"Our mission is to cultivate the potential in every student to thrive as a global citizen by inspiring a love of learning and civic engagement, by challenging and supporting every student to achieve academic excellence, and by embracing the full richness and diversity of our community."

POLICY **CHARTER SCHOOLS 10.000**

It is the policy of the School Board to consider the establishment of charter schools as provided by law. The Board believes that the creation of charter schools could enhance the educational opportunities for Madison Metropolitan School District students by providing innovative and distinctive educational programs and by giving parents/students more educational options within the District.

PROCEDURE **CHARTER SCHOOLS 10.000**

I. Initiation of Process to Establish a Charter School.

A. Initiation of Process. The process to establish a charter school may be initiated in one of the following five ways.

1. The Board may request initial proposals to establish a charter school. An initial proposal shall include the contents listed in Section II.A. and shall meet any other requirements established by the Board.

2. The Board, Superintendent or an individual Board member may present an initial proposal that includes the contents listed in Section II.A. to initiate a charter school to the Board at any time.

3. Two or more Board members may present/sponsor an externally-developed detailed proposal, meeting the requirements defined under Section III.B., either (1) after the Board as a whole addresses an initial proposal and chooses not to request a detailed proposal; or (2) in lieu of seeking Board support for an initial proposal and prior to the deadline established for submitting a petition under Section III.A.

4. A petition to establish a charter school signed by at least 5% of the teachers employed by the District or by at least 25% of the teachers employed at one school of the District may be filed with the District clerk or his/her designee along with an initial proposal to initiate a charter school. Such a petition shall be presented to the Board prior to May 1 of the school year that leaves one full additional school year prior to the school year in which the charter school is proposed to be initiated. (e.g. prior to 5/1/08 for the initiation of a charter school at the beginning of the 2009-2010 school year.)

5. Any person attempting to initiate a charter school by petition may elect to proceed directly with a full statutory petition and detailed

proposal (See Section III.A of this Policy) in lieu of an initial petition and initial proposal.

II. Initial Proposal.

A. Content of Initial Proposal. An initial proposal to establish a charter school shall, at a minimum, contain the following information.

1. Vision and philosophy:

A description of the educational vision and philosophy of the proposed charter school.

A description of how the proposed charter school supports and advances the District's mission, vision, and strategic priorities and goals as established by the School Board, including a description of how the proposed charter school aligns with and advances the District's Educational Framework and the Framework's key principles of student engagement, relationships, and learning.

The underlying theories of research.

A description of why a charter school is necessary to achieve the vision.

A description of how this charter school is unique and how it will differ from the schools and programs now available to students enrolled in the District.

2. Purpose:

A statement as to why the charter school is being proposed.

3. Leadership and Governance:

The name of the person or persons seeking to establish the charter school.

The relationship of the charter school to the overall organization of the District, the Board and Administration.

4. Any other information that the sponsor of the initial proposal believes that the Board may find helpful in addressing the initial proposal, including but not limited to any available information that might be included within a detailed proposal, as defined within this

Policy, or within an application for Charter School Planning Phase Funds.

B. Public Hearing on Initial Proposal. The Board may determine by majority vote to hold a public hearing on any initial proposal to establish a charter school.

C. Decision to Request a Detailed Proposal.

1. Following the receipt of an initial proposal, the Board shall determine by majority vote whether to request the preparation of a detailed proposal for the establishment of a charter school. In making this decision, the Board shall consider criteria that include, but are not limited to, the level of employee and parental support for the establishment of the charter school, and the fiscal impact of the establishment of the charter school on the School District. If the Board passes a resolution requesting the submission of a detailed proposal for a charter school following the submission of an initial proposal, the Board may also direct the Administration to work in conjunction with the person(s) seeking to establish the charter school on the development of a detailed proposal.

2. For requests initiated under Section I.A.4., a Board request for development of a detailed proposal shall not be construed as either approval of a petition for a proposed charter school or as an act that relieves the person(s) seeking to establish a charter school of the requirement that the person(s) submit a formal petition that meets the requirements of Wis. Stat. 118.40(1m).

3. In any case where the Board does not request the preparation of a detailed proposal following receipt of an initial proposal, the decision shall not preclude the person sponsoring the initial proposal from subsequently asking the Board to support an application for Charter School Planning Phase Funds as described in Section VII, provided that the Board has not already addressed such an application with respect to the same proposed school.

III. Preparation of Formal Petition and Detailed Charter School Proposal.

A. Statutory Petition and Preparation of Detailed Proposal.

1. Regardless of whether the Board passes a resolution requesting the submission of a detailed proposal, any person(s) seeking to establish a charter school by petition shall submit a petition and detailed proposal to establish a charter school that is signed by at

least 10% of the teachers employed by the District or by at least 50% of the teachers employed at one school of the District. Any teachers signing a preliminary petition submitted under I.A.4 of this Policy may also sign the formal petition. The formal petition and detailed proposal shall be filed with the District clerk, or his/her designee, no later than September 15 of the year preceding the school year in which the charter school is proposed to be initiated (e.g. prior to 9/15/08 for the initiation of a charter school beginning at the beginning of the 2009-2010 school year.) The detailed proposal for the establishment of a charter school shall contain, at a minimum, the information in III.B.

2. For any charter school proposal initiated under Section I.A.1, Section I.A.2., or Section I.A.3., no petition is required but the minimum requirements for the content of a detailed proposal shall be the requirements set forth below in Section III.B.

B. Content of Detailed Proposal. The detailed proposal shall at a minimum contain the following information.

1. Vision and philosophy: See components in II.A.

2. Purpose: See components in II.A.

3. Leadership and Governance: Components in II.A. plus the following:

   The name and professional qualifications of the person who will be in charge of the charter school and the manner in which the administrative services will be provided.

   The governance structure of the school, including the method to be followed by the school to ensure parental involvement.

4. Curriculum, Instruction and Assessment:

   A description of the educational program of the charter school and examples that illustrate the instructional methods and professional practices that will be used.

   The methods the school will use to enable students to attain the educational goals under Wis. Stats. Section 118.01. The method by which pupil progress in attaining the educational goals under section 118.01 will be measured.

The manner in which the annual audits of the programmatic operations of the school year will be performed.

5. Personnel:

The approximate staffing level that is planned for the charter school.

The process for recruitment and assignment of the charter school staff.

The process for supervision and evaluation of the charter school staff.

The qualifications that must be met by the individuals to be employed in the charter school.

A recommendation as to whether the charter school should be an instrumentality of the District. If it is determined by the Board that it will be an instrumentality of the District, then the Board shall employ all the personnel for the charter school. If the Board determines that it will not be an instrumentality of the District, then the Board shall not employ any personnel for the charter school.

6. Students:

The minimum and maximum number of students that will be enrolled in the charter school for the first year and for future years.

The grade levels to be served during the first year and during future years.

The procedures that the charter school will follow to ensure the health and safety of the pupils.

The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the District student population.

The process for selection if interest exceeds projected/authorized enrollment.

The requirements for admission to the charter school.

The procedures for disciplining pupils.

Information, if necessary, that identifies an alternative District school for pupils who reside in the charter school's attendance area and do not wish to attend or are not admitted to the charter school.

Information related to the extent to which the charter school will be prepared to meet the special needs of the students.

7. Business, Facilities and Operations:

The proposed financial relationship of the charter school to the overall District budget.

A budget for the first year of operation based upon stated enrollment assumptions.

The business and support services to be provided by the District.

The manner in which annual audits of the financial operations of the charter school will be performed.

A description of the school facilities.

The types and limits of the liability insurance that the charter school will carry and the effect of the establishment of the charter school on the liability of the District.

8. Exemptions from Statutes, Policies or Contracts:

The specific state statutes or district policies from which it will be particularly important for the charter school to be exempt.

The anticipated variations or waivers in collective bargaining agreements.

9. Involvement and Input:

A description of individuals, groups and processes used in the development of the proposal.

IV. Decision on a Detailed Charter School Proposal.

A. Public Hearing on Proposal.

1. Detailed proposals submitted in conjunction with a statutory petition: Within 30 days after the submission of the detailed proposal, the Board shall hold a public hearing on the proposal. The public hearing shall be held at least 45 days prior to the Board making a decision to enter into a contract to establish a charter school.

2. Detailed proposals not submitted in conjunction with a statutory petition: The Board shall hold a public hearing on the proposal. The public hearing shall be held at least 30 days prior to the Board making a decision to enter into a contract to establish a charter school.

B. Administrative Analysis. No later than 15 days prior to the Board making a decision to enter into a contract to establish a charter school, the Superintendent shall provide information to the Board regarding the proposal. Such information may include, but is not limited to, an analysis of how a decision to establish or not establish the proposed charter school will impact families to be served and the overall programs and operation of the District.

C. Board Decision on Proposal. After the public hearing, the Board shall determine whether to enter into a contract to establish a charter school. In making its decision, the Board shall, at a minimum, consider the information included in the detailed proposal, the information provided by the Superintendent, whether or not the requirements of Board Policy have been met, the level of employee and parental support for the establishment of the charter school, and the fiscal impact of the establishment of the charter school on the District.

D. Notification of State Superintendent. The Board will notify the State Superintendent of Public Instruction by March 1 of its intention to establish a charter school for the following school year. Such notification shall include a description of the charter school.

E. Completion of Documents. By April 1 or as soon as practicable, after the decision of the Board to proceed with the creation of the charter school, the documents, including the contract, that are necessary to establish the charter school will be completed.

F. Length of Approval. A charter school may be approved or renewed for a period of not less than two nor more than five years.

V. Review; Renewal; Revocation.

A. Annual Review. A charter school established by the Board will be reviewed on an annual basis in accordance with the provisions of the charter.

B. Time for Renewal. An application for the renewal of a charter school must be submitted to the Board no later than six months prior to the expiration of the existing charter. The Board shall decide whether to renew a charter school no later than five months prior to the expiration of the existing charter.

C. Revocation of Approval. A charter may be revoked by the Board if any of the following occur:

1. The charter school violates its contract with the Board.

2. The pupils enrolled in the charter school fail to make sufficient progress toward attaining the educational goals under s. 118.01.

3. The charter school fails to comply with generally accepted accounting standards of fiscal management.

4. The charter school violates s. 118.40.

5. For good cause.

VI. Charter School Requirements and Prohibitions.

A. Requirements. The charter school shall do all of the following:

1. If the charter school replaces a District school in whole or in part, it must give preference in admission to any pupil who resides within the attendance area of that school.

2. Be nonsectarian in its programs, admissions policies, employment practices and all other operations.

B. Prohibitions. The charter school shall not:

1. Charge tuition

2. Discriminate in admission or deny participation in any program or activity on the basis of a person's gender, race, religion, national origin, ancestry, pregnancy, marital, or parental status, sexual orientation, gender identity, gender expression, or physical, mental, emotional or learning disability.

[NOTE: The City of Madison defines gender expression in Madison City Ordinance Sec. 3.23 (2)(t) as follows:

> Gender Identity is the actual or perceived condition, status or acts of 1) identifying emotionally or psychologically with the sex other than one's biological or legal sex at birth, whether or not there has been a physical change of the organs of sex; 2) presenting and/or holding oneself out to the public as a member of the biological sex that was not one's biological or legal sex at birth;

This means that gender identity refers to an individual's fundamental sense of themselves as being male or female, masculine or feminine. Gender identity does not always correspond to biological sex.

The City of Madison's Ordinance Sec. 3.23 (2)(t) continues its definition of gender identity with an explanation of what is referred to as gender expression.

> 3) lawfully displaying physical characteristics and/or behavioral characteristics and/or expressions which are widely perceived as being more appropriate to the biological or legal sex that was not one's biological or legal sex at birth, as when a male is perceived as feminine or a female is perceived as masculine; and/or4) being physically and/or behaviorally androgynous.

This means that gender expression refers to the things like clothing and behavior that manifest a person's fundamental sense of themselves as masculine or feminine, and male or female. This can include but not be limited to dress, posture, hairstyle, jewelry, and vocal inflection.]

VII. Applications for Charter School Planning Phase Funds

A. The Board reviews applications for Charter School Planning Phase Funds that are awarded by the Department of Public Instruction (DPI) in those

situations in which a person/group is interested in the Board creating a charter school.

B. Applications for Charter School Planning Phase Funds shall be completed by the applicant in accordance with the process and procedure established by DPI and filed with the Board.

C. The applicant shall present a completed application to the Board at least two months prior to the deadline for submission of the application to DPI. Within one month after the application has been submitted to the Board, the Board will review the application, make a determination as to whether or not the Board supports the application and notify the applicant of the Board's determination. The President of the Board or his/her designee is responsible for notifying the applicant of the Board's determination.

D. If the application is supported by the Board, the Board President or his/her designee will sign the Grant Application form indicating the Board's support of the application for Charter School Planning Phase Funds.

E. If the Board supports the application and/or if the applicant receives Charter School Planning Phase funds from DPI, neither the Board's initial support of the application nor the fact the applicant received the Charter School Planning Phase funds, binds or commits the Board to authorize the creation of a charter school.

3/24/08

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CHARTERING EQUITY

USING CHARTER SCHOOL LEGISLATION AND POLICY TO ADVANCE EQUAL EDUCATIONAL OPPORTUNITY

Julie F. Mead
University of Wisconsin-Madison

Preston C. Green III
Pennsylvania State University

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National Education Policy Center
School of Education, University of Colorado Boulder
Boulder, CO 80309-0249
Telephone: (802) 383-0058

Email: NEPC@colorado.edu
http://nepc.colorado.edu

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GreatLakesCenter@greatlakescenter.org

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Chartering Equity: Using Charter School Legislation and Policy to Advance Equal Educational Opportunity

Julie F. Mead, University of Wisconsin-Madison
Preston C. Green III, Pennsylvania State University

Executive Summary

This policy brief addresses the challenge of using charter school policy to enhance equal educational opportunity. Three overriding assumptions guide the brief's recommendations: (1) charter schools will be part of our public educational system for the foreseeable future; (2) charter schools are neither inherently good, nor inherently bad; and (3) charter schools should be employed to further goals of equal educational opportunity, including racial diversity and school success. The creation of charter schools is just one among a variety of policy tools at the disposal of local, state, and national policymakers. As with all educational policy tools, one challenge is to wield the tool in a manner that will enhance equity and opportunity. Part I of this brief provides an overview of equal educational opportunity and its legal foundations and offers a review of prior research documenting issues concerning charter schools and their impact on equity and diversity. Part II presents detailed recommendations for charter school authorizers, as well as state and federal policymakers for using charter schools to advance equal educational opportunity. Separately, we are publishing a companion document based on these detailed recommendations, providing model statutory code language that can be employed by state policymakers to ensure that charter schools attend to long-established policy goals.

The recommendations detailed in Part II of this brief are as follows:

For Charter School Authorizers

- Establish a clear set of principles that will guide the exercise of the authority to grant, oversee, renew, and revoke charters.
- Require that charter school applicants make clear how the school will broaden, not replicate, existing opportunities for struggling populations of students in the community or communities intended to be served by the school.
- Require charter school applicants to attend explicitly to local contextual factors, particularly identified achievement disparities, graduation rate concerns, suspension and expulsion issues.
- Require evidence that the proposed school's curricular philosophy, methodological approaches, or both are likely to achieve positive results.

- Require charter school applicants to detail disciplinary codes and procedures and require a focus on positive interventions and supports.
- Require detailed teacher recruitment, retention, and staff development plans so that the school's teachers have sufficient capacity to deliver equal educational opportunity.
- Consider publishing a request for proposals (RFP) for charter schools to address particular persistent problems related to equitable outcomes as identified by local data analysis.
- Require detailed recruitment plans to ensure that the school targets and attracts a diverse student applicant pool representative of the broader community in terms of race, socio-economic status, disability status, gender, and limited English proficiency.
- Ensure that the charter contract includes provisions that hold charter schools to a standard of equal educational opportunity in terms of educational inputs, practices, and outcomes.
- Set clear revocation and renewal standards that reflect a commitment to equal educational opportunity.

For State Legislatures

- Adopt declarations establishing that one primary goal of charter school legislation is to enhance equitable educational outcomes for all students, particularly those who have historically struggled.
- State explicitly that charter schools must comply with all federal laws and any desegregation decrees.
- Require charter school applications to attend explicitly to the local context, particularly identified achievement disparities, graduation rates, and suspension and expulsion issues.
- Require that charter school applicants explain how the school will broaden, not replicate, existing opportunities in the community or communities intended to be served by the school.
- Require evidence that the proposed school's curricular philosophy, methodological approaches, or both are likely to achieve positive results.
- Require detailed recruitment plans to ensure that the school targets and attracts a broad applicant pool in terms of race, socio-economic status, disability status, gender, and limited English proficiency.
- As part of the standards for granting charter approval and renewal, create a set of rebuttable legal presumptions tied directly to equal educational opportunity.
- Grant state educational agencies the authority to revoke and non-renew charters of schools that do not meet basic standards, whenever charter authorizers fail to act.

For Congress in the Reauthorization of NCLB

- Condition funds distributed to states through NCLB's charter school provision on a clear articulation by the state of how charter school legislation is used to advance equal educational opportunity and other existing published priorities.
- Require that states assure that federal planning grants disbursed by the states may only be awarded to charter schools with applications that show a strong likelihood of success to positively affect local achievement disparities.
- Establish programs and grant funds that create an incentive to those charter schools that narrow achievement gaps and promote integration.
- Require states to collect data regarding charter school recruitment, retention, and discipline.

CHARTERING EQUITY: USING CHARTER SCHOOL LEGISLATION AND POLICY TO ADVANCE EQUAL EDUCATIONAL OPPORTUNITY

Introduction

Charter schools, which are voluntary enrollment schools created by a contract between a designated charter school authorizer and charter school operators, have been part of the public educational landscape in the United States for more than two decades.[1] They exist in 40 states, the District of Columbia, and Puerto Rico. According to the Center for Education Reform, more than 5,400 charter schools educate approximately 1.7 million students.[2] As a form of public school choice, charter schools have broad bipartisan support that has spanned four presidential administrations and has gained expression in both federal and state legislation.[3]

The creation and operation of charter schools as a policy initiative is not without controversy, however. Proponents and skeptics of charter schools both often couch their arguments in the language of opportunity. Proponents champion parental choice as a virtue in and of itself and laud charter schools as an avenue for groups to create innovative public school options for students.[4] They also contend that wealthier parents have always had school choices, due to their ability to change residences; charters are a way to extend choice to lower-income families. Skeptics caution that charter schools, if unregulated, will continue to result in stratification of students, disinvestment in other public schools, and a failure to enroll the most difficult-to-serve students.[5]

While we recognize the contentions on both sides of the issue, we begin this legislative policy brief with three overriding assumptions: (1) charter schools will be part of our public educational system for the foreseeable future; (2) charter schools are neither inherently good, nor inherently bad; and (3) charter schools should be employed to further goals of equal educational opportunity. In the end, the creation of charter schools is just one among a variety of policy tools at the disposal of local, state, and national policymakers. Like all such educational policy tools, one challenge then is to wield the tool a manner that will enhance equity and opportunity, rather than entrench or exacerbate inequities.

Equal educational opportunity for all children has long been a stated national goal. It has its home in the Fourteenth Amendment's guarantee of equal protection of the laws. Chief Justice Warren's ringing rhetoric from *Brown v. Board of Education* explains the foundation for the goal of equal educational opportunity:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[6]

As this language makes clear, equal educational opportunity involves attention to both inputs (instruction "made available to all on equal terms") and outputs (instruction to equip students for "good citizenship," "awakening the child to cultural values," "preparing

Federal laws, both those that prohibit discrimination and those that provide funding, clearly establish the obligation that every public school, including charter schools, serve the aim of equal educational opportunity.

[each child] for later professional training" and "helping [each child] to adjust normally to his environment.")[7] Recent discussions about the term "have also included the concept of 'throughputs,' i.e. the educational practices of the schools themselves."[8]

Unfortunately, our history bears too many examples of educational policies and practices that have fallen short of this aspiration, requiring the intervention of the courts to correct denials of opportunity on the basis of race (e.g., *Brown v. the Board of Education*, 1954[9]), alienage (e.g., *Plyler v. Doe*, 1982[10]), language (e.g., *Lau v. Nichols*, 1974[11]), sex (e.g., *U.S. v. Virginia*, 1996[12]), and disability (e.g., *Mills v. State Board*, 1972[13]). So central is the concept, that Congress has also found it in the nation's best interest to enact a series of federal laws, some of which provide funding to states and school districts to support their efforts in providing opportunity, while others penalize offenders by threatening the removal of federal financial assistance if they fail.

History also provides cautionary evidence that unconstrained parental choice may be used to thwart, rather than advance, equity and opportunity. For example, after the Supreme Court ruled segregation unconstitutional in *Brown*, officials in Virginia's Prince Edward County Schools closed all public schools and created a system of choice based on tuition vouchers, knowing that parental choice would result in continued racial segregation. Likewise, the County School Board of New Kent County instituted a "freedom of choice" plan within its public schools, resulting in a continuation of the segregated school system. In both instances, the Supreme Court invalidated the plans as unconstitutional.[14] Setting aside issues of discriminatory intent, choice patterns that exacerbate racial stratification

(and stratification by parental education, wealth, and other factors) remain a very real concern.[15]

This brief addresses the challenge of using charter school policy to enhance equal educational opportunity. Part I provides an overview of the current legal basis for equal educational opportunity and a review of prior research documenting issues concerning charter schools and their impact on equity and diversity. Part II presents detailed recommendations for charter school authorizers, state and federal policymakers for using charter schools to advance equal educational opportunity. In a separate, companion document, these detailed recommendations are translated into model statutory code language that can be employed by state policymakers to ensure that charter schools attend to long-established policy goals.

Part I: Equal Educational Opportunity and Charter Schools

This section reviews the legal basis for the concept of equal educational opportunity and explains the research concerning charter schools and their relationship to equity. In particular, research is reviewed regarding charter schools and race, disability, English language learners, and gender. This examination provides the foundation for the proposals made in Parts II of this brief.

After the Supreme Court declared segregation unlawful in *Brown v. the Board of Education*, advocates used both legislation and litigation to establish the obligation of public school systems to provide equal educational opportunity for all children regardless of status. While racial equality has remained a central concern, activists have also worked to ensure equality of opportunity on the basis national origin, language, sex, and disability.

Table 1 lists the major cases[16] and federal laws that establish the principle of equality of opportunity. The table also lays out the level of scrutiny courts apply if considering whether a particular policy is consistent with Fourteenth Amendment guarantees.

As noted, five federal statutes protect students enrolled in public schools from discrimination. In each instance, entities that fall short of the requirements risk a penalty, most often loss of some or all federal funding. As such, these laws can be considered "sticks" in that they punish improper actions.

In addition to these anti-discrimination laws, two important federal funding statutes are instrumental in ensuring that schools meet their obligations, the Elementary and Secondary Education Act (ESEA), now codified as the No Child Left Behind Act (NCLB),[17] and the Individuals with Disabilities Education Act (IDEA).[18] These laws may be considered the "carrots" that offset the sticks associated with the non-discrimination provisions.[19]

Congress enacted the ESEA in 1965 to provide funding to schools to assist them in providing opportunities to children from impoverished households as part of President

Table 1: Litigation and Legislation Establishing Equal Educational Opportunity

	Litigation			Legislation	
	Judicial Standard				
Race	*Brown v. Board of Education* *Parents Involved v. Seattle*	1954 2007	*Strict Scrutiny*: necessary and narrowly tailored to a compelling State interest	Title VI of the Civil Rights Act Equal Educational Opportunities Act (EEOA)	1964 1974
National Origin/ Alienage	*Plyler v. Doe*	1982	*Heightened Scrutiny*: substantially related to an important govern-mental interest	Title VI EEOA	1964 1974
Language	*Lau v. Nichols*	1974	*Heightened Scrutiny*	Title VI EEOA	1964 1974
Disability	*Pennsylvania Assn. for Retarded Children v. Commonwealth* *Mills v. Board of Education of District of Columbia*	1971 1972	*Heightened Scrutiny*	Section 504 of the Rehabilitation Act Americans with Disabilities Act (ADA)	1973 1990
Sex	*Mississippi v. Hogan* *U.S. v. Virginia*	1982 1996	*Heightened Scrutiny*	Title IX of the Education Amendments	1972

Lyndon B. Johnson's "war on poverty." Congress declared the purpose of the law as follows:

> In recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance ... to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs ...[20]

In addition to helping states and school districts mitigate the effects of poverty as a barrier to achievement, the ESEA (or, more accurately, the threatened loss of ESEA funding) has long been acknowledged as a primary impetus in the integration of public schools in the

1960s and 1970s.[21] NCLB, the latest reauthorization of the ESEA signed into law by President George W. Bush in 2002, couples funding with requirements for data collection and reporting. NCLB requires that schools report achievement data in the aggregate and disaggregated by race/ethnicity, gender, socio-economic status, disability, and language proficiency. Schools that fail to test a sufficient percentage of their students or have an insufficient number of students who score at proficiency levels are subject to a series of sanctions that increase in severity with every subsequent year of being named "in need of improvement."[22]

NCLB affects charter schools in three ways. First, as public schools, charter schools must comply with NCLB provisions, including testing, analysis and reporting of the disaggregated performance data. Second, charter schools have a role in the sanctions other schools face for failing to meet state and federal goals. Students enrolled in schools that have under-performed for two consecutive years must permit students to transfer to other public schools, including charter schools. Schools that have been deemed in need of improvement for five consecutive years must restructure, which can include converting to a charter school.[23] Finally, NCLB reauthorized the Charter Schools Expansion Act, which provides funds for planning grants of up to three years for charter school development.[24]

Charter schools must also comply with the provisions of the IDEA.[25] Enacted first in 1975 as the Education for All Handicapped Children's Act, the IDEA requires states to ensure that all public schools provide a "free appropriate public education" in exchange for federal funds designed to help schools meet the excess costs of providing special education and related services.[26] In addition to extensive provisions concerning how to provide FAPE, the law seeks to ensure equal educational opportunity by requiring that data be collected regarding the number of students identified as disabled, disaggregated by race and ethnicity, the educational placements to which students are assigned, and the rates of suspension and expulsion.[27] Provisions also impose requirements for any district that has a disproportionate number of students from any racial category identified as disabled.[28] Additional provisions ensure that children who are learning English are not labeled as having a disability solely due to their lack of English proficiency.[29] As discussed below, such rules as regards students with special needs play out in important ways for charter schools.

This combination of federal laws, both those that prohibit discrimination and those that provide funding,[30] clearly establish the obligation that every public school, including charter schools, serve the aim of equal educational opportunity.

Charter Schools and Race

Four concerns predominate any discussion of charter schools and race. The first three are problems shared with all public schools: (1) persistent achievement gaps[31] between White and non-White students;[32] (2) high drop-out rates; and (3) high suspension and expulsion rates that have created a "school-to-prison pipeline," particularly for students of color.[33]

The fourth consideration, the demographics of student populations, while a concern for many urban areas, is a particular concern and a common critique of charter schools.

The racial composition of charter schools raises important equity concerns. According to a 2010 UCLA Civil Rights Project report, 70% of Black charter school students attend schools that are intensely segregated (i.e., comprising of 90-100% racial minorities). This percentage was twice as many as the share of Black students in traditional schools who attend intensely segregated traditional public schools. Further, 43% of Black charter school students attended schools that were 99% minority. This percentage was "nearly *three* times as high as Black students in traditional public schools."[34]

These statistics are disconcerting for several reasons. Schools with high percentages of racial minorities are more likely than predominantly White schools to have problems with teacher turnover.[35] Schools with concentrations of minority students also tend to have lower educational outcomes, as quantified by test scores, high school graduation rates, and college graduation rates.[36] Intergroup relations are generally enhanced in less segregated schools.[37] And schools with high concentrations of Black students tend to have less funding per pupil than predominantly White schools when adjusted for need.[38]

Charter school statutes generally have two types of provisions intended to guard against the proliferation of high-minority charter schools. The charter school statutes of seven states—Colorado, Delaware, Louisiana, Michigan, Oklahoma, Pennsylvania, and Virginia—require charter schools to comply with court-ordered desegregation decrees. Further, a second type of provision is designed to ensure that the racial composition of charter schools reflects that of the school district as a whole. Oluwole and Green[39] divide these provisions into two categories: (1) hortatory; and (2) mandatory. Hortatory provisions urge racial balance, while mandatory racial balancing provisions require the charter school population to reflect the racial composition of the school districts in which they are located. Prescribed-percentage provisions are those that define a percentage required for racial balance.[40] Indeterminate racial-balance provisions do not prescribe a percentage, but instead have a general requirement of charter-school racial balance.[41] Table 2 lists states with these racial balancing provisions.

Table 2: Racial Balancing Provisions

Hortatory	Mandatory	
	Prescribed-percentage provisions	Indeterminate provisions
California, Florida, Hawaii, Ohio, Wisconsin	Nevada, South Carolina	Connecticut, Kansas, Minnesota, Missouri, New Jersey, North Carolina, Rhode Island

Statutory provisions requiring charter schools to comply with desegregation decrees may enhance equal educational opportunity to minority students and for minority students in traditional public schools in those school districts. Charter schools might violate court-

ordered desegregation decrees by being more segregated than other public schools within the school district. Charter schools might also make it difficult for school districts to satisfy school desegregation decrees by attracting a disproportionately high percentage of students and faculty of one race away from other public schools within the districts.[42] However, few school districts remain under court-ordered desegregation decrees or Title VI desegregation plans, so these provisions have limited utility to address charter school racial demographics.

In addition, a 2007 Supreme Court decision, *Parents Involved in Community Schools v. Seattle School District*,[43] raises doubt as to the constitutionality of at least some charter school racial balancing provisions. In *Parents Involved*, the Supreme Court found

When school reform embraces parental choice in the form of charter schools, the value of equal educational opportunity must remain central.

unconstitutional two voluntary, race-based student assignment plans in Seattle and Louisville. In both programs, students were denied their enrollment choice if it would place the school out of compliance with the district's racial balancing guidelines.[44] A divided Court concluded that the two plans violated the Equal Protection Clause. A four-Justice plurality signed onto an opinion essentially rejecting the idea that school diversity could be a compelling state interest. Justice Kennedy wrote a concurrence agreeing with the plurality[45] that strict scrutiny was applicable and therefore, the policies had to satisfy a compelling governmental interest and be narrowly tailored. Justice Kennedy concluded, however, that both plans served compelling interests, and he declared that "diversity...is a compelling educational goal [that] a school district may pursue."[46] Nonetheless, he found that neither school district's student assignment policy was narrowly tailored. One of his primary objections concerned the conditioning of opportunity on the individual's racial status.[47]

Kennedy's concurrence suggests that mandatory racial balancing provisions might not survive analysis. The primary problem is that such racial balancing provisions would likely require decisions to be made at an individual level, in a manner similar to those struck down in Seattle and Louisville. On the other hand, hortatory racial balancing provisions might survive constitutional scrutiny. Because hortatory provisions themselves stop short of racial quotas, the provisions would likely not be subject to strict-scrutiny analysis.

Justice Kennedy's opinion provides a roadmap that states could use to amend their charter school statutes to guard against racial isolation. He identified various race-conscious measures, which might not trigger strict scrutiny and thus are more likely to survive judicial examination.[48] Accordingly, states could amend their statutes and charter school authorizers could revise their policies to require charter schools to engage in recruitment and outreach to achieve a racially diverse student body. Charter school statutes could offer preferences to proposals that, for example, serve multiple districts or otherwise adopt approaches likely to attract a racially diverse student body.[49] Further, charter statutes

could stipulate that schools failing to achieve a racial diverse student body have a heavy burden to show why the schools' demographics have failed to meet community norms.[50]

Congress, too, could play a role in ensuring that charter schools serve aims of racial equality. The National Coalition on School Diversity published a brief recommending ways that NCLB could be revised to "foster diversity," including:

- Add "incentives for diversity in federally funded charter schools."
- "[E]nsure that federally funded charters do not contribute to increasing socio-economic and racial isolation."
- "[P]rovide incentives to locate new schools strategically to counter growing racial and socio-economic isolation."
- "[E]nsure that a charter school is not the only option offered to students attending a failing school."
- Require that "[o]nly charter schools that provide accurate and comprehensive data to the public should be considered for replication."
- Provide "[a]nnual oversight and accountability ... to ensure that federally supported charter schools meet civil rights requirements."
- Extend "Federal funding for charter schools ... to include magnet schools." [51]

Charter Schools and Socio-economic Status

Champions of charters frequently argue that these schools (and parental choice programs more generally) help provide children of low-income families with the ability to select their school, thereby offering a benefit long enjoyed by wealthy families that can choose from a broad array of public and private schools. Yet some researchers have raised concerns that charter schools, however unwittingly, may create or replicate stratification on the basis of income or social class.[52] Parental education in particular is among the strongest predictors of parents' efficacy and involvement in actively choosing schools for their children.[53]

Charter Schools and Disability

Considerable research has been done to examine the extent to which charter schools serve children with disabilities.[54] Even though some charter schools are specifically designed to serve this population, in general charter schools serve fewer children with disabilities than do traditional public schools.[55] Some have also documented a phenomenon called "counseling out" where charter school authorities advise parents that the school is not a good match for their child with a disability.[56] IDEA makes clear, however, that charter schools must serve children with disabilities and that charter schools may not limit enrollment of students who need special education.[57]

Charter schools specifically designed to serve children with disabilities raise other concerns, chief among them whether such schools run counter to current initiatives to include children with disabilities in general classrooms. While some of the 71 schools identified by a recent study were created to model inclusive practices, most schools were

designed to serve children with identified disabilities or disabilities generally.[58] Given IDEA's legal presumption that children with disabilities be educated with children who are not disabled unless the "nature and severity" of the child's disability requires something else, charter schools that become segregated environments for children with disabilities draw attention to the tension between IDEA's group decision-making requirements designed to ensure the child's rights on the one hand and independent parental choice on the other hand.

Charter Schools and English Language Learners

While little research has examined how charter schools serve English Language Learners (ELL), a recent study concluded that this special population tends to be under-represented in charter schools.[59] But the mechanisms and reasons lying behind these numbers are not clear from the research. Like any type of special programming, charter schools, especially those that are new schools, decide what programming to offer. The small number of ELL students in charter schools raises the question of whether charter schools are controlling the student population by controlling what programming is available and unavailable. The Equal Educational Opportunities Act (EEOA) requires that schools take "appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs."[60] Accordingly, charter schools enrolling children whose first language is not English would need to ensure that their programs and practices addressed students' language learning needs. It would appear that the clear potential for counseling out exists with this population in the same way that has been documented for children with disabilities, but further data collection and enhanced reporting requirements are needed in order to understand and address this issue.

Charter Schools and Gender

When NCLB was enacted, it directed the Department of Education to promulgate regulations to permit single-sex classes and schools. At that time, less than a dozen publicly funded single-sex programs existed across the country.[61] Since the final regulations amending Title IX's implementation were published in 2006, that number has exploded to over 500 public single-sex programs today, many of them charter schools.[62]

Title IX's regulations specify that permissible single-sex classes and activities within public schools must be non-vocational, voluntary programs that serve an "important objective," "provided that the single-sex nature of the activity is substantially related to achieving that objective."[63] Whole schools may also be single-sex and then must ensure that "substantially equal" benefits are available to the excluded sex, though independent single-sex charter schools are exempt from that provision.[64]

The regulations essentially codify the Supreme Court's standard from *U.S. v. Virginia*,[65] the case that found the Virginia Military Institute's exclusion of women violated the Fourteenth Amendment. However, the 2006 regulations appear to stop short of the Court's directive in that the 7-2 decision made clear that there is a "strong presumption that any

gender classifications are invalid"[66] unless an "exceedingly persuasive"[67] justification is served. Interestingly, unlike the regulations that apply to single-sex activities within co-educational schools, the regulations that apply to single-sex schools do not require the articulation of an important governmental interest. Since the VMI case, the Court has not issued further instruction on what justifications would be "exceedingly persuasive," but it appears that current jurisprudence would require any single-sex charter school to be supported by more than mere desire for such an environment.

Summary

As asserted above, equal educational opportunity is a cherished and long-held goal in the United States. Its current home in both jurisprudence and federal legislation directly reflects the struggle inherent in realizing the goal. When school reform embraces parental choice in the form of charter schools, the value of equal educational opportunity must remain central. The concerns raised when publicly funded schools enroll either an over- or under-representation of the students on the basis of race, socio-economic status, disability, language, or gender go to the heart of equity. While it would be inappropriate to claim that no school with such a profile could ever be valid, it is equally inappropriate to assume that simply because parents select an option with a homogeneous student population, it is proper.

Ensuring that public educational dollars serve equity requires balancing the parents' choices against principle of *parens patriae*, the state's interest in ensuring children's education meets appropriate standards.[68] This interest, combined with concerns about charter schools and whether they serve all children regardless of race, ethnicity, socio-economic status, language, disability and gender, strongly suggest that states and their students would benefits from explicit policies designed to increase the equity and outcomes of charter schools.

Part II: Recommendations for Educational Policymakers

Given the national focus on equal educational opportunity, the need to better serve segments of the student population, and the prevalence of charter school legislation as a school reform tool, the question becomes: How can policymakers wield the "charter schools" tool in a manner that champions equal educational opportunity?

What follows is a series of recommendations to ensure that charter schools further national policy goals with respect to equity and opportunity. Growth in the charter school sector for the mere sake of growth neglects the central justification for their existence: to improve the current public educational landscape for children and their families. We believe that any public policy should "[f]irst, do no harm," in this instance by ensuring that charter school policies "should at least not result in greater inequalities" than the current school system that charter schools are designed to "reform."[69] We also believe that employing charter schools to further equal educational opportunity requires that

implementation of charter school statutes "should not have the effect of increasing the advantage of those at the top of the [income] distribution."[70]

To that end, first, we provide measures that charter school authorizers—be they school districts or other entities—can adopt to better realize charter schools' potential as a school reform strategy. Second, we advance provisions that state legislatures could enact to set equitable statewide guidelines for all charter schools.[71] Finally, we make recommendations for Congress to include in the reauthorization of NCLB to ensure that charter schools address the same policy goals established by the original ESEA and other federal legislative initiatives.

Charter School Authorizers

Whether or not the federal or state legislatures adopt the specific policy recommendations below, charter school authorizers have an independent opportunity to exercise their discretion in ways that maximize equitable outcomes for all students and avoid the civil rights concerns raised by critics of charter schools. To that end, we recommend the following:

Establish a clear set of principles that will guide the exercise of the authority to grant, oversee, renew, and revoke charters. Every exercise of policy is a statement of values. Accordingly, it is imperative at the outset to consider in what ways the exercise of charter school authority will be consistent with the values held by the community the authorizer serves.[72] The principles adopted should clarify that the value of equal educational opportunity has priority and may also suggest approaches that would be counter to local norms. Any principles adopted should then be reflected in each aspect of the chartering process. For example, the University of Wisconsin-Milwaukee's requirement that each charter school "reflect the diversity of the population of the City" results in a requirement that applicants "[d]escribe the marketing program that will be used to inform the community about the school," "explain how students will be recruited for the program," and "[d]escribe the means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the school district population."[73]

Require that charter school applicants make clear how the school will broaden, not replicate, existing opportunities for struggling populations of students in the community or communities intended to be served by the school. Charter schools were designed to spur educational innovation in order to achieve better results.[74] The underlying premise, of course, is that by providing a variety of educational approaches, students and their parents will be more likely to find an educational environment that engages the child and leads to greater achievement. Therefore, if our goal is to improve educational outcomes for students who are not now achieving at desired levels in existing programs, little is accomplished by replicating opportunities currently present. Each charter school should add to the local educational menu in ways that target effective and equitable outcomes for all students.

Require charter school applicants to attend explicitly to local contextual factors, particularly identified achievement disparities, graduation rate concerns, suspension and expulsion issues. If charter schools are truly to play a beneficial role in school reform, then each charter school must have an appreciable positive impact on the educational attainment of the students served in that area. One way that charter authorizers could help to accomplish this goal would be to require those seeking charters to describe how the proposed school will address one or more identified problems targeted for "reform" by explicitly referencing local data and local issues and detailing how the proposed charter school will positively affect the community and improve the data picture.

Require evidence that the proposed school's curricular philosophy, methodological approaches, or both are likely to achieve positive results. While state statutes uniformly require charter school applicants to describe the educational approach to be used, describing that approach is insufficient if charter schools are going to achieve better results. Instead, charter authorizers should expect those who apply to justify the need for the charter school by demonstrating through references to research the likelihood of success. Charter school applicants should also be required to explain how this success will be measured, including but not limited to performance on state accountability systems. This suggestion, coupled with the requirement to attend to local outcomes data, aligns with NCLB and IDEA requirements to use sound scientifically based research as a basis for student programming as much as is practicable.[75]

Require charter school applicants to detail disciplinary codes and procedures and require a focus on positive interventions and supports. As noted above, students of color and students with disabilities are subject to higher rates of suspension and expulsion. In addition, researchers have raised many concerns about a "school to prison pipeline" because of an increasing police involvement in responding to in-school misbehavior.[76] To ensure equitable disciplinary policy, applicants should be required to detail their approach, including alternatives to suspension, expulsion, and discretionary involvement of police. Applicants should also be required to identify the research base that supports the school's proposed approach. Charter operators should also be required to maintain data regarding the number of suspensions and expulsions, both in the aggregate and disaggregated by race, ethnicity, gender, and socioeconomic status. Data on student attrition should also be tracked to ensure that students are not being constructively expelled (pushed out).

Require detailed teacher recruitment, retention, and staff development plans so that the school's teachers have sufficient capacity to deliver equal educational opportunity. Research has documented a linkage between teacher quality and student achievement.[77] However, schools with high concentrations of minority students are taught disproportionately by teachers who are uncertified, inexperienced, or not teaching in their field.[78] Authorizers must take steps to ensure that charter schools, particularly those serving minority students or other students who have historically struggled, have highly qualified faculty.

Consider publishing a request for proposals (RFP) for charter schools to address particular persistent problems related to equitable outcomes as identified by local data analysis. Charter school authorizers can approach their task in either a passive or an active posture. That is, they can wait to see what charter schools are proposed or they can actively seek ideas to tackle persistent identified problems. The National Alliance for Public Charter Schools recommends that state laws be amended to require authorizers to use an RFP process.[79] However, authorizers need not wait for such statutory revisions to implement a targeted approach specifically designed to solicit high-quality proposals to address issues of equity and opportunity.

Require detailed recruitment plans to ensure that the school targets and attracts a diverse student applicant pool representative of the broader community in terms of race, socio-economic status, disability status, gender, and limited English proficiency. Research clearly documents the advantages of learning in diverse environments for all students and conversely demonstrates the problems associated with racially isolated learning environments.[80] Additionally, scholars have raised concerns about charter schools having a segregative or re-segregative effect in some communities. Therefore, charter authorizers should require each applicant to submit a detailed recruitment plan documenting the steps that will be taken to ensure the broadest representation of students requesting admission to the school. If the school proposes a curriculum that is designed to appeal to a student population that can be defined by a common status characteristic (e.g., an ethno-centric charter school, a school designed for children with disabilities, a single-sex charter school), authorizers should hold the plan to a higher level of scrutiny to ensure that the school truly practices open enrollment[81] and actively seeks the benefits of a diverse student body. Likewise, given existing achievement gaps related to race and socio-economic status, authorizers should highly scrutinize a plan for any school that seeks to serve high-achieving students to ensure that it does not result in a school with a homogenous student population. Finally, if the school's proposed location would potentially hinder enrollment of a broad representation of students, the applicant should be expected to present a more detailed recruitment plan in order to counter those effects.[82]

Ensure that the charter contract includes provisions that hold charter schools to a standard of equal educational opportunity in terms of educational inputs, practices, and outcomes. Requiring attention to issues of equity is important, as noted above, at the application stage of charter school approval. Such attention by the authorizer is equally important once the school is up and running. Charter schools are primarily held accountable by means of a charter contract. Accordingly, it is important that the charter contract specify the equitable outcomes expected, including, but not limited to: (1) student achievement on state tests and other achievement outcomes that is comparable to, or better than, existing school performance, including a narrowing of identified achievement gaps; (2) student retention/attrition data that provide evidence that the school retains the students it enrolls; and (3) disciplinary data that shows that suspension and expulsion are used only when necessary and that

"trends and patterns of disciplinary actions, including suspensions, expulsions, and handling of pupil harassment will be examined annually."[85]

Set clear revocation and renewal standards reflecting a commitment to equal educational opportunity. The ultimate accountability mechanisms at the authorizers' disposal are revocation, renewal and non-renewal decisions. Therefore, authorizers should make the charter contingent upon performance that demonstrates the delivery of equal educational opportunity. To that end, authorizers should clearly establish that certain patterns of performance will require additional justification before any renewal is granted. For example, if the community is racially and ethnically diverse, but the school's population is not, the charter school should have to justify why it still serves the public interest and should provide a detailed plan to attract a student population more representative of the community in future years. Moreover, segregated learning environments are adverse to public policy. The presumption, therefore, should be that the community is not served by a segregated school and that a segregated charter school wishing to remain in operation should have to provide convincing evidence to overcome that presumption. Likewise, if school's data demonstrate that suspension and expulsion are used in excess of local or state practices and standards, the school should have to justify its continuance, given a presumption that a charter showing an unusually high reliance on exclusion for disciplinary purposes will not be renewed. In every case, satisfaction of parents of enrolled students should not be the primary evidence that the school positively serves the public's interests.

State Legislatures

Charter schools are, by definition, creations of state law. Accordingly, state legislatures should take explicit care to ensure that these schools deliver programs that advance state goals to provide equitable opportunities to all students. States can move in that direction by enacting provisions in charter school laws that make the goal of equal educational opportunity a central feature of charter schools and require charter school authorizers and operators to exercise their obligations in a manner consistent with that goal. What follows is a list of the provisions that should be present in a charter school statute and a rationale for such inclusion.

Adopt declarations establishing that one primary goal of charter school legislation is to enhance equitable educational outcomes for all students, particularly those who have historically struggled. Such declarations provide tangible evidence that charter schools are intended to be a tool to address the most pressing educational concerns as consistently expressed as a priority in federal law and many state laws. Such declarations also establish a predicate for provisions intended to effectuate the goal.

State explicitly that charter school must comply with all federal laws and any desegregation decrees. This provision is necessary to ensure that charter school operators are fully aware that state statutes may relieve compliance with state, but not

federal, law. In addition, to ensure that any remaining desegregation orders are not subverted by the creation of a charter school in the same catchment area, an explicit provision clarifying the decrees' relationship to charter schools should be included in any state with districts that remain under judicial oversight.

Require charter school applications to attend explicitly to the local context, particularly identified achievement disparities, graduation rates, and suspension and expulsion issues. By requiring as an element of a charter school application explicit attention to identified and quantifiable educational disparities, the statute increases the likelihood that charter schools will serve equity-focused goals of educational reform.

Require that charter school applicants explain how the school will broaden, not replicate, existing opportunities in the community or communities intended to be served by the school. Particularly given current political limitations on school funding, the state has an interest in ensuring that any new programs avoid replication of existing capacity. Requiring such an approach also helps to avoid negative outcomes associated with reduced economies of scale associated with redundant programming.

Require evidence that the proposed school's curricular philosophy, methodological approaches, or both are likely to achieve positive results. As noted in the section above, charter school applicants should be required to do more than simply describe the educational program they wish to employ. Rather, they should be required to tether their approach to high-quality research evidence that their request has a high likelihood of success. This requirement also ensures that funds used for charter school development serve as wise investments of the public fisc.

Require detailed recruitment plans to ensure that the school targets and attracts a broad applicant pool in terms of race, socio-economic status, disability status, gender, and limited English proficiency. Current charter school laws direct applicants to describe admission and sometimes recruitment plans, which is a necessary, but insufficient requirement. Beyond this, however, charter applicants should explicitly detail, given the local context and the geographic area from which students will be drawn, how the school will be advertised, and how students from a broad variety of backgrounds will be encouraged to apply. Doing so makes diversity a design principle, rather than merely a passive aspiration. Moreover, the efficacy of any plan will depend on the resources available to implement it. Therefore, the plan should include a proposed budget for recruitment and assurances that the necessary resources are available.

As part of the standards for granting charter approval and renewal, create a set of rebuttable legal presumptions tied directly to equal educational opportunity. Charter schools are disproportionately likely to have racially homogenous student populations, raising concerns that charter schools have exacerbated racial isolation and created de facto segregation.[84] Some charter schools also appear to turn away children with disabilities or children learning English.[85] Finally, some charter schools have

been designed to serve homogenous populations (e.g. single-sex schools or schools designed for children with disabilities).[86] In each instance, the public policy concerns are the same: given our history of racial segregation, reluctance to provide appropriate programming to children learning English, warehousing and denial of opportunities for children with disabilities, and limiting educational opportunities on the basis of sex, does an educational environment with a homogenous or nearly homogeneous student population based on some identified status characteristic (race, ethnicity, sex, disability) justifiably serve the public interest?

Given those concerns and the historical context of hard-fought advances against discrimination, it is imperative that state policymakers ensure that charter schools serve the purpose of advancing equity, not retreating from the goal. As such, we recommend state legislators adopt a series of rebuttable legal presumptions that trigger greater scrutiny and greater accountability to ensure that each charter school advances educational opportunity. Suggested language for these presumptions appears in the accompanying separate model code, but the intent is the same for all; to declare that some types of schools are presumptively adverse to public policy and therefore may not bear the imprimatur of the state as a public charter school without substantial justification to ensure non-discriminatory intent, effect, or both. In each instance, the presumption could be overcome if evidence could be marshaled to document how the school is actually consistent with and not counter to equal educational opportunity. Moreover, that evidence could include documentation of parental satisfaction, although this alone would be insufficient to show an advancement of the equity goals of charter policies.

This requirement is consistent with the non-discriminatory language in federal law (Title VI, Title IX, the EEOA, Section 504, the ADA, the IDEA and the NCLB). Likewise, requiring justification replicates the standard to which courts would hold any program alleged to be discriminatory. Requiring such justifications whenever a charter contract is initiated and renewed ensures that charter schools operate in a manner consistent the principles of equal protection.

Grant state educational agencies (SEAs) the authority to revoke and non-renew charters of schools that do not meet basic standards, whenever charter authorizers fail to act. The primary oversight responsibility for charter schools' operation is the charter authorizer. However, if the authorizer fails to act, the system essentially breaks down. Accordingly, a second level of oversight is needed to ensure that the goal of equal educational opportunity is protected for all students. We recommend some state educational agency (state school board, state department of education, state charter school board) be given the independent statutory authority to revoke or non-renew poorly performing charter schools.

Reauthorization of NCLB

As noted above, the federal provisions that describe and fund charter schools are found in No Child Left Behind. Congress is currently in the process of reauthorizing NCLB,

including the portion entitled the "Charter Schools Expansion Act." As such, legislators have an opportunity to strengthen the law by adding provisions to ensure that charter schools principally advance equal educational opportunity. We recommend the following:

Condition funds distributed to states through NCLB's charter school provisions on a clear articulation of how each state's charter school legislation is used to advance equal educational opportunity and other existing published priorities. Under existing law, funds expended under the Charter Schools Expansion Act flow first to the states. Provisions should be added to require that states submit plans that detail how each state's charter school program serves the advancement of equity in order to be eligible for those funds.[87]

Require that states award federal planning grants only to charter schools with applications that show a strong likelihood of success to positively affect local achievement disparities. In addition to requiring that charter school legislation must meet minimum standards, NCLB should require that states award charter planning grants only to those schools most likely to move the state appreciably closer to a goal of equal educational opportunity.

Establish programs and grant funds that create an incentive to those charter schools that narrow achievement gaps and promote integration. Currently federal funding is provided for charter school development in the form of planning grants. The provisions suggested here would go beyond planning grants and would provide recognition, funds, or both to established charters that serve as exemplars of successful integrated learning. In order to privilege those charter schools that demonstrate success in narrowing achievement gaps, the federal government could enact provisions to reward those programs. The incentives could take a variety of forms (e.g., designating schools of equitable excellence, providing funds to support expansion, providing funds to be used to support special projects, providing funds to be used as bonuses for staff, providing funds for discretionary school use). In whatever form the incentive takes, any funds should be contingent upon sharing approaches in order to diffuse innovations to the broader educational community.

Require states to collect data regarding charter school recruitment, retention, and discipline. In addition to the data already required by NCLB, the law should be amended to require that states require charter schools to report data on recruitment, retention and discipline of students. These data should be reported in the aggregate and disaggregated on the basis of race, ethnicity, gender, disability, and language. In that way, both state and federal officials can better monitor charter schools' effect on equity and diversity.

Notes and References

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4 Finn, C.E., Manno, B., & Vanourek, G. (2000). *Charter Schools in Action: Renewing Public Education*. Princeton, NJ: Princeton University Press.

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5 Mickelson, R.A., Bottia, M., Southworth, S. (2008). *School Choice and Segregation by Race, Class, and Achievement*. Boulder, CO: National Education Policy Center. Retrieved August 25, 2011, from http://nepc.colorado.edu/publication/school-choice-and-segregation-race-class-and-achievement.

Frankenberg, E., Siegel-Hawley, G., Wang, J. (2010). *Choice without Equity: Charter School Segregation and the Need for Civil Rights Standards*. Los Angeles, CA: The Civil Rights Project/Proyecto Derechos Civiles at UCLA; www.civilrightsproject.ucla.edu.

6 *Brown v. Board of Education of Topeka*, 347 U.S. 483, at 493 (1954).

7 Koski and Reich discuss four conceptions of equal educational opportunity: (1) "Equal educational opportunity might mean the simple treatment of everyone equally by allocating identical resources to each student;" (2) "Equal educational opportunity as horizontal equity ensures that all are provided equal access to education and that education does not discriminate against any child or identifiable and 'arbitrary' class of children (e.g., the poor) by creating or exacerbating their subordinate status;" (3) "A third conception of equal educational opportunity would aspire to eliminate the effects of socially produced inequalities. The schoolhouse serves to redress background social inequalities by directing additional resources to those students who are deemed needy;" and (4) "Finally, a fourth conception of equal educational opportunity would target all background inequalities, including those that are not caused by social circumstances."

Koski, W. S. & Reich, R. (2006). When "Adequate" Isn't: The Retreat from Equity in Educational Law and Policy and Why It Matters. *Emory Law Journal, 56*, 545-617, at 614-615.

8 Umpstead, R. (2011). A Tale of Two Laws: Equal Educational Opportunity in Special Education Policy in the Age of the No Child Left Behind Act And the Individuals With Disabilities Education Act. *West's Education Law Reporter, 263*, 1-21 (at p. 6).

9 *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

10 *Plyler v. Doe*, 457 U.S. 202 (1982).

11 *Lau v. Nichols*, 414 U.S. 573 (1974).

12 *U.S. v. Virginia*, 518 U.S. 515 (1996).

13 *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (D.C.1972).

14 *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964).

Green v. County School Board of New Kent County, 391 U.S. 430 (1968).

15 Stambach, A. & Becker, N.C. (2006). Finding the old in the new: On race and class in US charter school debates. *Race and Ethnicity in Education*, 9(2), 159-182.

Saporito, S., & Sohoni, D. (2006). Coloring outside the lines: Racial segregation in public schools and their attendance boundaries. *Sociology of Education, 79*, 81-105.

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16 Table 1 does not list every major case in each category, but rather representative landmark cases that establish the current jurisprudence in each area. The full citations for each case and federal statute follow:

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

Parents Involved in Community Schools v. Seattle School District Number 1, 551 U.S. 701 (2007).

Plyler v. Doe, 457 U.S. 202 (1982).

Lau v. Nichols, 414 U.S. 573 (1974).

Mills v. Board of Education of District of Columbia, 348 F.Supp. 866 (D.C.1972).

Pennsylvania Assn. for Retarded Children v. Commonwealth, 334 F.Supp. 1257 (ED Pa.1971).

Mississippi University for Women v. Hogan, 458 U.S. 718 (1982).

U.S. v. Virginia, 518 .U.S. 515(1996).

Title VI of the Civil Rights Act, 42 U.S.C. 2000d *et seq*.

Equal Educational Opportunities Act, 20 U.S.C. 1703.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, 34 C.F.R. 104 *et seq*.

Americans with Disabilities Act, 42 U.S.C. 12101 *et seq*.

Title IX of the Education Amendments of 1972, 20 U.S.C. 1682 *et seq*.

17 No Child Left Behind Act, 20 U.S.C. 6301 *et seq*.

18 20 U.S.C. 1400 *et seq*., 34 C.F.R. 300 *et seq*.

19 Underwood, J.K. & Mead, J.F. (1995). *The Legal Aspects of Special Education and Pupil Services*, Needham Heights, MA: Allyn & Bacon.

20 Public Law 89-10, §201(1965).

21 Orfield, G. & Lee, C. (2007). *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies.* Los Angeles, CA: The Civil Rights Project/Proyecto Derechos Civiles at UCLA; www.civilrightsproject.ucla.edu.

22 For a full discussion of NCLB, its requirements, and the sanctions imposed, see

United States Department of Education. (2002). *No Child Left Behind:* A Desktop Reference. Retrieved June 1, 2011 from http://www2.ed.gov/admins/lead/account/nclbreference/reference.pdf.

Chief among its requirements is that states that accept NCLB funds institute a uniform system of state accountability, which includes testing children in reading and math each year in grades 3-8, and once in the high school years. States must also assess scientific knowledge at least three times during elementary and secondary school. With a goal of 100% of students scoring at or above state established proficiency levels by 2014, the law tracks schools' "adequate yearly progress" annually. Schools that fail to meet the standards set by each state are deemed "in need of improvement."

23 20 U.S.C. §6316.

24 20 U.S.C. §7221.

25 20 U.S.C. 1413, 34 C.F.R. 300.209 (2006).

26 For a thorough discussion of what IDEA requires, see

Huefner, D. (2006). *Getting Comfortable with Special Education Law: A Framework for Working with Children with Disabilities.* (2nd Edition). Norwood, MA: Christopher-Gordon Publishers, Inc.

27 20 U.S.C. §1412(a)(24); 20 U.S.C. §1418(d)(1)(2004).

28 20 U.S.C. §1418(d)(1)(2004).

29 20 U.S.C. §1414(b)(1)(2004).

30 In December of 2010, the U.S. Department of Education published its final list of funding priorities for use when funding projects (75 Federal Register 78486, December 15, 2010). As the introduction to the regulations explains:

> [w]e take this action to focus Federal financial assistance on expanding the number of Department programs and projects that support activities in areas of greatest educational need." Several of the priorities listed further support the centrality of equal educational opportunity. They are:
>
> Priority 1—Improving Early Learning Outcomes
> Priority 3—Improving the Effectiveness and Distribution of Effective Teachers or Principals
> Priority 4—Turning Around Persistently Lowest-Achieving Schools
> Priority 5—Improving School Engagement, School Environment, and School Safety and Improving Family and Community Engagement
> Priority 6—Technology
> Priority 9—Improving Achievement and High School Graduation Rates
> Priority 11—Promoting Diversity
> Priority 13—Enabling More Data-Based Decision-Making
> Priority 14—Building Evidence of Effectiveness

Priority 15—Supporting Programs, Practices, or Strategies for which there is Strong or Moderate Evidence of Effectiveness

31 Baker, B., Keller-Wolff, C., & Wolf-Wendel, L. (2000). Two steps forward, one step back: Race/ethnicity and student achievement in education policy research. *Education Policy, 14*, 511-29.

32 Lee, J. (2006). *Tracking achievement gaps and assessing the impact of NCLB on the gaps: An in-depth look into national and state reading and math outcome trends*. Cambridge, MA: The Civil Rights Project at Harvard University.

33 The American Civil Liberties Union describes the "school to prison pipeline" as "a disturbing national trend wherein children are funneled out of public schools and into the juvenile and criminal justice systems" for disciplinary infractions that could be addressed within schools.

ACLU (n.d.) *School-to-Prison Pipeline* (web page). Retrieved May 25, 2011 from http://www.aclu.org/racial-justice/school-prison-pipeline.

For research and a discussion of the concept see:

Kim. C., Losen, D., & Hewitt, D. (2010). *The School-to-Prison Pipeline*. New York, NY: New York University Press.

34 Frankenberg, E., Siegel-Hawley, G., Wang, J. (2010). *Choice without Equity: Charter School Segregation and the Need for Civil Rights Standards*, 37. Los Angeles, CA: The Civil Rights Project/Proyecto Derechos Civiles at UCLA; www.civilrightsproject.ucla.edu. Retrieved June 6, 2011, from http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/choice-without-equity-2009-report/frankenberg-choices-without-equity-2010.pdf.

35 Brief of 533 Social Scientists as *Amici Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, at 10 (Nos. 05-908 & 05-915).

36 Brief of 533 Social Scientists as *Amici Curiae* in Support of Respondents, *Parents Involved in Community Schools v. Seattle School District No. 1*, at 12 (Nos. 05-908 & 05-915).

37 Linn, R. L. & Welner, K. G. (Eds.) (2007). *Race-conscious policies for assigning students to schools: Social science research and the Supreme Court cases*. Washington, D.C.: National Academy of Education.

38 See:

Green, P., Baker, B., Oluwole, J. (2008). Achieving Racial Equal Educational Opportunity through School Finance Litigation. *Stanford Journal of Civil Rights and Civil Liberties*, 4, 283-338.

Green, Baker, and Oluwole argue that funding equity may be insufficient to correct the educational disadvantages experienced by schools with high Black concentrations because "all else equal, it would cost more simply to provide comparable teaching quality in predominantly Black schools" (309).

See also:

Peske H.G. & Haycock, K. (2006). *Teaching Inequality: How Poor and Minority Students are Shortchanged on Teacher Quality*. Washington, DC: Education Trust. Retrieved July 11, 2011, from http://www.edtrust.org/sites/edtrust.org/files/publications/files/TQReportJune2006.pdf.

39 Oluwole, J. & Green, P. (2008). Charter Schools: Racial Balancing Provisions and *Parents Involved*. *Arkansas Law Review*, 61, 1-52.

40 For example, Nevada's racial-balancing provision requires that the racial balance of charter schools not differ by more than 10% from the racial composition of students in the school district. Nev. Rev. Stat. § 386.580(1) (2011).

41 For example, Kansas simply mandates that "pupils in attendance at the [charter] school must be reasonably reflective of the racial and socio-economic composition of the school district as a whole." Kan. Stat. § 72-1906(d)(2) (2011).

42 Green, P.C. & Mead, J. F. (2004). *Charter schools and the law: Establishing new legal relationships*. Norwood, MA: Christopher Gordon Publishers, Inc., 114-117.

43 *Parents Involved in Community Schools v. Seattle School District Number 1*, 551 U.S. 701 (2007).

44 In the Seattle case, the school district employed a series of tiebreakers to determine student assignments to oversubscribed high schools. Under the pertinent tiebreaker, the district sought to ensure that the schools were within 10% of the district's White/non-White composition, which was 41% White and 59% non-White. Similarly, the Kentucky school district's assignment plan was designed to make certain that each non-magnet school had between 15% and 50% Black enrollment. The district's racial composition was approximately 34% Black and 66% White. Students' requests for school preference were approved on the basis of availability and the racial integration guidelines.

45 The plurality was formed by Chief Justice Roberts and Justices Scalia, Thomas, and Alito.

46 *Parents Involved in Community Schools v. Seattle School District Number 1*, 551 U.S. 701, 783 (2007).

47 Kennedy has several other objections as well. For a thorough discussion of various opinions filed in *Parents Involved v. Seattle*, see Green, P.C., Mead, J. F. & Oluwole, J.O. (2011). "Parents Involved, School Assignment Plans, and the Equal Protection Clause: The Case for Special Constitutional Rules." *Brooklyn Law Review, 76*(2), 503-567.

48 These measures include: (a) the strategic site selection of new schools; (b) creating attendance zones with general recognition of the school district's demographics; (c) distribution of resources for special programs; (d) targeted recruitment of students and faculty; and (e) racial tracking of enrollments, performance, and other statistics.

49 "In many metropolitan areas....creative siting of charter schools could allow the school to serve both areas of concentrated poverty and students in more affluent and diverse areas" (p. 3).

National Coalition on School Diversity. (2010). *Federally Funded Charter Schools Should Foster Diversity*, issue brief. Washington, DC: author. Retrieved May 25, 2011 from http://www.prrac.org/pdf/diversityincharters3.26.10.pdf.

50 South Carolina's statute may provide a blueprint. It states:

> In the event that the racial composition of an applicant's or charter school's enrollment differs from the enrollment of the local school district or the targeted student population by more than twenty percent, despite its best efforts, the local school district board shall consider the applicant's or the charter school's recruitment efforts and racial composition of the applicant pool in determining whether the applicant or charter school is operating in a nondiscriminatory manner. A finding by the local school district board that the applicant or charter school is operating in a racially discriminatory manner may justify the denial of a charter school application or the revocation of a charter. . . . A finding by the local school district board that the applicant is not operating in a racially discriminatory manner shall justify approval of the

charter without regard to the racial percentage requirement if the application is acceptable in all other aspects.

S.C. Code Ann. § 59-40-70(D) (Supp. 2011).

51 National Coalition on School Diversity. (2010). *Federally Funded Charter Schools Should Foster Diversity*, issue brief. Washington, DC: author. Retrieved May 25, 2011 from http://www.prrac.org/pdf/diversityincharters3.26.10.pdf.

52 Stambach, A. & Becker, N.C. (2006). Finding the old in the new: On race and class in US charter school debates. *Race and Ethnicity in Education*, *9*(2), 159-182.

Holme, J.J. (2002). Buying Homes, Buying Schools: School Choice and the Social Construction of School Quality. *Harvard Educational Review*, *72*(2), 177-205.

53 Smrekar, C., and Goldring, E. (1999). *School choice in urban America: Magnet schools and the pursuit of equity*. New York: Teachers College Press.

See also Hsieh, C., and Urquiola, M. (2003). *When schools compete, how do they compete? An assessment of Chile's nationwide school voucher program*, NBER Working Paper No. 10008. Cambridge, MA: National Bureau of Economic Research.

54 Horn, J. & Miron, G. (2000). *An Evaluation of the Michigan Charter School Initiative: Performance, Accountability, and Impact*. Kalamazoo: The Evaluation Center, Western Michigan University.

Fiore, T.A., Harwell, L.M., Blackorby, J., & Finnigan, K.S. (2000). *Charter Schools and Students with Disabilities: A National Study*. Washington, DC: United States Department of Education, Office of Educational Research and Improvement.

Mead, J.F. (2002). Determining charter schools' responsibilities for children with disabilities: A guide through the legal labyrinth. *Boston University Public Interest Law Journal*, *11*, 167-189.

Ahearn, E., Lange, C., Rhim, L., & McLaughlin, M. (2001). *Project Search: Special Education as Requirements in Charter Schools, Final Report of a Research Study*. Alexandria, VA: National Association of State Directors of Special Education.

Ahearn, E. Rhim, L., Lange, C., and McLaughlin, M. (2005). *Project Intersect: Studying Special Education in Charter Schools, Research Report #1: State Legislative Review*. College Park, MD: University of Maryland, Project Intersect.

Mead, J.F. (2008). *Charter Schools Designed for Children with Disabilities: An Initial Examination of Issues and Questions Raised*. Alexandria, VA: National Association of State Directors of Special Education.

55 Miron, G., Urschel, J. L., Mathis, W, J., & Tornquist, E. (2010). *Schools without Diversity: Education Management Organizations, Charter Schools and the Demographic Stratification of the American School System*. Boulder and Tempe: Education and the Public Interest Center & Education Policy Research Unit. Retrieved May 25, 2011 from http://epicpolicy.org/publication/schools-without-diversity.

56 Fiore, T.A., Harwell, L.M., Blackorby, J., & Finnigan, K.S. (2000). *Charter Schools and Students with Disabilities: A National Study*. Washington, DC: United States Department of Education, Office of Educational Research and Improvement.

57 20 U.S.C. 1413, 34 C.F.R. 300.209 (2006).

58 Mead, J.F. (2008). Charter Schools Designed for Children with Disabilities: An Initial Examination of Issues and Questions Raised, Alexandria, VA: National Association of State Directors of Special Education.

59 This study was focused on schools run by Education Management Organizations, not all charter schools. See

Miron, G., Urschel, J. L., Mathis, W, J., & Tornquist, E. (2010). *Schools without Diversity: Education Management Organizations, Charter Schools and the Demographic Stratification of the American School System*. Boulder and Tempe: Education and the Public Interest Center & Education Policy Research Unit. Retrieved May 25, 2011 from http://epicpolicy.org/publication/schools-without-diversity.

60 20 U.S.C. §1703(f).

61 Mead, J.F. (2003). Single-Gender "Innovations": Can Publicly Funded Single-Gender Choice Options be Constitutionally Justified?" *Educational Administration Quarterly, 39*(2), 164-186.

62 The National Association for Single Sex Public Education reports 524 single sex programs as of January 2011. NASSPE (n.d.) *Single-Sex Schools / Schools with single-sex classrooms / what's the difference?* (web page). Retrieved February 16, 2012, from http://www.singlesexschools.org/schools-schools.htm#35

63 34 C.F.R. §106.34(b).

64 "A nonvocational public charter school that is a single-school local educational agency under State law may be operated as a single-sex charter school ..." 34 C.F.R. §106.34(c)(2).

65 518 .U.S. 515(1996).

66 *U.S. v. Virginia*, 518 U.S. 515, at 532 (1996).

67 *U.S. v. Virginia*, 518 U.S. 515, at 533 (1996).

68 Mead, J.F. (2008). *How Legislation and Litigation Shape School Choice*. East Lansing, MI: Great Lakes Center for Education Research & Practice. Retrieved February 16, 2012, from http://greatlakescenter.org/docs/Research/2008charter/policy_briefs/02.pdf.

69 Koski, W. S. & Reich, R. (2006). When "adequate" isn't: The retreat from equity in educational law and policy and why it matters. *Emory Law Journal, 56*, 545-617.

70 Koski, W. S. & Reich, R. (2006). When "adequate" isn't: The retreat from equity in educational law and policy and why it matters. *Emory Law Journal, 56*, 545-617, at 614-615.

71 The recommendations we make here are focused only on revisions to current laws to ensure equity. The National Alliance for Public Charters published a complete model statute. National Alliance for Public Charter Schools. (2009). A New Model Law for Supporting the Growth of High-Quality Public Schools. Retrieved May 25, 2011, from http://www.publiccharters.org/data/files/Publication_docs/ModelLaw_P7-wCVR_20110402T222341.pdf

72 For example, the University of Wisconsin-Milwaukee (UWM) adopted the following:

> The University interprets its responsibility to authorize charter schools as a part of a larger attempt to improve education for children and in this instance, the education of children in the City [of Milwaukee]. Charter schools must have programs that provide quality education to urban students and address the critical issues of today's urban education environment. The academic achievement of children who are viewed as at-risk should be the central focus of the charter school application. Substantive outcomes must be given priority over process experiences if academic achievement is to serve as the central focus. ... The

University and SOE [School of Education] consider the following principles to be essential to the development of charter schools authorized by the University. These principles are as follows:

- The charter school should be developed to improve the overall education conditions for children who live in the City.
- The charter school should reflect the "best educational practices" based upon professional standards and current research.
- The charter school should be developed to reflect linkages between and among the school, families, and community agencies.
- The charter school should reflect and be consistent with the UWM-SOE Urban Mission in all respects.
- The charter school population should reflect the diversity of the population of the City.
- The administration of the charter school should embody principles of democratic management.
- The charter school success measures should encompass both academic and social outcomes for children, as well as consumer satisfaction.

Retrieved, May 25, 2011, from http://www4.uwm.edu/soe/centers/charter_schools/application_proc.cfm.

73 University of Wisconsin-Milwaukee (n.d.). Application Requirements, Office of Charter Schools (web document). Retrieved May 25, 2011, from http://www4.uwm.edu/soe/centers/charter_schools/upload/Appendix-E-Application-Requirements-2.pdf

74 Nathan, J. (1996). *Charter Schools: Creating Hope and Opportunity for American Education*. San Francisco, CA: Jossey Bass.

75 20 U.S.C. §6301(9); 20 U.S.C. §1400(c)(5)(E-F).

76 Kim. C., Losen, D., & Hewitt, D. (2010). *The School-to-Prison Pipeline*. New York, NY: New York University Press.

77 Darling-Hammond, L. (1999). *Teacher Quality and Student Achievement: A Review of State Policy Evidence*. University of Washington: Center for the Study of Teaching and Policy. Retrieved May 25, 2011, from http://depts.washington.edu/ctpmail/PDFs/LDH_1999.pdf

78 Peske H.G. & Haycock, K. (2006). *Teaching Inequality: How Poor and Minority Students are Shortchanged on Teacher Quality*. Washington, DC: Education Trust. Retrieved July 11, 2011, from http://www.edtrust.org/sites/edtrust.org/files/publications/files/TQReportJune2006.pdf

79 National Alliance for Public Charter Schools (2009). *A New Model Law for Supporting the Growth of High-Quality Public Schools*. Washington, DC: Author. Retrieved May 25, 2011 from http://www.publiccharters.org/data/files/Publication_docs/ModelLaw_P7-wCVR_20110402T222341.pdf.

80 Linn, R. L. & Welner, K. G. (Eds.) (2007). *Race-conscious policies for assigning students to schools: Social science research and the Supreme Court cases*. Washington, DC: National Academy of Education.

81 Office for Civil Rights. (2000).Applying federal civil rights laws to public charter schools: Questions and answers. Reprinted in Green, P.C. & Mead, J. F. (2004). *Charter schools and the law: Establishing new legal relationships*. Norwood, MA: Christopher Gordon Publishers, 224-226.

82 The National Alliance of Public Charter Schools recommends that states provide transportation funding to charter schools. See:

National Alliance for Public Charter Schools (2009). *A New Model Law for Supporting the Growth of High-Quality Public Schools*. Washington, DC: Author, 23. Retrieved May 25, 2011 from http://www.publiccharters.org/data/files/Publication_docs/ModelLaw_P7-wCVR_20110402T222341.pdf

83 Wis. Administrative Code, PI 9.06.

84 National Coalition on School Diversity (2010). Federally Funded Charter Schools Should Foster Diversity. Retrieved May 25, 2011 from http://www.prrac.org/pdf/diversityincharters3.26.10.pdf.

85 See notes 44 and 49.

86 See notes 48 and 51.

87 See also:

National Coalition on School Diversity. (2010). *Federally Funded Charter Schools Should Foster Diversity*, issue brief. Washington, DC: author. Retrieved May 25, 2011 from http://www.prrac.org/pdf/diversityincharters3.26.10.pdf.

NEPC

NATIONAL EDUCATION POLICY CENTER

Model Policy Language for Charter School Equity

Julie F. Mead
University of Wisconsin-Madison

Preston C. Green III
Pennsylvania State University

February 2012

National Education Policy Center

School of Education, University of Colorado Boulder
Boulder, CO 80309-0249
Telephone: (802) 383-0058

Email: NEPC@colorado.edu
http://nepc.colorado.edu

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GreatLakesCenter@greatlakescenter.org

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Model Policy Language for Charter School Equity

Julie F. Mead, University of Wisconsin-Madison
Preston C. Green III, Pennsylvania State University

On the following pages, this report, a companion document to *Chartering Equity: Using Charter School Legislation and Policy to Advance Equal Educational Opportunity*,[1] presents model language designed for adoption by state legislatures with existing charter school laws.[2] As such, it is not intended to present a comprehensive charter school statute. Rather, the proposed language is designed to augment existing laws by adding language particularly aimed at ensuring that charter schools serve as a vehicle of reform consistent with the value of equal educational opportunity. These provisions should be adopted to ensure that charter schools are used as a tool to advance equity for all students. Although the proposed language is designed for state policymakers, it could also be adapted for use by charter school authorizers.

1 Mead, J.F. & Green, P.C. (2012). *Chartering Equity: Using Charter School Legislation and Policy to Advance Equal Educational Opportunity*. Boulder, CO: National Education Policy Center.

2 Guidance for the structure of the model law was provided by National Alliance for Public Charter Schools. (2009). A New Model Law For Supporting The Growth Of High-Quality Public Charter Schools. Retrieved from http://www.publiccharters.org/data/files/Publication_docs/ModelLaw_P7-wCVR_20110402T222341.pdf.

Guidance for the structure was also provided by the Pennsylvania Charter School Law, 24 Pa. Stat. § 17-1701-A et. seq. (2011).

A BILL FOR AN ACT

AN ACT TO ADVANCE EQUAL EDUCATIONAL OPPORTUNITY THROUGH CHARTER SCHOOLS.

Be it enacted by the General Assembly of the State of ABC that Title XXX is amended to include a new Article 123, which reads as follows:

ARTICLE 123

ADVANCING EQUAL EDUCATIONAL OPPORTUNITY THROUGH CHARTER SCHOOLS

Section 100. Legislative Declarations

The legislature finds and declares the following:

A. The purpose of charter schools is to enhance equitable educational opportunities for all students, including racial and ethnic minorities, students with disabilities, students with limited English language proficiency and students from low-income families; and

B. Charter schools that lack diversity in terms of race, disability status, gender, limited English proficiency, and socio-economic status require further careful examination to ensure they serve the purpose of enhancing equitable educational opportunities for all students.

Section 101. Application of Laws

A. Charter schools shall comply with all federal statutory, regulatory, and constitutional provisions.

B. Charter schools shall comply with school desegregation decrees.

C. Charter schools shall comply with all state non-discrimination provisions.

D. The rights of children enrolled in charter schools shall be the same as the rights granted by state and federal law enjoyed by children enrolled in other public schools.

E. These provisions in Sections 101-106 apply to all types of charter schools.

Section 102. Application Process

A charter from an authorizing agency shall last five years. Charter authorizers shall evaluate applications based on a presentation of the following evidence:

A. A design for curriculum and instruction supported by high-quality research, indicating that the proposed charter school is likely to meet the student performance requirements for the state accountability system for all students, including racial and ethnic minorities, students with disabilities, students with limited English proficiency, and students from low-income families. To the extent practicable, curriculum and instruction should be supported by peer-reviewed research.

B. Evidence that the proposed charter school will broaden rather than replicate existing opportunities within the community or communities intended to be served by the charter school. The charter applicant will provide a list of existing public schools (including other charter schools) that serve the same community or communities and explain how the proposed school differs from existing schools.

C. Evidence that the application attends explicitly to the local context by identifying the educational issue or issues the proposed school is intended to address (e.g., identified achievement disparities, graduation rates, and suspension and expulsion issues) and how high-quality research supports the proposal that the school will improve educational outcomes in that area.

D. A detailed teacher recruitment, retention, and staff development plan that addresses how the school plans to attract and retain a highly qualified teaching force, including a proposed budget that outlines sufficient resources to implement the plan and identifies appropriate funding sources to cover associated costs.

E. A detailed plan to attract and enroll a diverse student body in terms of racial diversity, disability status, gender, and English proficiency. The plan shall explain how the school's designs for recruitment, educational themes, and the proposed location of the school are likely to attract students from a broad variety of backgrounds. The recruitment plan will include a proposed budget that outlines sufficient resources to implement the plan and identifies appropriate funding sources to cover associated costs.

F. A detailed plan to retain enrolled students, including how the school will retain racial and ethnic minorities, students of limited English proficiency, students with disabilities, students of different genders, and students from students from low-income families. In the case of a

proposal for a high school, the plan will address how the school will attain graduation rates for racial and ethnic minorities, students of limited English proficiency, students with disabilities, students of different genders, and students from low-income families that are comparable to or better than the rates of other high schools in the district.

G. A detailed description of discipline policies and practices that provide positive interventions and educational support for all students, particularly those who are suspended and including high-quality research that supports the proposed approach. No child will be expelled unless a preponderance of the evidence associated with the incident clearly demonstrates that the safety of students and staff compels the action. To the extent practicable, behavioral and disciplinary approaches should be supported by peer-reviewed research.

H. A detailed plan for how the school will provide special education and related services for students with disabilities pursuant to applicable federal laws.

I. A detailed plan consistent with applicable federal laws for how the school will meet the needs of students for whom English is not the primary language.

J. A plan for systematic record keeping of student performance including academic achievement, retention, attrition, suspension, and expulsion both in the aggregate and disaggregated on the basis of race, sex, disability, language status, and socio-economic status.

Section 103. Presumptions of Invalidity

A. Pursuant to Section 102, a proposed charter school that is unlikely to attract a student body whose composition of racial and ethnic minorities, students with disabilities, students with limited English proficiency, and students from low-income families that is within 10% of the population for each of these sub-groups within the community or communities intended to be served by the charter school is presumed to be invalid;

B. The applicant can overcome this presumption by providing clear and convincing evidence that the charter school will satisfy the policy goal of providing equal educational opportunity for all students; and

C. Evidence of the support of parents for the proposed school approach may be considered but shall not be the primary evidence that the school positively serves the public's interests and is therefore insufficient by itself to overcome this presumption of invalidity.

Section 104. Requests for Proposals

A. Charter school authorizers may issue Requests for Proposals to address particular persistent problems related to equitable outcomes (e.g., identified achievement disparities, graduation rates, and suspension and expulsion issues);

B. Charter school authorizers shall analyze proposals pursuant to this Section using the application process established in Section 102; and

C. Proposals submitted pursuant to this Section are subject to the Presumption of Invalidity provisions established in Section 103.

Section 105. Data Collection on Suspensions, Expulsions, and Transfers

A. Charter operators shall maintain data regarding the number of suspensions, expulsions and other formal disciplinary actions, in the aggregate and also disaggregated by race, ethnicity, gender, socioeconomic status, and disabling condition;

B. Charter operators shall also maintain data regarding student attrition, including reasons why students leave their schools;

C. The State Education Agency (SEA) will adopt and disseminate a common framework for the maintenance of the required data; and

D. The charter school shall submit data collected in section 105A & B to the authorizer on an annual basis.

Section 106: Revocation and Nonrenewal

A. On an annual basis, the charter authorizer shall review data regarding student performance including academic achievement, retention, attrition, suspension, and expulsion both in the aggregate and disaggregated on the basis of race, sex, disability, language status, and socio-economic status.

B. During the term of a charter, an authorizer may choose to revoke a charter for the following reasons.

1. Failure to meet the student performance requirements of the state accountability system or of the charter itself;

2. Attrition rates that are 10% or higher than other schools in the district. Overall attrition rates should be considered, as well as attrition rates disaggregated by gender, race and ethnicity, disability status, English learner status and socio-economic status. Additionally, in the case of high school, consideration should be given to graduation rates that are

10% lower than that of other high schools in the community or communities served by the school;

3. Failure of the school to attract a student body whose composition of gender, racial and ethnic minorities, students with disabilities, students with limited English proficiency, and students from low-income families is within 10% of the population for each of these sub-groups within the community or communities served by the charter school;

4. Fiscal mismanagement or fraud.

C. When determining whether to renew a charter, an authorizer shall not renew a charter if a review of performance data shows any of the following:

1. Failure to meet the student performance requirements of the state accountability system or of the charter itself;

2. Attrition rates that are 10% or higher than other schools in the district. Overall attrition rates should be considered, as well as attrition rates disaggregated by gender, race and ethnicity, disability status, English learner status and socio-economic status. Additionally, in the case of high school, consideration should be given to graduation rates that are 10% lower than that of other high schools in the community or communities served by the school;

3. Failure of the school to attract a student body whose composition of gender, racial and ethnic minorities, students with disabilities, students with limited English proficiency, and students from low-income families is within 10% of the population for each of these sub-groups within the community or communities served by the charter school;

4. Fiscal mismanagement or fraud.

D. If any of the reasons in Section 106C exists, the authorizer may override the presumption of nonrenewal if the charter school provides clear and convincing evidence that it otherwise satisfies the policy goal of providing equal educational opportunity for all students and provides a plan for addressing the identified issue such that it does not persist. Evidence of the support of parents for the charter school may be considered, but shall not be the primary evidence that the school positively serves the public's interests and is therefore insufficient by itself to justify renewal.

E. State educational agencies may revoke and non-renew charters of schools that do not meet basic standards, whenever charter authorizers fail to act.