Representative Garcia,

Thank you for allowing the opportunity to provide an analysis of the most recent draft of charter school accountability bill. We want to frame this analysis into the three following categories:

- First, it is our view that there are several provisions in the bill that create misrepresentations, which present a distorted picture of charter schools and their history in Colorado.

- Second, there are sections where the bill purports to add "accountability" for charter schools without recognizing that it is replicating measures that are already in place and in many cases have been in place for over a decade.

- Third, we have identified policies that could be beneficial if these policies were applied to all public education providers and were not only targeting charter schools.

Misrepresentations/Distortions

- P. 4, ll 4-8. The very first paragraph of the legislative declaration is misleading. The claim that the original charter school bill provided for "few" schools is simply false. The original bill anticipated 50 schools. 1993 Colo. Sess. Law, Ch. 227, codified at C.R.S. § 22-30.5- 109(2)(a) (1993). This original limitation on the number of schools was time-limited, applying only until 1997. The original timetable, in other words, was to allow up to 50 schools to start within the first four years of operation, or just over 12 schools per year, with that limit expiring in 1997. The Act has been in effect for 30 years. Moving at the rate of the "original intent," Colorado could today have 360 charter schools. It has far fewer (260).

  The number of 50 schools was then expanded to 60. 1996 Colo. Sess. Law, Ch. 159, codified at C.R.S. § 22-30.5-109(2)(a) (1996). "Few" would ordinarily connote perhaps 5 or 6 schools, not ten times those numbers. And omitting that the original cap was scheduled to expire is also misleading. It simply does not conform with objective history.

  Beyond that, at no time did the number of charter schools in operation meet or exceed this statutory cap. During 1993-1995, fewer than 50 charter schools opened. For the entire period in which 60 was the number (up through 2003), fewer than 60 total opened. The cap — which consistently anticipated that more charter schools might open than actually did open — served no visible purpose during the entire first decade

of the Act. Put another way, the original intent was to allow a certain number of schools per year to open that the legislature thought might be reasonable in the context of the entire system. Charter schools actually opened more slowly than anticipated.

The formal cap, having never done anything, was abolished in 2004. We have now had no formal cap since 2004 — a period of 20 years. We continue to open schools at a net average rate short of the roughly 12 per year originally anticipated.

Failure to mention that the original "cap" never imposed an actual limit on school opening and failing to mention that that the formal change to no numerical limitation took place 20 years ago (implying that this was a recent change) is also deceptive.

Additionally, the original bill was not limited to "at-risk" children. This paragraph makes it seem that every original charter school was supposed to be an "at-risk" school of some sort. This is squarely false. When the "cap" was 50, the anticipated number of schools the legislature wanted to see making some special effort with respect to at-risk students was 13 (26%), and when the cap rose to 60 it was 16 (26.6%). Representing "the" purpose of legislation as being something that the legislature pegged at perhaps a quarter of its purpose is misleading and inaccurate.

It is also inaccurate to suggest that Colorado charter schools have never met the legislative purpose of serving a meaningful share of at-risk students. Colorado charter schools serve a disproportionately high number of "high risk" students (a category narrower and more severe than just "at-risk"; see C.R.S. § 22-7-604.5) as well as higher numbers of ELLs and students of color. Thus, the original mention of at-risk children as *one* focus of charter attention was spot on and remains a robust feature of the charter movement.

But fundamentally, the representation that the original purpose of this Act was to open perhaps half-a-dozen schools just for at-risk kids, which has been subsequently altered into something unanticipated, is wholly inaccurate.

- P. 4, ll. 9-11. This paragraph is also false. Accountability oversight of charter schools, by law, has been more rigorous than oversight of other public schools. For example, no charter school in this state has ever been left open, with the track record of low growth and performance as has been the case at numerous school districts across the state. Charter schools have been, repeatedly and in different places, closed for performance that would not "run out the clock" on general accountability measures. The state board has never had to use its independent accountability authority to close or reorganize a charter school because districts and CSI are ahead of that curve and close or replace such programs before similarly severe action is taken against a conventional public school.

- P. 4, l. 13 - p. 5. 9. This paragraph is misleading. Many of the subparagraphs suggest that charter schools are not subject to existing forms of regulation (see below for more). Others use coded language to enable hostile districts, who occasionally unfortunately exist, to justify acting on ideological resentment to charter schools without any need for a basis regarding the performance, behavior, or purpose of an individual school.

- P. 5, l. 13 to p. 6, l. 4; p. 7, l. 8 – p. 8, l. 3; p 8, l. 17 – p. 9, l. 3; p. 12, l. 13 – p.14, l. 9; p. 28, l. 10 – p. 30, l. 16; & p. 57 ll. 10-26. These provisions reflect a serious misunderstanding of charter school waiver practice. These would, among other things, abolish "automatic" waivers. "Automatic" waivers have a long history of being requested and routinely granted to every or virtually every charter school. In some cases, they are "delegation" waivers. In other instances, they reflect the employment separation between charter schools, the district, and the institute. This separation is one cornerstone of the ability of a charter school to manage its workforce so as to pursue its unique mission with integrity. Charter schools are subject to the identical provision of general employment law (Title 8) that applies to school districts.

  In short, the purpose of these waivers was very much part of the "original intent" of the Charter Schools Act, and they are essential to charter schools having the degree of independence necessary to perform their public policy function as a "semi-independent" sector within public education.

  As these waivers were requested year after year, by school after school, they clogged up the state board calendar and caused similar needless repetition at the district, CSI, and school levels. Thus, the original "automatic waiver" provision eliminated what had become repetitive, routinized, and needless paperwork. This was a successful paperwork reduction and efficiency measure that would be reversed under the provisions of this proposed legislation. Transparency concerns related to this point that have been expressed are addressed separately below.

- P. 5, ll. 5-18. This calls for only parent-based if not parent-dominated, charter school boards. It reflects a misunderstanding of the proper role of charter school independence in relation to governance.

  The most obvious example is that several alternative educational campus (AEC) charter schools serve high-risk students, especially in high school. Many of these focus on youth who are, in many cases, disconnected from their parents (some, for example, being unaccompanied immigrant youth; others being homeless; still others having highly fraught relationships with their parents). AEC charters that have tried to recruit parent-based boards have often been unsuccessful in doing so because too

many parents are disconnected. The remaining parents often work multiple jobs, may be reluctant to serve on public boards for immigration or other reasons, or are otherwise unable or unwilling to make and sustain the substantial commitment involved in effective board service.

Beyond the AEC example, many charter boards seek board members to support the "capacity" of the board to govern the school effectively. Individuals with prior substantial public or non-profit board service, individuals with expertise in education, expertise in accounting and finance, expertise in law, expertise in special education, a proven history of grass-roots fundraising, higher education or vocational education experience, and so on, may be sought. Sometimes, such individuals can be found in a parent body. Sometimes they cannot.

Other charters also serve distinct geographic communities and seek to have representation of well-recognized local community leadership (this is particularly the case in many minority neighborhoods). Often, these community leaders are not parents.

In short, this provision would handcuff schools in multiple ways in trying to have high-quality boards framed around fully legitimate considerations.

- P. 6, l. 19 – p. 7, l. 7; p. 8. ll. 4-16; p. 32, l1 – p. 56, l. 11. These provisions apply the uniform teacher evaluation system to charter schools, eliminating one of the most common waivers that carry some robust replacement plan requirements (see below for more). This waiver has been sought by charter schools from the day the evaluation system came into law, partly because that system was designed for more conventional schools and does not consider how test-based accountability translates into some less common educational environments.

  Montessori schools, for example, have a strong interest in preserving and reflecting the integrity of the Montessori method in a public school environment. Such schools are, of course, subject to standard accountability measures. However, it is legitimate for Montessori schools to put a greater weight on their assessment of the integrity of their teaching methods, as this is part of their *long-term* strategy for sustaining high-quality instruction that yields good test results for students. A school with such a strategy remains fully accountable --- it will be measured against test scores. However, the school is pursuing a thoughtful formula for success, which involves assuring the integrity and intentionality of its defined approach to instruction at the classroom level.

  Also consider language immersion schools. It is appropriate to factor in state standardized English, Math, etc., tests in evaluating teachers. It would make enormous sense for these schools to evaluate teachers' success in imparting the target

language to their students. An immersion school that promises to teach students Chinese may get excellent scores on exams given in English, but without effective support for learning Chinese, it is failing a core purpose of the school. Teacher evaluations that consider the mission of making students fluent in Chinese, as essential to the genuine success of our hypothetical school are entirely omitted from the state system.

Similar observations could be made about public Waldorf charter schools, Expeditionary Learning charter schools, and many others.

There is nothing illegitimate about these considerations and no good reason to subject an intentionally non-standardized sector of public education to nothing but standardized teacher evaluation. Charter schools remain accountable for hitting the standard marks. However, they should also remain able to pursue their unique goals and purposes and shape their evaluation systems to support *those* goals.

- P. 9, l. 4 – p. 10, l. 12. This is a purely punitive and wasteful measure to substitute districts charging market rent levels to charter schools instead of actual district costs for any facilities a charter school occupies. The current use of a cost basis allows districts to recover the expenses incurred by allowing a charter school to use an otherwise vacant or underused district facility. Substitution of rent turns districts into for-profit landlords, who can then routinely charge higher amounts for unused facilities --- in some cases far above actual costs.

  We fear that this section of the bill would create a perverse public policy incentive in which a district attempts to profit at the expense of educational expenditures for its students — to take dollars from charter schools that might otherwise be used for teacher salaries or school supplies and instead earn a profit off the backs of those students. That approach is, in turn, self-defeating because when "rent" is predictably higher than actual cost, charter schools will often be able to find less expensive space (in predictably less desirable facilities) on the private market. This will mean district facilities remain put aside at the expense of the public, charter school students are in inferior facilities, and neither the district nor the school receives the benefit available under the current system.

- P. 14 ll. 20-24; p. 19, ll. 9-14; & p. 30 l. 23 – p. 31, l. 5. This provision repeats a mistake in the original Charter Schools Act that was promptly repealed. The original act required a charter school to identify the "need" for the charter school. C.R.S. § 22-30.5-106(1)(d)(1993). This invariably led to early charter applications either launching into a critique of the district's approach to education or the district reading any aspirational statement about "needs" as a thinly disguised set of insults. Because the "need" provision prompted almost nothing other than misunderstanding

=, it was repealed,with support from charter proponents and districts, three years after the act passed.

- P. 15, l. 3 – p. 19, l 2; p. 17, l. 3. This is an attempt to dismantle the state board appeals process entirely. Essentially, this is a license for any local board, after any election cycle, to eliminate as many charter schools as possible.

  The state board appeals process has been remarkably efficient, compared to procedures used in other jurisdictions on similar issues, and even-handed. This would destroy a process that has worked well, deny many ill-considered charter proposals, approve many proposals that have resulted in valuable educational opportunities for children, and bring balance and a substantial measure of civility to the *local* discussion of charter school issues.

- P. 17, l. 4 – p.18, l 9. This creates a new appeal, which can be filed by any person (e.g., any proponent of this bill) *against* a local board because it *agreed* to approve a charter school. The exact language is that the state board can find a charter school that would "thwart the demonstrated general will of community members." p. 17, ll. 21-22. So, if a group of white parents objects to a school that teaches Spanish, this would "thwart the general will." This is not a hypothetical example. Some years ago, a charter application for a language immersion school in Denver was given a negative review by the Denver DAC, led by its white parents, because parents on that board opposed teaching students Spanish, Chinese, and French. One major point of charter schools is to allow people who may be part of an educational *minority* to start a school, whether that is Deaf students (Rocky Mountain Deaf School) or parents who believe in Expeditionary Learning (the Odyssey School and others), or parents who believe that bilingualism is an educational asset (our language-immersion and dual-language schools). Appealing to the concept of "general will" is an appeal supporting the suppression of those who think differently on any educational subject.

- P. 18, ll. 10-22 & p. 21, ll. 17-21. This provision would enable any district with a drop in pupil enrollment, no matter how insignificant, or which merely "project[s]" such a drop over a three-year period to categorically refuse to consider charter applications. Districts and the state board are already authorized to consider what is in the "best interests of pupils, school district, or community." See, e.g., C.R.S. § 22-30.5-108(3)(a). If a district is in genuine retrenchment, nothing prevents it from factoring that into its decision-making on charter schools. And there is nothing to prevent an argument to the state board or a state board's decision that a period of serious retrenchment is not one in which it is in the "best interest" of the "school district" to approve a new school.

  The second branch of this provision would allow any district with an enrollment decline to simply revoke the approval of a charter school. Again, there is no effective

appeal. So, again, the school that serves the interest of a minority is sacrificed at the whim of the majority.

- P. 18, l. 23 – p. p. 19, l. 2; o, 19, l. 18 - p. 20, l. 18. This provision undermines the timeline for charter renewal. Charter renewals are submitted by December 1, with a decision required by February 1. C.R.S. § 22-30.5-110(1.5). This two-month period includes a winter break that typically consumes at least two, if not three weeks, in district schedules. This provision would inset two fifteen-day periods during which a district could insist that an application was "incomplete," followed by a district accountability review, which must be 15 days before a January board meeting. It also allows the district to extend these time periods. Simply, a 60-day period for review will not accommodate this unnecessary process that is replete with opportunities for legalistic delay strategies.

Redundancies

Waiver Transparency

P. 10, l. 13 – p. 11, l. 25; p. 30, ll. 17-20.

The provision is written as if all information concerning charter school waivers is secret or hidden. In fact, every charter school waiver in Colorado is available from the Colorado Department of Education on the web at a very easily accessed and user-friendly site. This site contains the following information:

- A list of all automatic waivers, with a brief description of each statute.
- A list of prohibited waivers, briefly describing each statute.
- A link to an alphabetical list of all charter schools, with:
  - a list of each statute waived for each school;
  - a separate, introductory list of each such statute, a brief description of that statute, and a count of the number of charter schools that have sought and received that particular waiver.

See https://www.cde.state.co.us/cdechart/waivers. Notably, no comparable online list of waivers obtained by districts is found when one searches for "Colorado school district waivers." Compare https://www.cde.state.co.us/communications/statutorywaiverrequests-guidance with the webpage for charter waivers.

All this notwithstanding, we include a potential suggestion for further waiver transparency below.

Financial Transparency: All charter schools and districts are subject to the Financial Transparency Act, which requires each district and school to disclose all budget (income and expenditure) information online for free public access. See C.R.S. § 22-44-301, et seq. In addition, tax-exempt 501c3 charter schools (unlike districts) must disclose the link to their federal form 990 (which uses a different method of accounting to disclose all financial information). Districts are listed in the state law as required to report a 990, but school districts as IRS-recognized "governmental units" of the state are not required to file form 990. See, e.g., https://www.irs.gov/pub/irs-tege/rp1995-48.pdf. Indeed, certain "affiliates" of governmental units are also not required to file 990s. This means districts can maintain wholly owned subsidiaries for which neither the Transparency Act nor the IRS requires publicly accessible filing.

If a charter school has a tax-exempt related entity dedicated to raising money (as a few do), that entity, too is required to file a 990. Thus, the current situation is this:

- School districts have transparency websites but not 990 filings;
- School district foundations (common) may file 990s, though districts are able to organize "affiliates" for which no 990 is required;
- Charter schools have transparency filings AND 990 filings AND their transparency site must link to their 990;
- Charter school 501c3 fundraising affiliates (uncommon) have 990 filings.

Thus, the current situation is that charter schools provide *more* transparency to the public on their finances than school districts do. Districts are under less scrutiny at the federal level, do not need to link to their "foundation" 990s (when those exist), and can create affiliated entities with no publicly disclosed filing.

- P. 11, l. 26 through p. 12, l. 12. This would ban charter schools when an applicant "receives or will receive funding from, or is or will be affiliated with, a religious institution." The Colorado Charter Schools Act has required, from 1993 onward, that Colorado charter schools be "nonsectarian [and] nonreligious." C.R.S. § 22-30.5-104(1). That instruction is unequivocal and has no exception or qualification attached to it. The further clarification that Colorado charter schools are unequivocal public entities run by sworn public officers reinforces that such government-operated schools cannot be "religious." See C.R.S. § 22-30.5-104.9 (2023).

- P. 14, ll. 12-19; p. 30, l. 23 – p. 31, l. 5. This provision requires a charter application (a document that currently tends to run to about 700 – 1,000 pages), to include in a new provision (described in proposed C.R.S. §§ 22-30.5-106(1)(e.5) & 22-30.5-509(1) (e.5)) the services to be provided to students in special education and English Language Learners. C.R.S. §§ 22-30.5-106(1)(q) & 22-30.5-509(1)(q) already requires:

> "A plan for serving students with special needs, including budget and staff requirements, which plan shall include identifying and meeting the learning needs of at-risk students, students with disabilities, gifted and talented students, and English language learners."

The current provision is more comprehensive and requires more description than the proposed addition, on the exact same topic.

- P. 21, l 24 – p. 22, l. 13. This provides that any member of the governing board of a charter school and the school leader are not allowed to engage in "any activity" or "any financial interest" that creates or could create a "conflict of interest."

  For most of the history of the charter school movement in Colorado, it has been clear that the conflict-of-interest rules in C.R.S. § 7-128-501 apply to charter schools. With the passage of C.R.S. § 22-30.5-104.9, it became unmistakably clear that charter schools were also covered by the same conflict of interest rules that apply to school districts. See C.R.S. §§ 24-18-101, et seq. Note that these rules, because they apply to school districts and charter schools among many other local public entities under Title 24, cannot be waived by the state board of education. In other words, the conflict-of-interest rules that govern city council members, county commissioners, and school district boards of education apply on exactly the same terms to charter schools (who are also covered by analogous rules — adding some nuances — under C.R.S. § 7-128-501). Notably, the consequences for violations of these rules can include voiding an action of a board that allowed a person with a conflict of interest to vote, and can also include personal consequences, up to and including criminal prosecution. Those, not school closures, are the proper consequences.

- P. 22, l. 16 – p. 24, l. 15; & p. 25, ll. 9-22. These provisions attempt to revise charter school funding to make adequate funding for charter schools into more of a back-of-the-bus type of afterthought. Charter schools are already clearly "charged" a number of district costs under the current statute, rendering these newly proposed provisions unnecessary and redundant.

  First, there is a well-defined, well-understood provision requiring charter schools to share exactly equally, on a per-student basis, in specific central district costs that cannot be neatly divided and parceled out to different district activities. Perhaps the most intuitively obvious of these costs are those of the board of education itself and the district superintendent's office, which are apportioned to charter schools on a per-pupil basis as "central administrative overhead costs" or "CAO." C.R.S. § 22-30.5-112(2)(a)(II) & (a.5). This amount, because it is precisely defined, is reconciled each year. In large districts, the amount is typically in the 1-2 percent range. In smaller

districts, it is typically a little higher. The amount is capped at 5%, except for very small districts.

On top of CAO, there is a separate allowance for districts to charge "direct costs" for any other cost the district incurs in supporting the charter school. C.R.S. § 22-30.5-112(2)(b.5). This provision allows districts to make choices about what administrative services it will extend, in what fashion and to what degree, to support charter schools, and to then charge accordingly with the arrangement documented in the negotiated contract. Districts that prefer providing more services get to charge for those services. This can include anything from HR support to legal support, to certain liability insurance, certain transportation costs, food services, etc. Districts have ample control over this topic and while charter schools can negotiate aspects of these arrangements, there are often independent reasons that support the district in imposing or withholding a particular service. As these arrangements vary greatly, confusing all "administrative costs" with "CAO" is very ill-advised.

Third, Colorado has had, from its early days, a provision on the allocation of special education costs. This presumes that a district and charter school follow a "full insurance" model, in which the district provides **all** special education services at the charter school and charges back to the charter school the full net cost of the district's special education program on a per student (not per special education student) basis. See C.R.S. § 22-30.5-112(2)(a.8). This is commonly referred to as the "full insurance model." In essence, the district requires the charter school to pay the full district cost of special education as if it were spread equally across the PPR for each regular education student in the district and the district provides all the services. This provision, however, is not a straitjacket; it is a default. A district and a charter school are permitted to mutually agree upon an alternative arrangement. And many have.

These three items — carefully defined CAO; flexible provision and charges for other administrative costs; and a "full insurance" statutory default for special education services — are fairly settled aspects of charter school finance. But this bill, on p. 23, ll. 14-18, conflates the "actual amount" of CAO with some idea of non-reimbursed special education services from a completely different part of the statute. This is a proposal for needless alteration of statutes that already protect district finances.

- P. 56, ll. 12-22. This provision would alter the confidentiality provisions of C.R.S. § 22-9-109. While not redundant to existing law, this is redundant to a more targeted bill pending this session. See SB 24-132.

Potential Idea

We noted several times above that we had ideas on waiver transparency. We believe the CDE website has made an excellent start in allowing those who want to dig into waiver-by-waiver information to do so.

What some may say it does not do is provide an adequate overview of what waivers really are and what they mean in the charter context. It also fails to provide a parallel set of information on district waivers, for purposes of meaningful comparison. As such, we would be open to a situation where this legislation was refocused to have the sole purpose of requiring the CDE website to be revised to include:

- A short description of the most commonly granted non-automatic waivers with an easy-to-understand explanation of why this waiver exists and what it typically means in the charter context (purpose and effect)

- A link to a parallel district waiver webpage, and a requirement that that webpage be revised to include the same information currently disclosed on the charter school waiver webpage (that is, the list of districts with current waivers, and what statutes, specifically, those districts have waived).

We would also not oppose a requirement that each charter school website link to the CDE waiver website, so parents and others statewide could have access to an informative and meaningful introduction to waiver practice.