

Charter School Task Force

Report to the Utah State Board of Education

December 6, 2019

Executive Summary

The Charter School Task Force (task force) was established by the Utah State Board of Education (Board or USBE) for the purpose of addressing improvements to charter school accounting standards, operations, and finances.

As part of its work, the task force reviewed provisions in Utah Code, Board Administrative Rules, concept and purpose statements and articles regarding use of accounting standards promulgated by the Financial Accounting Standards Board (FASB) and the Government Accounting Standards Board (GASB), and received a report from an outside consultant on: 1) how many states require charter schools to use FASB vs. GASB accounting standards; and 2) what entity structure other states use for charter schools (e.g. private nonprofit corporation, private for-profit corporation, governmental nonprofit corporation, or governmental entity).

The task force met nine times beginning September 30th and ending on December 2, 2019 and was comprised of the following:

- Utah State Board of Education Board Members: Chair Mark Huntsman, Laura Belnap, and Cindy Davis
- Legislators: Senator Dan McCay, Senator Kathleen Riebe, Representative Karen Kwan, and Representative Jefferson Moss
- State Charter School Board (SCSB) Members: Chair Kristin Elinkowski, Vice-Chair DeLaina Tonks, and Cindy Phillips
- State Auditor's Office: State Auditor John Dougall and Jeremy Walker
- State Treasurer's Office: State Treasurer David Damschen, Emily Barton, and Kirt Slaugh
- Charter School Stakeholders: Justin Riggs, Charter School Director, Stephanie Archibald, Charter School Business Manager; Carol Hirschi, Charter School Board Member; Dave Strait, Charter School teacher
- AAGs: Michelle Beus, Bryan Quesenberry, and David Jones
- USBE staff: Angie Stallings, Scott Jones, Debbie Davis, Patty Norman, Michael Clark, Jacob Houtrouw, Jennifer Lambert, Ben Rasmussen, Stewart Okobia, Cammy Wilcox, and Kathy Helgesen
- Other invited guests: Royce VanTassell, Utah Association of Public Charter Schools and Terry Shoemaker, Utah School Boards Association/Utah School Superintendents Association.

Recommendations

As a result of the task force's deliberations, the task force proposes the following recommendations:

Require Charter Schools to Use Governmental Accounting Standards Board (GASB) Accounting Standards

The task force had extensive discussions of the differences between the Financial Accounting Standards Board (FASB) accounting standards and the Governmental Accounting Standards Board (GASB) accounting standards. The task force reviewed the white paper "Why Governmental Accounting and Financial Reporting Is – and Should be – Different" by the Governmental Accounting Standards Board (March, 2006):

(https://www.gasb.org/jsp/GASB/Document_C/DocumentPage&cid=1176169371273)

and received information from task force members and staff on the advantages and disadvantages of both FASB and GASB. The task force also received a report from an outside legal consultant on how many states require charter schools to use FASB vs. GASB accounting standards.

The task force recommends requiring all LEAs, including charter schools, to use GASB standards after a future date to allow the Legislature, Board, and authorizers to provide funding, training and support to offset the potential transition costs related to changing from FASB to GASB. The task force anticipates charter schools will need an appropriation to cover the cost of new accounting programs and staff training. The task force also recognized that the transition from FASB to GASB may need to be phased-in with pilot schools starting first and then requiring all schools to use GASB at a later date.

Charter School Entity Structure Remain as Private Nonprofit Entities with Statutory Changes and Clarifications

The task force considered whether the current statutory structure for charter schools, requiring them to be organized and managed under Utah Code Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, is the best structure. As part of discussion, the task force received a report from an outside legal consultant on which entity structures other states use for charter schools (e.g. private nonprofit corporation, private for-profit corporation, governmental nonprofit corporation, or governmental

entity) and conducted a review of the advantages and disadvantages of each of the entity structure requirements.

The task force recommends that charter schools remain as nonprofit 501(c)(3) entities with statutory or administrative rule changes, including:

1. Providing statutory clarification that if there's a conflict between the laws governing the school as an LEA and laws governing the nonprofit 501(c)(3) operating the school, the laws and standards that govern the school as an LEA take precedence; and
2. Codifying the requirement that an LEA may only spend restricted funds for their restricted purpose and may not be used for any other purpose, including for cash flow purposes.

That the Board Continue a Discussion of Governance, Oversight, and Monitoring of Charter Schools

The task force discussed the overlapping authority and roles of the Board and the SCSB in governing, oversight, and monitoring charter schools. The task force considered a number of proposals to resolve the overlap or provide more clarity, but the task force ran out of time and did not reach consensus on a proposal or recommendations for changes to statute or administrative rule.

The task force recommends the Board continue the discussion of charter school governance, oversight and monitoring, including the roles of both the Board and the SCSB in those areas.

Additional Consensus Statements

In addition to the recommendations above, the task force supports the following:

- (1) Providing that a new charter school begin as a provisional charter for 3-5 years. An authorizer may then allow the charter school to become "evergreen" after that time at the discretion of the authorizer. The first pre-operational year counts as year 1.
- (2) Providing an authorizer the authority and funding for the authorizer to appoint a neutral receiver in the event of a school closure or the forced termination of a school.
- (3) Providing an authorizer and the State Board of Education (USBE) the ability to request a subpoena from the state auditor to request financial, governance, or other records held by a school authorized by the authorizer or any entity with which they are contracting services.
- (4) Providing an authorizer and USBE the ability to request a subpoena from the state auditor to request financial records from entities affiliated with a charter

school authorized by the authorizer if the charter receives a notice of concern or is placed on warning or probation.

- (5) Providing an authorizer the authority to remove and reconstitute a charter school's local board of directors – and have that action remain in place for up to a full year at the authorizer's discretion. (SCSB Legislative Request)
- (6) Providing an authorizer the authority to replace a charter school's executive director or principal who may not be removed by a local board for a period of up to one year, at the discretion of the authorizer. (SCSB Legislative Request)
- (7) Amending Utah Code Subsection 53G-5-303(4) to allow an authorizer to modify a charter school agreement without the mutual agreement described in Subsection (4)(a) to require a 501(c)(3) nonprofit entity that operated a charter school to follow specific actions related to the inventory, liquidation, or distribution of assets and liabilities when a school is in the process of closure (this authority builds on existing authorizer authority, but existing statute is vague and without the ability to enforce). (SCSB Legislative Request)
- (8) Clarifying that funds appropriated to the SCSB (approx. \$400,000) for training do not have to be provided to an outside provider (through an RFP). The funds may also be used internally by SCSB staff to provide training.

Potential Motion

That the Board thank the Charter School Task Force for its work and report, accept the Task Force recommendations, and direct Board leadership to facilitate action related to the recommendations, including assigning potential action items to standing committees.