

## *Issues Surrounding Charter Schools: A Look at Other States*

### **Florida: Accountability and Mismanagement**

**D**uring the summer of 2005, a battle raged in Florida courtrooms as teachers and parents fought to keep two local charter schools open. Riviera Beach Academy and Delray Boynton Academy were sanctioned by state authorities and asked to close their doors to students. These schools' low performance on statewide standardized tests had prompted the Palm Beach County school district to close them down or have funds for the entire district withheld by the state. Both Riviera Beach and Delray Boynton Academies argued that they were operating as middle schools that focused on high-risk students, and therefore should not be held accountable to the same standards as traditional schools. High-risk students are those who have performed poorly academically or behaviorally in traditional school settings.

When the state and local orders were passed down to the schools though, parents and teachers took the fight to the courtroom and sued to have their schools stay open. Florida state law mandates that any school not given a passing grade on standardized tests for two consecutive years must close. This is referred to as "the double F standard." "We can't tolerate failure," says Florida Governor Jeb Bush, a Republican, in support of the standard.<sup>1</sup>

But the schools argued in court that their alternative, or high-risk, students should not have been graded at all for the 2003–04 school year, a year in which the state did not grade other alternative schools. Stewart L. Karlin, a lawyer representing the schools, says, "They got kids who basically flunked out of the school system. You can't apply the double-F standard to these kinds of schools, because they're taking kids who are substantially behind the curve already."<sup>2</sup>

Eventually, the court decided to let the schools stay open and mediate the problem with the state. By October 2005, the state decided to let the schools stay open but revoked their charters, essentially making district officials the governing body of the schools. The schools were officially closed as charters, but remained open as state-funded, public alternative schools, or schools that serve high-risk students.

A separate issue in Florida, as well as other states, has been the development of charter schools operated by for-profit companies. One such company, Imagine Schools Inc., owns and operates 13 schools in central Florida. A 2005 audit of all of the state's 326 charter schools found 10 Imagine charters with severe financial deficits. Eight of those schools had reported a financial deficit for two or three years in a row.<sup>3</sup> Likewise, an analysis by the *Orlando Sentinel* found that those 10 schools spent 50 percent less on individual student instruction than other schools nearby. The extra monies that should have been spent on instruction were instead found to be applied to salaries and administrative costs.<sup>4</sup>

Management companies are operating in several states, including North Carolina, where Imagine Schools Inc. already owns Kestrel Heights of Durham and plans to open new schools. Another for-profit firm, National Heritage Academies, also owns five separate schools in North Carolina. The mismanagement of schools by for-profit companies has not been an issue in North Carolina, but Florida's problems with these large companies have led to recommendations for changes in Florida's policy, including requiring a financial recovery plan for all schools reporting a two-year deficit.<sup>5</sup>

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## **California:**

### **More For-Profit Fallout**

**T**he concern with for-profit companies running charter schools has run rampant in California after the severe mismanagement and collapse of nearly 60 charter schools in four districts sent state and county officials scrambling to clean up the mess during the summer and fall of 2004. The aftermath of this collapse left almost 6,000 students without a school for the fall and left their immunization and grade records abandoned across the state.<sup>6</sup> According to a state investigation, the breakdown of the California Charter Academy (CCA) was due to poor management and the abuse and misuse of schools funds. C. Stephen Cox, who founded CCA in 1999, also started and acted as CEO of two separate companies in subsequent years: the Educational Administrative Services Corporation (EASC) and the American Public Agency Authority (APAA). The EASC provided Cox's charter schools with administrative services while the APAA provided insurance coverage for the schools.

A state audit of the records of these three companies found grave mismanagement and misappropriation of government funds. Among the findings in the audit were the transferal of \$233,000 in CCAs' accounts without the approval of the boards' use of \$1.2 million in CCAs' funds to employ members of Cox's family, and a finding that more than \$1 million in credit card charges by Cox and another EASC employee were for "personal purchases and trips." The audit found the boards of each school failed to oversee the services of each of Cox's companies, and both schools were closed.<sup>7</sup> "The magnitude of waste of precious education funds outlined in this audit is appalling," says Jack O'Connell, California's state schools Superintendent, in response to the CCA audit.<sup>8</sup> San Bernardino County Superintendent Herbert Fischer also was troubled by the report. "While charter schools can provide alternative and innovative options for students and families, we must take action to ensure they are accountable for the use of public funds and education of students," Fischer says.<sup>9</sup> Although this mismanagement occurred in California, The Center for Education Reform, a pro-charter research group, rated the state as having the 15th strongest charter law, earning the state the grade of B in a 2004 evaluation of charter school laws across the states.<sup>10</sup>

## **Ohio:**

### **Constitutionality of Charters**

**W**hile financial mismanagement and accountability problems have caused serious administrative fallout in both Florida and California, Ohio teachers and officials hope to keep for-profit charter schools out of their state. In a 2001 lawsuit, the Ohio Federation of Teachers (OFT), The American Federation of Teachers (AFT), the AFL-CIO and other teacher and parent advocacy groups questioned the constitutionality of charter schools run by management companies. Calling themselves the Ohio Federation of Parents and Teachers, the intent of their legal challenge was to prevent for-profit entities from opening and operating charter schools. As OFT President Paul Mooney argued, "The notion was supposed to be small, autonomous public schools with some unique educational program to offer. Instead, the concept has been hijacked by people whose goal is to privatize education."<sup>11</sup>

The market for “sponsoring” charter schools has turned into a multimillion-dollar industry in Ohio. “Sponsoring” consists of non-profit and for-profit groups charging local charter schools for management and maintenance services. The standard cost of these services is 3 percent of each student’s funding and can range as high as 12 percent. Two of the 70 sponsoring organizations in Ohio earned more than three million dollars in the 2005–06 fiscal year.

Some Ohioans are wary of this system. “There is no oversight because sponsors are evaluating their own work, so there is a conflict of interest,” said state Senator Teresa Fedor (D-Toledo).<sup>12</sup> The Lucas County Educational Service Center, one of Ohio’s largest sponsors, produced \$1.84 million from charging schools for “fiscal services” in 2005–06.<sup>13</sup>

While the Federation focused on private management firms as the most egregious offenders in their lawsuit, they also perceived all charters as falling outside the Ohio Constitution’s parameters for public education. Ohio law mandates that public education throughout the state should be administered through “common schools.”<sup>14</sup> The Parents and Teachers Congress sees chartering as a private matter since, apart from funding, the state is not in control of the school board. “The concept set forth in the constitution in 1851 was that there was going to be a common system [of education] funded on a uniform basis with uniform standards,” says OFT President Mooney.<sup>15</sup>

The Ohio Court of Appeals heard *State ex rel. Ohio Congress of Parents & Teachers v. State of Ohio Board of Education* on August 24, 2004. The court separated the claims of the Parent and Teacher Congress into three issues: (1) Whether management companies are in “violation of statutes governing the operation of community schools,” (2) the challenge to the constitutionality of the community schools, and (3) whether the state treasury funds appropriated to community schools could be recovered.<sup>16</sup> In the end, the court found the unconstitutional claims to be faulty, saying the Legislature’s power to “... create, change, and modify school districts does not impinge upon constitutional rights.”<sup>17</sup> In the other two issues, the appeals court sent the decisions back to the trial court and asked that the trial court spend more time reviewing the subject.

Yet another issue in Ohio is the creation of a separate set of standardized tests that Ohio created for charter schools. A law enacted during the summer of 2005 called for a new, additional set of standardized tests at the start and end of each school year for those charters that met certain criteria. Essentially, those schools that underachieve on the traditional set of tests have another opportunity to achieve higher scores. Those schools that do not meet the state’s expectations for three years must close down. The new tests are considered to be diagnostic, measuring the skills and weaknesses of individual children, as opposed to the old proficiency-based testing.<sup>18</sup> Jeanne Allen, the president of the pro-charter Center for Education Reform, supports Ohio’s new law. “This will give a clear, transparent understanding of whether and how Ohio’s charter schools are performing,” says Allen.<sup>19</sup> OFT President Mooney instead views the new law as lessening accountability requirements for charters as opposed to the traditional public schools. “They have now set a lower standard for charters,” says Mooney. “That’s pretty stunning.”<sup>20</sup>

## **New York: The Cap Debate Rages On**

**W**hen North Carolina developed its law enabling the establishment of charter schools in 1996, it instituted a maximum cap of 100 charter schools as means of controlling the growth of the schools and monitoring them. The state of New York also initially limited its number of charter schools to 100. But demand

for more schools has produced a controversy between pro- and anti-charter school groups.

During the spring of 2006, Governor George Pataki proposed a plan to raise the cap to 250 schools from its current maximum of 100. Governor Pataki, in a speech to the state Senate and Assembly on January 17, 2006, told legislators that, "Charter schools work. The entire 100 charters have now been used. So let's increase the number."<sup>21</sup> Alan B. Lubin, the president of a union of various teachers' organizations, including the American Federation of Teachers, said, "Charter schools have not distinguished themselves from public schools in terms of innovative technique, or by raising the level of achievement on state assessments. We cannot stand by idly while the governor dramatically expands the unproven charter school experiment."<sup>22</sup>

Several other officials have backed the notion of lifting or increasing the cap. Joel Klein, chancellor of New York City schools, said, "Today, the evidence shows that authorizing charter schools is a sound investment in our future."<sup>23</sup> New York Senator James S. Alesi added, "I would predict that the cap is going to be raised this year. Much of the appetite for charter schools comes from those urban areas and predominantly urban families that want to have a choice. So it's turning Democrat Assembly members, and most of them are people of color, on to an idea..."<sup>24</sup> Senator Alesi was proven wrong though, as the New York General Assembly adjourned in the summer of 2006 without even voting on the bill. "It's not there for now, not for this legislative session," says Speaker Sheldon Silver.<sup>25</sup>

## **South Carolina:**

### **Sending Charters Statewide**

**L**awmakers in South Carolina are instituting a statewide charter school district. The idea has already been implemented in Colorado, but South Carolina's system differs in that Colorado only allows certain counties meeting specific criteria to approve charter schools. The Colorado Charter Schools Institute, the board directing the statewide district, mostly acts as a charter granting body and its involvement in charter matters is mainly restricted to that task.<sup>26</sup> Charter law in South Carolina allows every local school board in the state to grant charters. In North Carolina, charters can be granted by the State Board of Education, the University of North Carolina system, and local school boards. This allows charter schools some means around their local school boards. The State Board of Education has been the primary charter granting institution thus far in North Carolina, as the University of N.C. has yet to explore that avenue.

The South Carolina statewide district would allow more charters to open up without the approval of local boards, which are likely to be unreceptive to charter schools due to issues around losing students and funding. The charters are allowed to remain within the jurisdiction of their local boards if they wish, but the new district would give them the chance to revoke their current charters and reapply with the new board.

In May of 2006, South Carolina's Republican Governor Mark Sanford signed Bill H 3010 and officially brought the statewide charter school district into being. Sanford said the statewide district "... is needed to provide another option for people looking to establish these schools."<sup>27</sup> He says the statewide district will ease "the regulatory burden from local school districts" and will further "streamline the approval process and create more of these schools."<sup>28</sup> Some charter supporters are ecstatic about the possible growth of the charter program in a state where only 26 are in operation, despite the charter law's ratification in 1996.<sup>29</sup> "I believe it's going to make a huge difference," says David Church, a former principal and now executive

director of the S.C. Association of Public Charter Schools.<sup>30</sup> He also said that this was a first step towards improving the charter program in South Carolina.

While the statewide district idea has impressed some pro-charter groups and legislators, others are not quite as pleased with the new law. The most common concerns raised with this legislation are growth of the state bureaucracy and the quality of the oversight provided by the new charter district board. "It's creating a new school system that's not accountable to local needs," says S.C. Sen. Phil Leventis (D-Sumter). "It's the antithesis of accountability."<sup>31</sup> Scott Price of the S.C. School Boards Association likewise finds the new oversight board to be an unnecessary addition to the state bureaucracy. "We don't feel we need to be growing government or government bureaucracy," says Price.<sup>32</sup>

Even some pro-charter advocates are not in favor of the statewide district plan. Jeanne Allen, the founder and president of the pro-charter schools Center for Education Reform, has met with Gov. Sanford in an attempt to curb his enthusiasm about the new district. She warned his staff that this legislation would actually harm charter schools, taking away local funding, of which some charters count as 50 percent of their total funds. "His staff has not served him well," she says. "It's almost become, 'We couldn't possibly be wrong.'"<sup>33</sup> Audrey Breland, dean of a high school charter in Richland, is also concerned about the effects of the new district. "I don't see the benefit," Breland says. "It doesn't appear that this is in the best interest of the charter schools. It's already a big risk to start a charter school. This is no incentive."<sup>34</sup>

### **Washington State: Third Time Not the Charm for Charters**

**F**or Washington pro-charter groups, the last decade has been one of disappointment and missed opportunities. Beginning in 1996, three separate charter bills have been proposed and voted down, with the most recent in 2004 actually getting ratified. Each time the bill has become increasingly narrower in terms of how many schools it would allow and the autonomy it would grant schools. The 2004 version included a maximum of 45 schools over six years, with only five a year allowed to open for the first three years. In addition, only nonprofit organizations would be allowed to run charter schools. In an effort to curb the substantial dropout rates in Washington, totaling 21.5 percent of all high school students in 2004, the majority of these schools were to be reserved for those that serve disadvantaged or high-risk children.<sup>35</sup> The Washington charter school bill officially became law in March 2004.<sup>36</sup> Many parents and pro-charter organizations were excited at the prospect of new charter schools. "I think it would be awesome," said Washington parent Delfina Bright of the possibility of charter schools. "The only reason my daughter is not in a private school is because we can't afford it."<sup>37</sup>

But even after the bill finally passed in both the House and Senate, Washington voters were not ready for the change. By July 2004, charter school opponents had amassed 135,745 valid signatures to force a referendum. Referendum 55, as it was titled, allowed Washingtonians to vote as to whether they wanted charter schools, operating in their state. By a margin of 52 to 48 percent, the charter law was defeated. Jeanne Allen, the president of the Center for Education Reform, was upset with the outcome. "Once again, Americans show they are uncomfortable voting directly on any issue that would dramatically change the way schools do business," she said.<sup>38</sup>

But charter school foes say Referendum 55 does reflect the opinion of the voters, despite pro-charter efforts to persuade them differently. "Voters get it. Charter schools are not the right direction," says Jennifer Lindenauser, communications

director for Protect Our Public Schools, a group organized to campaign against charters in Washington. Patti Lehman, a pre-school teacher, agrees. "We should be working within the system hiring competent and qualified people," she says.<sup>39</sup>

—Aisander Duda

#### FOOTNOTES

<sup>1</sup> Alan Richard, "Florida Forces Charter School Closures, Sparks New Debate," *Education Week*, Washington, D.C., August 31, 2005.

<sup>2</sup> Erik W. Robelen, "Disputes Over Charter Closures Winding Up in Court," *Education Week*, Washington, D.C., January 4, 2006, p. 1.

<sup>3</sup> William O. Monroe, "Report on Significant Findings and Financial Trends in Charter School and Charter Technical Career Center Audit Reports Prepared by Independent Certified Public Accountants," Florida Auditor General, Tallahassee, Fla., Report No. 2006-034, September 2005, pp. 9–18.

<sup>4</sup> Vicki McClure and Tania Deluzuriaga, "Overhead Saps Cash at Most Imagine Charter Schools," *Orlando Sentinel*, Orlando, Fla., February 20, 2005, p. A1.

<sup>5</sup> Robelen, note 2 above.

<sup>6</sup> Sam Dillon, "Collapse of 60 Charter Schools Leaves Californians Scrambling," *New York Times*, New York, N.Y., September 17, 2004, p. A1.

<sup>7</sup> Larry E. Reider, "Extraordinary Audit of the California Charter Academy," Office of Kern County, Bakersfield, Calif., April 14, 2005, pp. 2–4.

<sup>8</sup> Nanette Asimov, "Charter school accused of misusing \$25 million: State superintendent wants charges filed against executives," *San Francisco Chronicle*, San Francisco, Calif., April 15, 2005, p. A1.

<sup>9</sup> Christine McGrew and Dan Evans, "California Charter Academy Audit Released," San Bernardino County School System Press Releases, San Bernardino, Calif., April 14, 2005, Web site [www.sbcss.k12.ca.us/news/gen\\_info/news\\_archive.html](http://www.sbcss.k12.ca.us/news/gen_info/news_archive.html).

<sup>10</sup> *CER's ranking of the nation's strongest to weakest laws*, The Center for Education Reform, Washington, D.C., Web site [www.edreform.com/\\_upload/ranking\\_chart.pdf](http://www.edreform.com/_upload/ranking_chart.pdf).

<sup>11</sup> Bill Cohen, "Ohio Teachers Union Sues Over Charter Schools," *Stateline.org*, Washington D.C., May 17, 2001.

<sup>12</sup> Ignazio Messina, "Groups clamor to sponsor Ohio charter schools," *The Toledo Blade*, Toledo, Ohio, July 3, 2006, p. A1.

<sup>13</sup> *Ibid.*

<sup>14</sup> Erik W. Robelen, "Ohio Supreme Court to Rule on Charter Law," *Education Week*, Washington, D.C., December 7, 2005, p. 25.

<sup>15</sup> *Ibid.* at p. 27.

<sup>16</sup> *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. Of Edn.*, 2004-Ohio-4421, p. 3.

<sup>17</sup> *Ibid.* at p. 15.

<sup>18</sup> Amy Germuth, "The State Testing Program for Ohio and How It Works: A Primer for Charter Schools," Thomas B. Fordham Institute, Washington, D.C., October 24, 2003.

<sup>19</sup> Erik W. Robelen, "Ohio Mandates New Tests for Charters," *Education Week*, Washington, D.C., July 27, 2005, p. 31.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Erik W. Robelen, "Fight Over Charter Cap Erupts in Empire State," *Education Week*, Washington, D.C., February 22, 2006, p. 43.

<sup>23</sup> Joel Klein, "Let 'Em Flower: N.Y. Lawmakers Must Lift Cap on Charter Schools," *New York Post*, New York, N.Y., May 23, 2006, p. 31.

<sup>24</sup> Robelen, note 22 above.

<sup>25</sup> Erin Einhorn, "'F' is for Full," *New York Daily News*, New York, N.Y., June 25, 2006, p. 13.

<sup>26</sup> Eric W. Robelen, "South Carolina Eyes State Charter District," *Education Week*, Washington, D.C., February 22, 2006, p. 26.

<sup>27</sup> *Ibid.*

<sup>28</sup> S.C. Governor Mark Sanford, "Contract for Change: More Educational Choices for Parents," S.C. Governor's Office Press Release, October 12, 2004, Web site [www.scgovernor.com](http://www.scgovernor.com).

<sup>29</sup> *State by State Charter Law Profile*, The Center for Education Reform, Washington, D.C., Web site [www.edreform.com/index.cfm?fuseAction=cLaw](http://www.edreform.com/index.cfm?fuseAction=cLaw).

<sup>30</sup> Wayne Washington, "Questions Plague State-wide Charter School District Bill," *The State*, Columbia, S.C., February 7, 2006, p. B1.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Pete Bylsma and Lisa Ireland, "Graduation and Drop-out Statistics for Washington's Counties, Districts, and Schools, School Year 2003–2004," *Office of Superintendent of Public Instruction*, Olympia, Wash., September 2005, p. 19.

<sup>36</sup> Melissa Lambert Milewski, "Creating New Opportunities to Learn: Charter Schools and Education Reform in Washington," *Washington Policy Center*, Seattle, Wash., September 2004, pp. 1–2.

<sup>37</sup> Brad Shannon, Heather Woodward, John Dodge, "Charter Referendum Falls Short, New Primary Passes," *The Washington Charter School Resource Center*, Seattle, Wash., November 3, 2004, Web Site [www.wacharterschools.org/news/wanews/2004-11-03\\_Olympian.htm](http://www.wacharterschools.org/news/wanews/2004-11-03_Olympian.htm)

<sup>38</sup> David J. Hoff, Andrew Trotter, "Voters Largely Reject Funding, Policy Shifts," *Education Week*, Washington, D.C., November 10, 2004, p. 22.

<sup>39</sup> *Ibid.*