

CHARTER SCHOOLS: A SIGNIFICANT PRECEDENT IN PUBLIC EDUCATION

SANDRA VERGARI*

□Charter schools.□ Mere utterance of the term in education circles is almost certain to evoke passionate opinions on this hotly debated reform initiative. A charter school is a publicly funded, nonsectarian school of choice that operates free from many of the regulations under which traditional public schools operate. The charter is negotiated between the school's organizers and a public authorizer.¹ The organizers manage the school and the authorizer monitors compliance with the charter and applicable state and local rules. The charters contain provisions pertaining to matters such as curriculum, performance measures, governance, and operational and financial plans. While controversial, the charter school concept has attracted bipartisan support at the federal, state, and local levels of government in the United States.² Funding for the

* Assistant Professor, Department of Educational Administration and Policy Studies, University at Albany, State University of New York.

1. The organizers may be teachers, parents, or others from the public or private sectors. The authorizers are public entities and may be local school boards, state school boards, universities, municipalities, or statutorily created charter school authorizer boards.

2. Both former President Clinton and President George W. Bush have promoted the charter school concept in public speeches and in support for federal funding. President William J. Clinton, State of the Union Address (Feb. 4, 1997) (on file with The NYU Annual Survey of American Law, New York University School of Law) (□We should also make it possible for more parents and teachers to start charter schools, schools that set and meet the highest standards, and exist only as long as they do. Our plan will help America to create 3,000 of these charter schools by the next century□ nearly seven times as there are [sic] in the country today□ so that parents will have even more choices in sending their children to the best schools.□; President George W. Bush, Remarks by the President on Parental Empowerment on Education, (Apr. 12, 2001) (transcript available at <http://www.whitehouse.gov/news/releases/2001/04/20010412-3.html>) (□I'm an enthusiastic supporter of charter schools. Charter schools are beginning to change our understanding of public education, no question about it.□. Former Governor Roy Romer of Colorado and Governor George E. Pataki of New York have been champions of charter school legislation. Eric Hirsch, Colorado Charter Schools: Becoming an Enduring Feature of the Reform Landscape, in *THE CHARTER SCHOOL LANDSCAPE* 93, 94 (Sandra Vergari ed., 2002); Sandra Vergari, New York: Over 100 Charter Applications in Year One, in *THE CHARTER SCHOOL LANDSCAPE* 230, 231 (Sandra Vergari ed., 2002). Mayor Jerry Brown of Oakland, Mayor Bart Peterson of Indianapolis, and former Mayor Rudy Giuliani of New York have advocated charter school programs.

federal Public Charter Schools Program (PCSP) rose from \$6 million in 1995 to \$190 million in 2001.³ PCSP funds are provided to states and individual charter schools for charter school planning, implementation, and information dissemination.

In the discussion below, I review the charter school concept in theory and in practice and analyze several key facets of charter school reform that are the subject of debate in the educational policy and research communities. In addition to the central issue of accountability, I examine questions pertaining to innovation, equity, public education for profit, and the ripple effects of charter schools. I also propose several policy and research recommendations. Having studied the charter school movement for nearly ten years, my overall assessment is that it is not merely a fad, but rather a significant turning point in United States education policy. The presence of charter schools is contributing to new ways of thinking about public education.

I. THE CHARTER SCHOOL: FROM CONCEPTION TO TODAY

The nation's first charter school law was adopted in Minnesota in 1991, and the first charter school opened there in 1992.⁴ Eleven years later, thirty-nine states and the District of Columbia have charter school laws and all but three of these jurisdictions have charter schools in operation.⁵ In January 2003, nearly 2700 charter schools were in operation across the U.S. with more than 680,000 students

CITY OF INDIANAPOLIS, CHARTER SCHOOLS IN INDIANAPOLIS, at <http://www.indygov.org/mayor/charter/> (last visited Jun. 30, 2003) (Mayor Bart Peterson became one of Indiana's most vocal proponents of charter schools . . .); Daniel Weintraub, Jerry Brown Battles the Unions He Once Nurtured, SACRAMENTO BEE, May 13, 2003, available at <http://www.sacbee.com/content/politics/columns/weintraub/story/6657402p-7609264c.html> (last visited Jun. 30, 2003) (Brown was in Sacramento last week lobbying unsuccessfully for the cause of charter schools . . .); Giuliani Says New York Safer, Fewer People on Welfare, CNN, Jan. 14, 2000, available at <http://www.cnn.com/2000/ALLPOLITICS/stories/01/14/giuliani.01/> (last visited Jun. 30, 2003) (Giuliani advocated developing more charter schools and privatizing others . . .).

3. SRI INT'L, A DECADE OF PUBLIC CHARTER SCHOOLS: EVALUATION OF THE PUBLIC CHARTER SCHOOLS PROGRAM: 2000-2001 EVALUATION REPORT 1-2 (2002).

4. MINN. STAT. §120.064 (Supp. 1993) (renumbered in 1998 as MINN. STAT. §124D.10). For additional information regarding the City Academy High School, the nation's inaugural charter school, see <http://www.cityacademy.org>.

5. The three states without charter schools are New Hampshire (N.H. REV. STAT. ANN. §194-B (1995)), Iowa (IOWA CODE ANN. §256F.1 (West 2002)), and Tennessee (TENN. CODE ANN. §49-13 (2002)). Ctr. for Educ. Reform, Charter

enrolled.⁶ More than half of all charter schools are located in five states: Arizona (464), California (428), Florida (227), Texas (221), and Michigan (196).⁷

Policymaker endorsement of the charter school concept marks a turning point in the history of public education policy. The charter school concept questions longstanding tenets about what a public school is supposed to look like and how it is supposed to operate. While their numbers remain small, especially when compared to the 91,000 public schools in the United States, charter schools represent a challenge to the monopoly on public schooling long enjoyed by the traditional educational establishment—comprising teachers unions, school district administrators, local school boards, and state-level education bureaus.⁸

The forty charter school laws across the nation vary in content. Charter school advocates characterize the laws as “strong” or “weak” according to whether the statutes promote the proliferation of charter schools. Some charter school laws permit only school districts to authorize charter schools.⁹ Stronger laws permit additional types of charter school authorizers: the authorizers are public entities such as local school boards; state school boards; universities; the City of Milwaukee, Wisconsin; the Mayor of Indianapolis, Indiana; and boards in Arizona and the District of Columbia created specifically for authorizing and overseeing charter schools.¹⁰ Charter school laws typically permit the creation of new charter schools as well as the conversion of traditional public schools to charter status.

School Highlights and Statistics (2003), available at <http://www.edreform.com/pubs/chglance.htm> (last visited May 26, 2003).

6. Ctr. for Educ. Reform, Charter School Highlights and Statistics (2003), available at <http://www.edreform.com/pubs/chglance.htm> (last visited May 26, 2003).

7. *Id.*

8. LEE M. HOFFMAN, NAT'L CTR. FOR EDUC. STATISTICS, NCES 2002-356, OVERVIEW OF PUBLIC ELEMENTARY AND SECONDARY SCHOOLS AND DISTRICTS: SCHOOL YEAR 2000-2001 2, 5 (2002).

9. Some of these laws allow appeals of rejected charter school applications to the state board of education or another appellate entity. See Sandra Vergari, Charter Schools: A Primer on the Issues, *EDUC. & URBAN SOC.* 31, 4:389-405; see also CTR. FOR EDUC. REFORM, CHARTER SCHOOL LAWS ACROSS THE STATES: RANKING SCORECARD AND LEGISLATIVE PROFILES vii-iii (2003).

10. MICH. COMP. LAWS ANN. §380.502(4) (West 1997) (Michigan refers to charter schools as “public school academies”); N.Y. EDUC. LAW §2851(3) (McKinney 2001); WIS. STAT. ANN. §118.40(2r)(b) (West 2002); IND. CODE ANN. §20-5.5-3-14 (West 2002); ARIZ. REV. STAT. ANN. §15.182 (West 1994); D.C. CODE ANN. §38-1702.01 (2001).

Eleven states permit private schools to convert to charter status.¹¹ Illinois, Michigan, and New York are among the states with limits on the number of charter schools permitted, while Arizona and Wisconsin are among several states without such caps. According to the Center for Education Reform, a school choice advocacy organization that tracks charter school legislation, twenty of the forty charter school laws are strong and the other twenty are weak.¹²

Charter schools are sometimes characterized erroneously as synonymous with school vouchers. Proposals for school voucher policies typically embody provision of public funds that families can apply toward tuition at private schools.¹³ As a school choice reform, the charter school concept shares some features with the voucher concept. Such features include freedom from local school district control, greater decision-making autonomy than traditional public schools, public funding, and consumer choice. There are also significant differences between the two reform initiatives. In contrast to school voucher plans, charter schools may not charge tuition, engage in religious instruction, or make admissions decisions on the basis of academic or athletic abilities. Moreover, charter schools face the possibility of closure by their public authorizers if they fail to meet their own performance standards.¹⁴ Some charter school advocates favor vouchers while other charter supporters oppose them. Meanwhile, many voucher advocates view charter schools primarily as an interim policy step on the way toward the achievement of a full voucher system. The charter school reform is useful to voucher advocates as a means by which to —often up—parents, the general public, and policymakers by getting them used to the idea of school choice as an education policy.¹⁵ Thus, voucher advocates have a stake in the success of charter schools: were policymakers to decide that the charter school concept does not work well in practice, it is likely that voucher advocates would face greater political challenges in advancing their own school choice proposals.

11. RPP INT'L, U.S. DEPT. OF EDUC., *THE STATE OF CHARTER SCHOOLS 2000: FOURTH YEAR REPORT OF THE NATIONAL STUDY ON CHARTER SCHOOLS 2* (2000).

12. CTR. FOR EDUC. REFORM, *supra* note 9, at vii–viii.

13. See generally TERRY M. MOE, *THE BROOKINGS INST., SCHOOLS, VOUCHERS, AND THE AMERICAN PUBLIC* (2001); JOHN F. WITTE, *THE MARKET APPROACH TO EDUCATION: AN ANALYSIS OF AMERICA'S FIRST VOUCHER PROGRAM* (2000).

14. Bryan C. Hassel, *The Case for Charter Schools*, in *LEARNING FROM SCHOOL CHOICE 35–37* (Paul E. Peterson & Bryan C. Hassel eds., 1998).

15. See JOHN KINGDON, *AGENDAS, ALTERNATIVES, AND PUBLIC POLICIES*, 127–31 (2d ed. 1995).

II. THE ONGOING POLICY DEBATE SURROUNDING CHARTER SCHOOLS

Heated political battles over the charter school concept have continued even after the adoption of charter school laws. Both opponents and supporters of charter schools have pressed state lawmakers to keep the reform on the policy agenda. Opponents have characterized the reform as a "distraction" and have tried to prevent the charter school concept from gaining legitimacy. Charter schools present not only a policy challenge to the authority of the traditional education establishment but also a financial challenge. Students who leave a traditional public school to attend a charter school are followed by per pupil funding that would otherwise go to the traditional public school. Opponents have sought legislative moratoriums on the creation of new charter schools and financial aid for districts that have lost dollars to charter schools.¹⁶

Charter school supporters have pushed for statutory provisions that are favorable to the charter school movement such as the removal of caps on the number of charter schools permitted, deregulation, and funding for buildings. Amendments to charter school laws have been relatively common. Amendments won by charter supporters include those that have raised or eliminated caps on the number of charter schools permitted (as in Massachusetts and Minnesota), and those that have expanded the types of public entities that can authorize charter schools (as in California and Wisconsin).¹⁷ Amendments won by charter school opponents and by those concerned about adequate oversight of charter schools have occurred in Michigan (where caps were placed on the number of charter schools that can be authorized by universities) and in Texas (where the education commissioner was given greater authority to oversee charter schools and to close failing schools).¹⁸

16. See Alan Richard, *States' Work on Charters Still Unfolding*, *EDUC. WEEK*, Mar. 20, 2002, at 1, 18; Caroline Hendrie, *Charter Laws are Targeted in Fiscal Tilts*, *EDUC. WEEK*, Mar. 5, 2003, at 1, 26-27.

17. *MASS. GEN. LAWS ANN.* ch. 71, §89(i) (West 2002) (In 2000, Massachusetts raised its cap from fifty to one hundred twenty.); *MINN. STAT.* §124D.10 Subd. 4 (1998); *CAL. EDUC. CODE* §77605.6 (West 2002); *WIS. STAT. ANN.* §118.40(2r)(b) (West 2002).

18. *MICH. COMP. LAWS ANN.* §380.502(2)(d) (West 1997); *TEX. EDUC. CODE ANN.* §7.055 (Vernon 2003); see also *TEX. EDUC. CODE ANN.* §12.115 (Vernon 2003).

A. Accountability

Central to the charter school concept is an agreement with the public: in return for relief from rules and regulations, charter schools agree to be held to a high standard of accountability. If a charter school does not deliver the results it promises and fails to meet the terms of its charter, it faces not only the exodus of its student "customers," and the public funds they bring to the school, but also the revocation of its charter to operate. The charter school authorizer is the public's agent for ensuring that the public interest is protected and that the public investment in the school reaps an adequate return.¹⁹ In some cases, authorizers may not fulfill their roles adequately due to lack of capacity, lack of will, or political considerations.²⁰ Other authorizers, such as the State Board of Education in Massachusetts and the Chicago school district, have been identified as "professional approvers" and "competent overseers."²¹

A charter school application is supposed to undergo rigorous review by the authorizer and the authorizer should not approve a charter application unless it reflects strong potential for operational success. The authorizer is then obligated to oversee the school in a manner sufficient to identify any serious shortcomings and require corrective action from the school. The imperative to maintain an ample supply of "customers" and high-quality teachers who have chosen a school is supposed to ensure that charter schools are responsive to the voices of students, parents, and teachers. Thus, charter schools face incentives to address problems promptly, preventing serious deficiencies that could lead to school closure.

By October 2002, 194 charter schools (6.7% of the total number of charter schools ever opened) had closed.²² An additional seventy-seven charter schools were consolidated into their local

19. See Sandra Vergari, *The Regulatory Styles of Statewide Charter School Authorizers: Arizona, Massachusetts, and Michigan*, *EDUC. ADMIN. Q.*, 730(7)57 (2000); Sandra Vergari, *Charter School Authorizers: Public Agents for Holding Charter Schools Accountable*, *EDUC. & URBAN SOC'Y* 129(1)40 (2001).

20. See generally PAUL T. HILL ET AL., *CHARTER SCHOOLS AND ACCOUNTABILITY IN PUBLIC EDUCATION* (2002); Frederick M. Hess, *Whaddya Mean You Want to Close My School? The Politics of Regulatory Accountability in Charter Schooling*, *EDUC. & URBAN SOC'Y* 141(1)56 (2001); and Bryan C. Hassel & Sandra Vergari, *Charter-Granting Agencies: The Challenges of Oversight in a Deregulated System*, *EDUC. & URBAN SOC'Y* 406(1)28 (1999).

21. See PAUL T. HILL ET AL., *CHARTER SCHOOLS AND ACCOUNTABILITY IN PUBLIC EDUCATION* 59 (2002).

22. *CTR. FOR EDUC. REFORM, CHARTER SCHOOL CLOSURES: THE OPPORTUNITY FOR ACCOUNTABILITY 2* (2002).

school districts for a range of reasons.²³ These numbers mark an increase in the rate of closure when compared to the closure data from two years earlier. As of the end of 2000, eighty-six charter schools had closed due to failure.²⁴ An additional twenty-six charter schools were consolidated into their local school districts for a range of reasons.²⁵

1. Interpreting Accountability Issues in Charter School Closure

When a charter school closes, does this signal a victory for the charter school movement, demonstrating genuine accountability? Or does a charter school closure suggest something else about accountability for the use of public funds?

The rate of charter school closures has been compared favorably with the rate of small business closures.²⁶ However, inherent in their status as schools, the products of charter schools and the services they provide differ significantly from the products and services provided by most other public and private entities. Schools are charged with the extraordinary responsibility of educating and meeting the needs of children. According to a prominent national charter school advocacy group: "The closure of charter schools that fail to do what they are supposed to do proves that the charter school concept is succeeding."²⁷ An alternative interpretation of the aforementioned closure data is that the rate of charter school failures is indicative of weaknesses in the charter school system that may pose a threat to the long-term viability of the charter school movement.

Charter school closures may harm the reputation of the authorizers that approved the schools and were responsible for monitoring their performance. Most importantly, a charter school closure may be stressful for students, and a closure means that the public has received a negative return on its financial investment in the school. Thus, rather than being applauded, the necessary closure of a failing charter school should be lamented and analyzed by authorizers and charter school advocates with the aim of preventing

23. *Id.*

24. Ctr. for Educ. Reform, *New Information About Charter Schools Released Showing only 4 Percent Failure Rate*, at <http://www.edreform.com/press/2001/010116.htm> (last visited May 26, 2003).

25. *Id.*

26. See, e.g., CHESTER E. FINN JR. ET AL., *CHARTER SCHOOLS IN ACTION: RE-NEWING PUBLIC EDUCATION* 137 (2000).

27. CTR. FOR EDUC. REFORM, *CHARTER SCHOOL CLOSURES: THE OPPORTUNITY FOR ACCOUNTABILITY*, 1 (2002).

additional closures in the future. Authorizers and charter advocates need to identify whether a given charter school failure is the result of weaknesses in the charter application approval process, weaknesses in authorizer oversight of the school, lack of technical assistance to the school, or other factors. Charter school founders, authorizers, and policymakers can then use this knowledge to develop measures that can ultimately reduce the number of cases in which school closure is in order.

The critical role of authorizers in the charter school system is beginning to receive greater attention in the education policy community.²⁸ One of the challenges confronting charter school policymakers is determining the appropriate level of regulatory relief for charter schools. The aim should be to permit enough flexibility for charter schools to be innovative and successful while also ensuring ample public oversight. Many charter school laws provide very little guidance as to precisely how charter school authorizers are to fulfill their responsibilities, leaving such details to be sorted out during policy implementation. Charter school authorizers in states such as Arizona and Texas, where charter school applications were approved without first being subjected to careful scrutiny, have learned that the absence of rigorous application review can lead to negative consequences in the form of failing charter schools that must be closed.²⁹

2. Demonstrating Accountability through Student Achievement

a. Statistical indicators of student performance

The extant student achievement data for charter schools indicates a mixed record of performance.³⁰ Some charter schools are doing an admirable job while others are struggling. Researchers seeking to assess the academic performance of charter schools face numerous methodological challenges pertaining to sample size and attrition, selection bias, control groups, state testing schedules, and

28. See generally, Caroline Hendrie, *New Scrutiny for Sponsors of Charters*, *EDUC. WEEK*, Nov. 20 2002, at 1, 18; Vergari, *supra* note 19.

29. Regarding the experience in Texas, see Hendrie, *supra* note 28, at 18 (quoting the director of the Charter Friends National Network, "What we're seeing now is a series of actions . . . to weed out charters that, in some cases, shouldn't have been granted in the first place or that suffered earlier from lax oversight.").

30. GARY MIRON & CHRISTOPHER NELSON, *NAT'L CTR. FOR THE STUDY OF PRIVATIZATION IN EDUC.*, OCCASIONAL PAPER NO. 41, *STUDENT ACADEMIC ACHIEVEMENT IN CHARTER SCHOOLS: WHAT WE KNOW AND WHY WE KNOW SO LITTLE* 1 (2001); BRIAN P. GILL ET AL., *RHETORIC VERSUS REALITY: WHAT WE KNOW AND WHAT WE NEED TO KNOW ABOUT VOUCHERS AND CHARTER SCHOOLS* 95 (2001). See generally *THE CHARTER SCHOOL LANDSCAPE*, *supra* note 2.

analytical time frame. These factors, combined with the youth of charter schools in many states, account partly for gaps in our knowledge about the overall academic performance of charter schools.

In an analysis of test scores for 376 charter schools in ten states from 1999 to 2001, Brookings Institution researchers found that the charter school test scores were below those of comparable traditional public schools.³¹ The study did not gather evidence as to why the charter school scores were lower.³² In speculating on the reasons for the lagging charter school scores, the study suggests two possible explanations: (a) that charter schools simply may not be performing well, and (b) that charter schools attract large portions of low-achieving students and may be helping these students to make significant gains each year even though their achievement levels remain below average.³³

The Brookings Institution study also found that the test scores for new charter schools (those in their first or second year of operation) were below those of older charter schools.³⁴ The study does not provide evidence as to why this is the case but its author suggests that the lower scores at new schools may result in part from start-up challenges, and in part from the enrollment of large percentages of low-achieving students.³⁵ First, the chances that a new school's start-up challenges will affect student performance can be reduced by careful planning and consultation with other charter schools and technical advisers prior to the opening of the school, and by systematic scrutiny of the school's implementation plans by the authorizer prior to charter approval. Second, it is quite possible that test scores obtained during a student's first year at a charter school are more reflective of the student's previous educational experiences than of the instruction received at the charter school. In New York State, for example, fourth grade English tests are administered during the middle of the academic year.³⁶ Thus, a charter school in its first year has instructed the students for only a few months prior to the fourth grade tests.

31. THE BROWN CTR. ON EDUC. POLICY, THE BROOKINGS INST., THE 2002 BROWN CENTER REPORT ON AMERICAN EDUCATION: HOW WELL ARE AMERICAN STUDENTS LEARNING? 32 (2002).

32. *Id.*

33. *Id.*

34. *Id.* at 33.

35. *Id.* at 34.

36. Letter from Gerald E. DeMauro to District Superintendents, Superintendents of Public and Nonpublic Schools, Principals of Public Schools, and Principals of Nonpublic Schools (July 2002) at <http://www.emsc.nysed.gov/ciai/testing/inform/eleminsche03.pdf>.

Solutions to some of the gaps in student achievement data may be close at hand. New student testing requirements under the No Child Left Behind Act of 2001, should help to facilitate the gathering of systematic data on the academic performance of charter schools.³⁷ Given the federal government's continued financial support of the charter school reform, and its new emphasis on research-based education policy, it would be appropriate for the U.S. Department of Education to conduct or commission systematic, reliable studies of the academic performance of charter schools in the near future.

b. Standards of student judgment

Some charter advocates have complained that charter schools are being judged unfairly according to a different performance standard from traditional public schools. At the outset of the charter school movement, however, advocates asserted that charter schools were to be held to a higher standard of performance than traditional public schools due to the accountability standards imposed on charter schools.³⁸ Indeed, this objective was the basis for the public's agreement to provide regulatory relief and funding to charter schools. As such, the long-term reputation and viability of the charter school movement hinge upon whether its participants demonstrate genuine accountability for performance.

Over the past decade, a great deal of time, energy, and private and public funding have been devoted to the development of charter school accountability systems. Researchers, practitioners, consultants, and policymakers at state and national conferences, and in numerous reports and books have discussed at length the major facets of the issue. Much about how to charter school accountability has now been figured out. What remains uncertain is whether charter schools and their authorizers possess the capacity and will to ensure a sound system of charter school accountability. The National Association of Charter School Authorizers, founded in 2001, has the potential to facilitate improvements in charter school authorizer practices nationwide via information dissemination and technical assistance.

37. No Child Left Behind Act of 2001, 20 U.S.C. 6301 et seq. (2002).

38. See JOE NATHAN, CHARTER SCHOOLS, CREATING HOPE AND OPPORTUNITY FOR AMERICAN EDUCATION 1 (1996). Joe Nathan is one of the founders of the charter school movement in the United States.

3. Improving the System of Charter School Accountability

A system of charter school accountability that emphasizes transparency is highly recommended. Such an approach would involve at least annual release of reports on the operations, performance, and schedule of forthcoming board meetings of each charter school. The information would be easily accessible to the public, perhaps free of charge on the Internet.³⁹ Political concerns about protecting the vulnerable charter school movement have likely precluded the adoption of such a system. If and when charter school advocates decide to implement a system of accountability via transparency, the traditional public school system is likely to face significant pressure to publicize similar user-friendly data. Such a course of events would be a major contribution of the charter school movement to the overarching public education system.

Undoubtedly, student achievement must be the foremost objective in education.⁴⁰ Additional types of charter school outcomes that merit evaluation include student attendance rates and disciplinary incidents; post-school outcomes such as university attendance and civic participation; social outcomes pertaining to equity and social cohesion; and institutional outcomes such as professional development for teachers.⁴¹

B. Innovation

In addition to accountability, innovation is a hallmark of the charter school concept. By definition, an innovation is something new.⁴² Opponents of charter schooling frequently charge that these schools have not proven to be innovative.⁴² Yet conclusions about the extent to which charter schools are innovative may fail to consider context. Something new (e.g., experiential learning, multi-age classrooms, elementary school teachers who teach one academic subject rather than many) in a given school district, state, or historical context may not be new in another context. The charter school reform does embody a number of innovative organizational features, including the provision of consumer choice, genuine site-based management (which permits other innovative measures such

39. See, e.g., FINN, *supra* note 26.

40. Debates over definitions and measurements of student achievement are beyond the scope of this article.

41. See generally BENJAMIN LEVIN, *REFORMING EDUCATION: FROM ORIGINS TO OUTCOMES* (2001).

42. AMERICAN FEDERATION OF TEACHERS, *DO CHARTER SCHOOLS MEASURE UP? THE CHARTER SCHOOL EXPERIMENT AFTER 10 YEARS* 6 (2002); Thomas Good & Jennifer S. Braden, *The Charter School Zeitgeist*, *EDUC. WEEK*, Mar. 15, 2000, at 45, 48.

as merit pay and an extended school year), and an accountability process that includes both market dynamics and a public oversight body. Charter schools provide numerous laboratories for assessing a variety of innovations in school governance, administration, and pedagogy. Given that the subjects most affected are children whose educational development is at stake, it is prudent to limit the number of such experiments until policymakers can be confident that the outcomes are favorable for children.

C. Equity

Charter schools may enhance equity by providing low-income families with opportunities for school choice previously available only to families able to afford private school tuition or the expense of residing in neighborhoods with high-performing public schools. At the outset of the charter school movement, charter opponents expressed concerns that charter schools would enroll the most advantaged, academically talented students. Now that it is apparent that charter schools are serving large percentages of disadvantaged minority students at risk of academic failure, some analysts have raised concerns that charter schools are promoting social and racial stratification in public education.⁴³ As noted by analysts such as Joseph Viteritti and Lance Fusarelli, however, many minority students already attend public schools in segregated settings.⁴⁴ Moreover, the neighborhood school [is] a vital component of community life, one that is cherished by families who have good schools in their communities.⁴⁵ Why should lower-income students be denied the opportunity to attend good schools near their homes? Viteritti suggests that most minority parents, if required to make a choice, would place a higher priority on having their children attend

43. According to the National Center for Education Statistics, charter schools enroll higher percentages of Black and Hispanic students and lower percentages of White students than traditional public schools. NAT'L CTR. FOR EDUC. STATISTICS, NCEES 2002-025, *THE CONDITION OF EDUCATION 2002*, Table 30-2 (2002). On concerns about social stratification, see GARY MIRON & CHRISTOPHER NELSON, *WHAT'S PUBLIC ABOUT CHARTER SCHOOLS? LESSONS LEARNED ABOUT CHOICE AND ACCOUNTABILITY* 93-95 (2002). See generally *WHERE CHARTER SCHOOL POLICY FAILS: THE PROBLEMS OF ACCOUNTABILITY AND EQUITY* (Amy Stuart Wells ed., 2002); JEFFREY R. HENIG, *RETHINKING SCHOOL CHOICE: LIMITS OF THE MARKET METAPHOR* (1994).

44. JOSEPH P. VITERITTI, *CHOOSING EQUALITY: SCHOOL CHOICE, THE CONSTITUTION, AND CIVIL SOCIETY* 211-12 (1999); Lance Fusarelli, *Texas: Charter Schools and the Struggle for Equity*, in *THE CHARTER SCHOOL LANDSCAPE*, supra note 2, at 175, 187.

45. See VITERITTI, supra note 44, at 212.

schools that are academically rigorous than having them sit in a classroom that is racially integrated.⁴⁶

Other equity concerns pertain to the condition of some charter school facilities, the relative lack of veteran teachers in charter schools, special education, and funding issues. Controversies over equity issues in charter schooling and public schooling overall are certain to continue. When it comes to equity (or any other criterion by which charter schools might be evaluated), charter schools are not a panacea, and most advocates do not claim such. Evaluations of charter schooling should consider the extent to which charter schools lead to enhanced equity in public education. While imperfect, charter schools may be better than other existing educational options in many cases.

D. Public Education for Profit

Education management companies (EMCs) are engaged in all facets of charter school operations, including instruction.⁴⁷ It is estimated that about fifteen percent of charter schools nationwide are operated by an EMC, and there is considerable variation across the states. EMC-operated charter schools are a common phenomenon in Arizona, Michigan, and New York where favorable statutory provisions pertaining to charter school funding, existence of charter authorizers other than school districts, and relief from union requirements make these states appealing to EMCs.⁴⁸ Due to relatively large enrollments in charter schools operated by EMCs, an estimated twenty-five percent of all charter school students are educated in schools operated by EMCs.⁴⁹

Some stakeholders are philosophically opposed to having private entities profit from educating children and are concerned about potential negative consequences of the profit motive in edu-

46. *Id.* at 213.

47. While the deregulatory context of many charter schools is appealing to EMCs, EMCs are appealing to charter school founders who lack sufficient resources or expertise to single-handedly manage all facets of the operation of a public school. Some schools contract with EMCs to manage all facets of charter school operations while other schools contract for particular services.

48. See Frederick M. Hess & Robert Maranto, *Letting a Thousand Flowers (and Weeds) Bloom: The Charter Story in Arizona*, in *THE CHARTER SCHOOL LANDSCAPE*, supra note 2, at 54, 60; Michael Mintrom, *Michigan's Charter School Movement: The Politics of Policy Design*, in *THE CHARTER SCHOOL LANDSCAPE*, supra note 2, at 74, 88-90; Vergari, supra note 2, at 234-235.

49. Bryan C. Hassel, *Friendly Competition*, *EDUC. NEXT* 11 (Winter 2003), available at <http://www.educationnext.org/20031/pdf/16.pdf>.

cation.⁵⁰ Those who support EMC involvement in the charter school movement can point to the fact that public schools have long contracted with private providers for a range of goods and services (e.g., textbooks, food services, and transportation).⁵¹ Moreover, charter schools have the authority to hold EMCs accountable for their performance. Charter schools operated by EMCs reap substantial benefits in terms of resources and expertise. In return, their boards, principals, and teachers may also be compelled to give up varying degrees of decision-making autonomy.

According to theories of the market, poorly performing EMCs will eventually be closed out of charter schooling while those that deliver preferred educational and operational outcomes will thrive. As predicted by charter school theory, the charter school arena is rich in diverse approaches to management and pedagogy. Charter schools are not compelled to make use of EMCs. Rather, the decision-making autonomy that charter schools enjoy means that they can make use of EMCs if they decide to do so. Charter school boards must take care to exercise adequate oversight of EMCs and not defer too much decision-making power to EMCs.

The United States General Accounting Office (GAO) recently published a report on three EMCs operating in the District of Columbia: Edison Schools, Mosaica Education, and Chancellor Beacon Academies.⁵² The GAO found that there has been little high-quality research on the effectiveness of the three nationally active EMCs.⁵³ As a result, GAO could not draw conclusions about the effects of the EMC programs on student achievement, parental involvement and satisfaction, or school climate.⁵⁴ As in the case of other facets of the charter school movement, the roles and impact of EMCs merit increased attention from researchers and research funders.

50. See GARY MIRON & CHRISTOPHER NELSON, *The Effects of Education Management Organizations*, in *WHAT'S PUBLIC ABOUT CHARTER SCHOOLS? LESSONS LEARNED ABOUT CHOICE AND ACCOUNTABILITY* 170-93 (2002); David N. Plank et al., *Charter Schools and Private Profits*, *THE SCHOOL ADM'R*, May 2000, at 12.

51. See MIRON & NELSON, *supra* note 50; Plank et al., *supra* note 50.

52. See UNITED STATES GENERAL ACCOUNTING OFFICE, *GAO-03-11, PUBLIC SCHOOLS: INSUFFICIENT RESEARCH TO DETERMINE EFFECTIVENESS OF SELECTED PRIVATE EDUCATION COMPANIES* (2002).

53. See *id.* at 11.

54. See *id.* at 14.

E. Ripple Effects

Ted Kolderie, a founder of the charter school concept, has asserted that "the real purpose of the reform is to cause the main-line system to change and improve."⁵⁵ There is some evidence to suggest that charter schools are provoking new practices in public education. All forty-nine school districts examined in a recent study made changes in education or operations that district leaders attributed to the existence of charter schools.⁵⁶ School districts have responded to charter school competition by implementing full-day kindergarten programs, providing alternative curricula such as Montessori schools, and engaging in stepped-up public relations campaigns.⁵⁷

A key component of the charter school concept is the competition charter schools present for traditional public schools. On the other hand, if the hypothesized positive ripple effects of charter schools are to be fully realized, there will need to be more cooperation between charter schools and traditional public schools. Analysts of the charter school movement in the U.S. have identified significant tensions between charter schools and the traditional public school system. The competitive dynamic inhibits cooperation and discussions about best practices between charter schools and traditional public schools.

Researchers and policymakers have not capitalized on the value of charter schools as research laboratories. Policymakers need to find ways to increase information dissemination and promote conversations about what best practices in charter schools might usefully be introduced into the public school system overall.

III.

MOVING FORWARD: LESSONS FOR THE FUTURE

Beyond the important benefits that many charter schools are providing to traditionally under-served populations, the charter school movement has provoked rich debate about the purposes and processes of public education.⁵⁸ Cyber charter schools in Wiscon-

55. TED KOLDERIE, *CTR. FOR EDUC. REFORM, THE CHARTER IDEA: UPDATE AND PROSPECTS*, FALL 1995, at 7CB (1995).

56. See RPP INT'L, *CHALLENGE AND OPPORTUNITY: THE IMPACT OF CHARTER SCHOOLS ON SCHOOL DISTRICTS 1* (2001).

57. See Joe Nathan, *Minnesota and the Charter Public School Idea*, in *THE CHARTER SCHOOL LANDSCAPE*, supra note 2, at 17, 29; Hess & Maranto, supra note 48, at 69; Vergari, supra note 2, at 243.

58. See, e.g., Frederick M. Hess, *What is 'Public' About Public Education?* *EDUC. WEEK*, Jan. 8, 2003, at 56.

sin, Ohio, and Pennsylvania, for example, have elicited lawsuits challenging their receipt of public funds.⁵⁹ Some of the weightier questions surrounding the charter movement pertain to the extent to which charter schools are responsive to the collective interest as well as individual interests, and whether social stratification may increase as families with similar backgrounds and beliefs choose a given charter school.

Just as statutes aimed at safeguarding health, safety, and civil rights apply to charter schools, some elements of the common school ideal may be incorporated into the diverse charter school system via certain state mandates (e.g., character and civic education) applied to all public schools. While the charter school concept is based on deregulation, publicly-funded charter schools should be required to meet selected mandates (e.g., monthly board meetings with timely advance notice to parents and other stakeholders) that serve the public interest.

Charter schools are public schools. It is lamentable that, in many instances, politics, tensions over school finance, and the competitive dynamic of the charter school concept have encouraged participants in the charter school system and their counterparts in the traditional public school system to engage in "us vs. them" thinking. What strategies in response to charter schools are likely to be most productive for traditional public schools? Constructive approaches involving honest self-examination, open-minded interest in learning about the best practices of charter schools, market research, public outreach, community building, and a "customer" service orientation will prove more beneficial for traditional public schools over the long-term than will efforts to thwart the charter school reform through negative rhetoric, legislative lobbying, and court-based strategies.

There are signs that members of the traditional educational establishment are responding in constructive ways to the new competition presented by charter schools. In Minneapolis, school district officials decided to survey parents who have exercised their school choice option to find out why they have made the choices they have and to find out what the district can do to attract and retain "customers."⁶⁰ As noted by Minneapolis schools superintendent Carol Johnson, "We have to work harder to make sure families

59. Claire Luna, *Online and Out of School*, SUN JOURNAL, Jan. 27, 2003 (on file with NYU Annual Survey of American Law, New York University School of Law).

60. Allie Shah, *Losing out to Charter Schools: Traditional Public Schools in Minneapolis are Losing both Students and Money as the Movement Flourishes*, MINNEAPOLIS-ST. PAUL STAR TRIBUNE, Jan. 28, 2003, at 1B.

continue to view us as a viable choice.⁶¹ The New York State School Boards Association advises school boards to "view the district as competing for students, even if no charter schools are on the horizon," and to "treat students, parents, taxpayers, and other stakeholders as customers who expect good value for their dollar."⁶²

For both traditional public schools and charter schools, receipt of public dollars should be viewed as a privilege that carries with it weighty responsibilities. Charter schools have challenged the monopoly on public funds for education long enjoyed by school districts. In several states, charter schools are becoming institutionalized as permanent features of public education. The charter school movement has helped to empower parents by expanding choice in public education. In school districts with charter schools, dissatisfied parents no longer must accept the traditional public schools to which their children are assigned.

Charter school advocate Bruno Manno observes that "the charter movement can no longer coast on a theory and a hope."⁶³ What steps do charter school supporters need to take to ensure the long-term growth and viability of the charter school movement? As the original policy champions of the charter school concept leave their seats as governors and state lawmakers, charter advocates will have to win the support of their successors and thwart the influence of charter opponents.⁶⁴ Accordingly, Manno suggests "a national organization dedicated to pressing the charter movement to clean up its act and deliver the results promised by charter boosters," as well as to "recruit[ing] new charter supporters at the state and local policy level."⁶⁵

Acceptance of the notion that public education dollars do not necessarily belong to school districts and that parents should have a say in whether the public funds allocated for their children are provided to a traditional public school or a charter public school marks a dramatic shift in public education policy. The charter school movement has successfully challenged longstanding assumptions about the delivery of public education and what the public has a right to expect from public education. Provisions of the No Child Left Behind Act that permit children in failing public schools to

61. Id.

62. NEW YORK STATE SCH. BDS. ASSOC., *FACING THE CHALLENGE OF CHARTER SCHOOLS: A PRIMER FOR SCHOOL BOARDS* 7 (2000).

63. Bruno V. Manno, *Yellow Flag*, *EDUC. NEXT* 22 (Winter 2003), available at <http://www.educationnext.org/2003/pdf/16.pdf>.

64. Id.

65. Id.

transfer to better public schools, including charter schools, are further reinforcement of this new thinking. For voucher supporters, the next step is to expand parental choice even further by permitting parents to use public funds to send their children to any public, private, or parochial school of their choice. For a range of reasons that are beyond the focus of this article, however, the voucher concept is, at present, significantly more controversial than the charter school concept. Thus, charter schools can be viewed as a policy compromise between those who would maintain the traditional public education system and those who would like to see it completely overhauled via the adoption of a voucher system of education.

IV. CONCLUSION

The existence of nearly 2700 charter schools is tangible evidence that many parents are not pleased with the traditional public schools to which their children would otherwise be assigned. If the charter school movement and forty charter school laws reflected little more than a fad, certainly they would not be the subject of so much attention from the public education establishment, policymakers, and other stakeholders. Regardless of what the future may hold for the charter school movement, charter schools constitute a significant precedent in the history of U.S. public education policy.