This is a simple way to ensure that the school is held accountable for meeting key fiduciary obligations throughout the year, and again, this preserves the board’s time to focus on other key priorities.

Investing in the development of systems of fiduciary oversight, such as consent agendas and a board action calendar, will help boards of directors organize and prioritize the vast amounts of information that they are obligated to oversee. These systems give boards the tools to proactively determine whether or not their schools are demonstrating fidelity to their mission, acting as effective stewards of public money and providing academic value to their students. This effective fiduciary oversight is a key step towards improving charter school boards of directors’ ability to play their bureaucratic accountability role.

Building Capacity for Policy Development

Policies are common to organizational life. In fact, John Carver notes that, “policies permeate and dominate all aspects of organizational life,” (Carver 2006). As such, policies can be an enormously effective tool for holding schools accountable. Clear policies set the school’s direction and establish expectations for behavior. Policies form a documented account of what an organization wishes to accomplish and help to define how a school should conduct itself. Charter school boards can lay the basic groundwork for better performance accountability by playing a greater role in establishing written policies. By taking the time to draft and deliberate board policies to govern the school, boards create a clear picture of what is crucial to the school’s success and how to measure that success. Policies are also a very effective tool for ensuring that boards focus only on governance, thus overcoming the temptation of diving too deep into management details. John Carver contends that, “By attending to policy content, a board can gain far more control over what matters and be at the less risk of getting lost in the details,” (Carver 2006). Charter school boards of directors can also use policy development to clarify governance roles in order to overcome the conflicts of interest that emerge when board members play competing roles. John Carver’s Policy Governance model provides a theoretical framework for charter school boards of directors to begin building their capacity for policy development.

John Carver’s Policy Governance model of policy development insists that ends determinations is the pivotal duty of governance (Carver 1996). Ends policies fundamentally reflect the purpose of the organization and the results that the organization is designed to accomplish. Carver indicates that ends policies are established when, “the board defines which consumer results are to be achieved, for whom and at what cost,” (Carver 2006). Like other organizations, ends policies are manifest in a charter school’s vision. For charter schools, ends policies are also manifest in the charter contract in partnership with the school’s authorizer. This

charter contract forms the foundation for performance accountability by articulating key academic and nonacademic results that the school is accountable for. Boards that are effective at developing, reviewing and updating these ends policies will be able to clearly articulate their purpose and desired results. Boards, then, can focus their attention towards holding schools accountable for their performance against these standards.

In addition to determining organizational ends, the Policy Governance model also identifies policies that can help boards overcome the tendency of mistaking management for governance. For Carver, these are termed board-management delegation policies through which, “the board clarifies the manner in which it delegates authority to staff as well as how it evaluates staff performance,” (Carver 1996). It is important that boards strike the right balance between delegating and monitoring. Carver recognizes the pitfalls of finding this balance when he says, “The board cheats the organization’s potential achievement if it constrains too much; it risks cheating standards of acceptable conduct if it constrains too little,” (Carver 2006). Board-management delegation policies help boards learn to define desired results and delegate the means to obtaining those results to staff. At the same time, these policies help to define how the board will monitor management’s progress towards these ends. In these ways, board-management delegation policies help boards of directors maintain focus on governing without wandering unnecessarily into the management of the organization.

The Policy Governance model also urges boards to invest in developing policies related to governance processes. For Carver, this means that, “the board determines its philosophy, its accountability and the specifics of its own job,” (Carver 1996). Governance process policies establish the expectations for how the board members interact with each other, how the board will make decisions and how board members are to be accountable for those decisions.

Combined with board-management delegation policies, which offer clarification between governance and management, governance process policies help boards begin to overcome the conflicts of interest that arise when members have other competing interests that compromises their ability to govern effectively.

Policy development can be difficult work. In order to initiate this process, charter school boards of directors should utilize an effective strategic planning process to develop key policies, particularly ends policies. Strategic planning calls on boards to play an active role in creating goals and priorities and then allocating the organization's resources accordingly. When initiating a strategic planning process, it is important that charter school boards engage their school's broad range of stakeholders to help determine the most effective strategic direction for the school. Engaging teachers, staff, local businesses, parents and board members can help ensure that the school's, "people, policies, programs, budgets, incentives, and facilities must be harmonized with the plan. Each part reinforces the other," (Chait et al 2005).

John Bryson's Strategy Change Cycle is a popular strategic planning framework that has proven effective for countless nonprofit boards of directors, and it provides a process for strategic thinking and planning that suggests several key ways boards can engage in policymaking (Bryson 2004). The foundation for this model is Bryson's definition of strategic planning as, "a disciplined effort to produce fundamental decisions and actions that shape and guide what an organization (or other entity) is, what it does, and why it does it". Rather than operate in a linear fashion that results in a static strategic plan, the Strategy Change Cycle is designed to, "organize participation, create ideas for strategic interventions, build a winning coalition, and implement strategies" (Bryson 2004). Boards that are effective in policymaking will achieve this vision.

The Strategy Change Cycle rests on ten steps that organizations can engage in to conduct a strategic planning process. These steps are listed in Figure 1 below. It is important that boards go through all of the steps, but the order of them is not rigid or linear. While each of the ten steps can have a positive impact on the board's strategic planning process, there are two steps in this process that can have an enormous impact on policy development.

Assessing the external and internal environments to identify strengths, weaknesses, opportunities and challenges can help boards identify key topics that inform policymaking. This step requires boards to engage stakeholders to identify the key trends, policies and other environmental factors, both internally and externally, that have an effect on the school's success. Boards can accomplish this by, "monitoring a variety of forces and trends, including the political, economic, social, educational, technological, and physical environmental," (Bryson 2004). When boards effectively assess how they are performing on key indicators and how the environment around them can have an impact on the school's success, the policies that are necessary and the ends that the organization ought to pursue become clearer. Bryson acknowledges this when he says, "Being clear about what *is* can be an extraordinarily helpful prelude to discerning *what ought to be*," (Bryson 2004).

Boards should also engage stakeholders in identifying the strategic issues facing the school. Bryson defines strategic issues as, "fundamental policy questions or critical challenges affecting the organization's mandates, mission and values, product or service level mix, clients, users or payers, cost, financing, structure, process and management," (Bryson 2004). During the process of assessing key strengths, weaknesses, opportunities and challenges, the board will yield a great deal of information. They must sort through this information to determine the key strategic issues that it can pursue. Bryson asserts that this will involve conflict that may,

“involve ends (what), means (how or how much), philosophy (why), location (where), timing (when), and the entities advantaged or disadvantaged by different ways of resolving the issue (who),” (Bryson 2004). Working through this conflict and identifying the key strategic issues can help boards to set meaningful policy.

Figure 1 – The Ten Steps of the Strategy Change Cycle

- 1) Initiate and agree on a strategic planning process.
- 2) Identify organizational mandates and mission.
- 3) Clarify organizational mission and values.
- 4) Assess the external and internal environments to identify strengths, weaknesses, opportunities and challenges.
- 5) Identify the strategic issues facing the organization.
- 6) Formulate strategies to manage the issues.
- 7) Review and adopt the strategies or a strategic plan.
- 8) Establish an effective organizational vision.
- 9) Develop an effective implementation process.
- 10) Reassess the strategies and the strategic planning process.

Strategic Planning for Public and Nonprofit Organizations (Bryson 2004)

Building capacity for policy development can help charter school boards of directors overcome many of the self-imposed obstacles to effective governance. Establishing ends policies forms the foundation for performance accountability by clearly stating the expectations for results to be achieved. Board-management delegation policies can help forge a healthy relationship between governance and management, and in so doing, ensure that boards do not get lost in the considerable management activities of the school. Using this framework for policy development can help charter school boards of directors ensure that they are focusing their limited time and energy on the important accountability functions that they are obligated to perform. In order to begin the process of policy development, boards should use an effective strategic planning process to inform those policies. The Strategy Change Cycle is an important

model that can assist boards. Once boards have a mature policy development system, they can gradually spend more and more time on meaningful policy decisions and begin to phase out the consent agenda and board action calendar tools discussed previously.

Develop Systems to Evaluate Performance

Charter school boards of directors can improve their capacity to fulfill their performance accountability role by developing systems to evaluate performance in key areas. In *The Seven Outs: Strategic Planning Made Easy for Charter Schools*, Brian Carpenter identifies a framework of performance evaluation that includes four types of performance measures. Carpenter indicates that, “four measures are required because no single category is capable of capturing the entire range of things the board needs to consider in evaluating school performance,” (Carpenter 2008). The framework insists that boards should monitor *relative performance* of the school to determine how the school is performing in relation to other schools or students across the state. *Absolute performance* is a strong indicator of how the school is performing against standard criteria at a given point in time. Measuring *student gains* over time can help determine whether or not individual students are learning while at the school. Boards can also evaluate performance on *mission-specific outcomes* that are unique, but important to the school. When boards combine these performance measures together, they will obtain a more holistic view of how the school is performing, and as such, improve the board’s ability to hold schools accountable for performance.

According to Carpenter, evaluating a school’s *relative performance* against a predetermined comparison group, “creates a reference point by which the school can compare itself,” (Carpenter 2008). Relative performance measures are important to boards, because they

allow them to understand how their school is performing on key achievement measures in comparison to schools that they compete with for students and/or prestige. The comparison group could include schools in the area, all public schools in the state, all charter schools or another group that the board deems important. Carpenter insists that it's the board's role to "figure out where it wants the school's performance to be relative to other schools," (Carpenter 2008). Once they have determined an adequate performance goal (perhaps through the Policy Governance process), they should rank order their school on important measures like test scores, attendance and other measures of student achievement that the board has indicated as valuable in its performance outcomes in the charter contract.

Absolute performance is another category of measurement that can help boards of directors better evaluate how their school is performing. Evaluating absolute performance differs from relative performance, because absolute performance measures school performance against norm referenced tests and standard criteria. Carpenter indicates that, "these tests normally consist of thresholds in which the student's performance is gauged against the test criteria itself," (Carpenter 2008). The most common measures of absolute performance for Minnesota charter schools are the Minnesota Comprehensive Assessments and the Basic Skills Tests, which are required by the state at predetermined intervals in a student's education. In addition to these state tests, schools can also measure their absolute performance against the Adequate Yearly Progress standards in the federal No Child Left Behind Act. Measures of absolute performance can provide the board with useful information about how their students are performing against a standard measure at a given point in time.

While measures of relative and absolute performance give boards an indication of school performance in the aggregate and for external comparison, measures of *student gains* can

illustrate how individual students are growing over time. This is a strong measure of the value that the school is providing for its children throughout the school year. Unlike relative and absolute performance measures, measures of student gains illustrate the change in performance of a single student from one point in time to another. According to Carpenter, “This means that each student has a starting point and a statistically projected finish line. Gains testing is valuable precisely because the finish line is compared with the starting line,” (Carpenter 2008). The Northwest Educational Assessments (NWEA) product is common to Minnesota charter schools, and it offers several measures of student gains throughout the year. Measuring student gains gives boards of directors additional information to perform a holistic evaluation of a school’s performance.

Finally, Carpenter suggests that boards ought to evaluate school performance against *mission-specific outcomes*. By evaluating performance against mission-specific outcomes, boards of directors recognize that, “students can enjoy any number of the benefits of education without those benefits necessarily lending themselves to quantitative measurement,” (Carpenter 2006). Minnesota charter schools differ from each other in their core missions or purpose, and oftentimes schools build in mission-specific outcomes into the charter contract. It is important to measure progress towards these outcomes just like any other quantitative measures. Carpenter offers the following examples of mission-specific outcomes: “Graduates will possess key skills used by successful entrepreneurs”, and “Graduates will be literate in the classics,” (Carpenter 2008). Evaluations of mission-specific outcomes are likely to be expressed qualitatively, and they give boards of directors one more set of measures to evaluate school performance.

Charter school boards of directors can build a holistic, effective system of evaluating school performance if they build the system around the multiple types of performance found in

Carpenter's framework. Evaluating relative performance will offer strong indicators about how the school is performing in relation to other schools that the school competes with for students. Measures of absolute performance give a snapshot of the school's performance against standard criteria at a given point in time. Student gains measures are very important, as they indicate how effective the school is helping its students to grow and learn throughout the year. And, mission-specific measures are important indicators of how the school is performing in relation to their unique school goals. This system of evaluating performance is sophisticated and will greatly improve charter school boards of directors' ability to fulfill its performance accountability role.

Conclusion

Minnesota was the first state to legislate charter schools into existence. One of the key statutory purposes of charter schools is to improve pupil learning and student achievement (Minnesota Statutes 2009). Through legislation and practice, Minnesota has developed a complex system of accountability which combines bureaucratic, market and performance vehicles to hold schools accountable. Despite this multifaceted system of accountability, the Minnesota Office of the Legislative Auditor has discovered that charter schools are underperforming traditional public schools on several measures (OLA 2008). Even in the face of these disappointing results, charter schools continue to grow in popularity and serve a significant percentage of Minnesota's students. This suggests that the charter school accountability system lacks the capacity to do an effective job as it's currently constituted.

Charter school boards of directors are the only stakeholder that operates at the confluence of all three vehicles of accountability, and as such, they are in a unique position to strengthen the charter school accountability system in Minnesota. However, this paper has demonstrated that these boards are often ineffective due to lack of systemic capacity to govern, a susceptibility to

conflicts of interest, and the tendency to mistake management for governance. This paper has also demonstrated that systematizing fiduciary oversight, building capacity for policy development and developing systems to evaluate performance can help boards overcome their dysfunctions and improve their ability to hold schools accountable.

There is no research that demonstrates that better governance or a stronger accountability system will necessarily lead to improved academic performance by charter schools. Therefore, there is no guarantee that building board governance capacity will lead to the fulfillment of the key statutory purposes of charter schools. It is, however, logical to expect that stronger, better functioning organizations are more likely to produce better performance. As such, increased capacity for effective charter school governance could indeed contribute to better performance.

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