

Charter School Resource Guide



An overview of the origins, growth, funding, legal governance, and impact of charter schools on students, public schools and communities with a review of state charter schools and model charter school accountability provisions.

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Introduction & Overview

The 2016 elections brought charter schools into the spotlight. After growing steadily but often quietly for many years, they are now in the center of our national debate over education. The nominee for the Secretary of Education Betsy DeVos is a zealous promoter of charters and vouchers.

Pro-charter ballots measures in Massachusetts and Georgia this fall captured national attention and significant funding, even in a presidential year. Notably, despite the amount of funding that charter proponents poured into each state, the charter initiatives in each foundered badly. In Massachusetts, 62% of those voting rejected a proposal to lift the existing state cap on charter schools and authorize the creation of twelve additional schools each year. And, in Georgia, 60% of those voting rejected a proposal to give the state power to declare a school district “failing,” and give the state control to determine the fate of each individual school and the district as a whole.

The recent experience in Massachusetts and Georgia demonstrate that the public is concerned about the impact of charter schools on traditional public schools, and is concerned about the lack of accountability in the charter sector. Our review of the existing framework of charter school laws reveals that those concerns are well founded. As this Resource Guide details, of the 44 jurisdictions (states and DC) that have state charter school laws, fully one third do not require that charters comply with the same open meetings laws and conflict of interest requirements that apply to public school boards, school districts and employees. More than half of the states with charter laws allow such schools to be operated as for-profits. Just five states expressly prohibit such schools from being managed by for-profits. Charters also are very unstable educational options – by 2010 fully a third of the charter schools that had been opened in 2000 had been closed down.

As the 2017 legislative sessions take shape, further efforts to expand charters are expected. So as to best prepare our affiliates and allies to respond to such initiatives, NEA has assembled this Charter School Resource Guide detailing what we now know about charters based on their record and performance over the last twenty years.

Part 1 of this brief presents the basic facts about charter schools — their origin, growth, funding, and legal governance. Part 2 discusses charter school performance and the impact on local communities and schools. Part 3 discusses the efforts to increase the accountability of charter schools. And Part 4 explains the strong support among stakeholders for greater charter school accountability as well as the significant concerns that exist about the impact of charter schools on traditional public schools and communities. Attached as Exhibits A and B are two additional resources – Exhibit A provides an overview of existing state charter laws and Exhibit B contains model accountability amendments to existing charter school laws.

1. Charter School Basics

1A. History

Charter schools started as a union idea. [Albert Shanker](#), president of the American Federation of Teachers, advanced them in 1988 at a speech at the National Press Club.¹ Shanker imagined schools that could be created as laboratories for new ideas, focusing especially on children who did not fit well in typical schools — children who were gifted, impoverished, disaffected, or English-language learners. Shanker said:

Consider six or seven or twelve teachers in a school who say, "We've got an idea. We've got a way of doing something very different. We've got a way of reaching the kids that are now not being reached by what the school is doing." That group of teachers could set up a school within that school which ultimately, if the procedure works and it's accepted, would be a totally autonomous school within that district."

Shanker did not see such ideas as antithetical to strong unions or collective bargaining. Indeed, he believed that such a "bottom-up" approach is more likely to arise when the "bread and butter issues ... are in good shape."

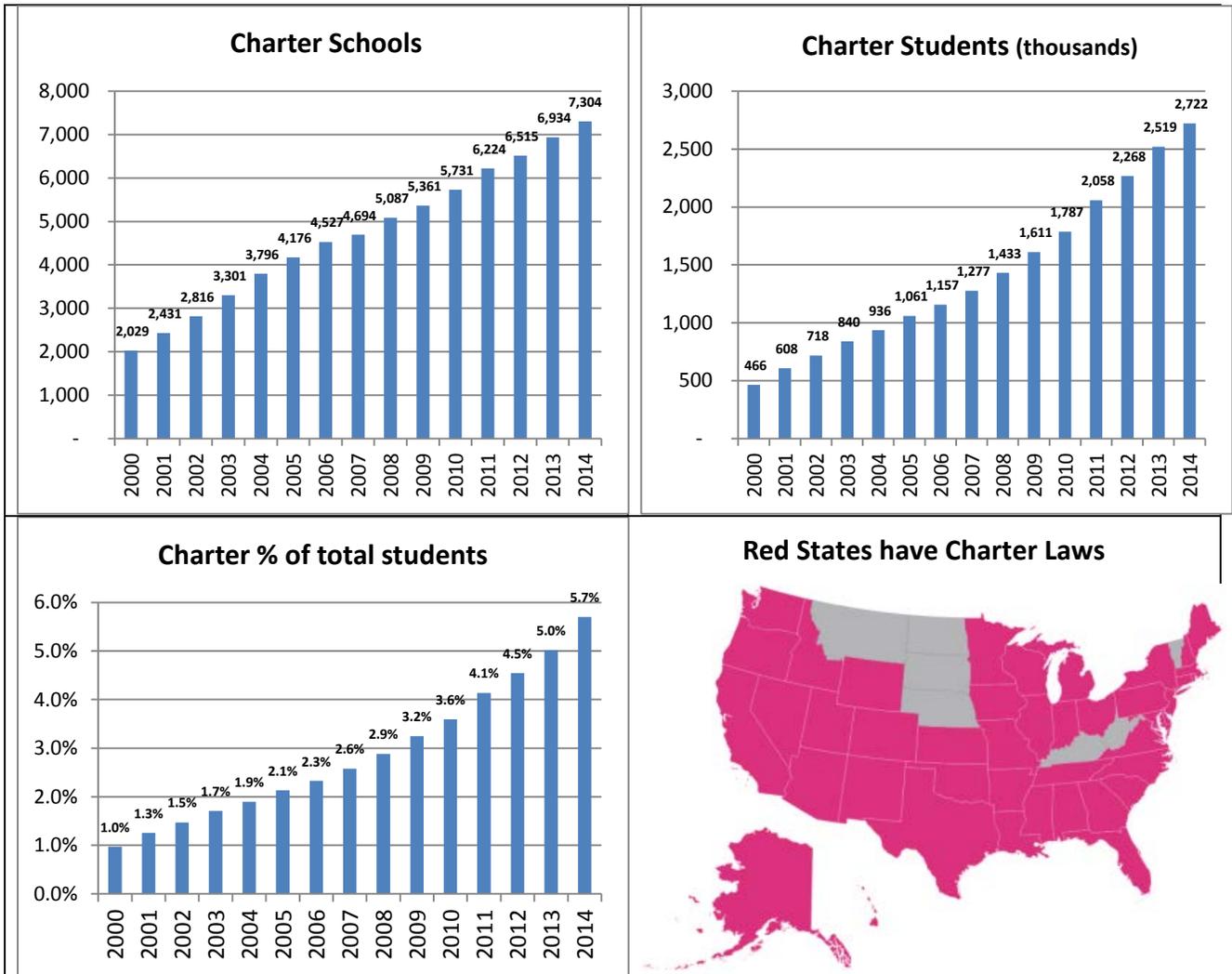
Shanker hoped that granting such "charters" to new schools would spur innovation. He imagined teachers and superintendents working together on new ideas. Above all else, he imagined that the charter schools would collaborate, not compete, with established public schools. Everything would be shared with the public systems that created them.

It hasn't turned out that way. Although some charter schools are excellent or fill a special niche, many are problematic. In New Orleans, charter schools largely replaced traditional public schools altogether. In other large urban districts, they provide a large proportion of the available schools, but without the accountability or stability that traditional public schools provide and without any measurable positive impact on student outcomes.

1B. Basic Facts: How many and where

The growth of the charter school industry has been explosive. The first charter school law was passed in Minnesota in 1991 and the first charter school opened in 1992. By the year 2000 there were over 2,000 charter schools in 36 states.² Charter school enrollment passed the one-million mark in 2005 and the two-million mark in 2011. During the 2015-16 school year, more than 400 new charter public schools opened and 250,000 new students enrolled.³ Charter school students now comprise over 5% of the overall student population.

Charter School Numbers⁴



States. Forty-three states and the District of Columbia have charter school laws. (Exceptions are Kentucky, Montana, Nebraska, North Dakota, South Dakota, Vermont, and West Virginia.)⁵

Charter schools and charter school student enrollment is concentrated in a subset of states and school districts. California alone is home to 20% of charter students nationwide. The top five states for charter schools make up 52% of charter school enrollment. The top ten states enroll 71% of charter students and the top twenty states enroll 90% of charter students. In the states that have charter schools, on average 5.6% of the students are in charters.

Top Twenty States Ranked by Numbers of Charter Students, Percent of Students in Charters, and Growth in Percent of Students in Charters, 2014⁶

Ranked by Charter Numbers, 2014

State	Charter Students	% of State Students In Charters	State Share of Total USA Charter Students
California	544,293	8.7%	20%
Texas	262,103	5.0%	10%
Florida	251,825	9.1%	9%
Arizona	206,667	18.6%	8%
Michigan	142,752	9.6%	5%
Pennsylvania	132,766	7.7%	5%
Ohio	122,437	7.1%	4%
New York	106,483	3.9%	4%
Colorado	101,359	11.4%	4%
Georgia	71,617	4.1%	3%
North Carolina	70,244	4.6%	3%
Louisiana	69,817	9.7%	3%
Illinois	62,446	3.1%	2%
Utah	61,411	9.7%	2%
Minnesota	47,747	5.6%	2%
Wisconsin	44,109	5.1%	2%
Indiana	37,448	3.6%	1%
Massachusetts	37,402	3.9%	1%
New Jersey	37,257	2.7%	1%
DC	34,541	42.7%	1%
NATIONAL	2,721,786	5.4%	100%

Ranked by Charter %, 2014

State	% of State Students In Charters
DC	42.7%
Arizona	18.6%
Colorado	11.4%
Louisiana	9.7%
Utah	9.7%
Michigan	9.6%
Florida	9.1%
Delaware	9.1%
California	8.7%
Pennsylvania	7.7%
Ohio	7.1%
New Mexico	6.7%
Idaho	6.6%
Nevada	6.3%
Hawaii	5.7%
Minnesota	5.6%
Oregon	5.3%
Wisconsin	5.1%
Texas	5.0%
Alaska	4.7%
NATIONAL	5.4%

Ranked by Charter Growth

State	Charter Student Growth 2009-2014
Tennessee	410%
Virginia	393%
New Hampshire	212%
Oklahoma	163%
Nevada	150%
New York	142%
Arkansas	132%
Louisiana	122%
South Carolina	108%
Indiana	103%
Rhode Island	99%
Georgia	91%
Florida	83%
Arizona	81%
Utah	81%
North Carolina	80%
Texas	77%
Illinois	74%
New Mexico	74%
California	72%
NATIONAL	69%

During the five years 2009-2014, charter enrollment grew 69%. In ten states, charter school enrollment more than doubled, including large states such as New York (142% growth), Indiana (103% growth) and South Carolina (108% growth). In Tennessee, charter school enrollment rose an astonishing 410% during those years.

Local Education Agencies. Once charter schools start in a jurisdiction, they can grow quickly. In addition, the industry seizes on opportunities for growth such as New Orleans after Hurricane Katrina and Detroit during the economic downturn.

Some of the country’s largest school districts have high concentrations of charter school students — 23% in Los Angeles, 14% in Dallas and Chicago, and 15% in Dade and Broward counties in Florida. New York City still has a single-digit charter school enrollment, 7% of the total student population. The charts below are drawn from the 150 largest school districts in the country.⁷ Within these districts, they are ranked by charter enrollment, percentages, and growth. Virtual schools were removed from the data, however, because they may serve students across geographic lines.

Top Thirty School Districts as of 2013 by Numbers of Charter Students, Percent of Students in Charters, and Growth in Percent of Students in Non-virtual Charters.

Ranked by Charter Enrollment, 2013

Locality	Charter Students 2013	% Students in Charters 2013
Los Angeles CA	151,205	23%
New York City (all regions)	71,850	7%
Chicago IL	54,170	14%
Dade Co FL	52,039	15%
Houston TX	46,722	20%
Philadelphia PA	44,675	25%
Broward Co FL	38,820	15%
New Orleans LA	35,213	90%
Detroit MI	34,680	42%
Washington DC	33,285	43%
Dallas TX	25,566	14%
Milwaukee WI	21,391	25%
San Diego CA	20,165	15%
Denver (School Dist No. 1) CO	17,851	20%
Cleveland OH	16,495	30%
San Antonio TX	16,350	27%
Palm Beach Co FL	16,061	9%
Columbus OH	15,855	24%
Baltimore City MD	14,747	17%
Clark Co NV	14,192	4%
Hillsborough Co FL	14,086	7%
Albuquerque NM	13,508	13%
Phoenix Union	13,386	34%

Ranked by Charter % 2008

Locality	% Students in Charters 2008
New Orleans LA	57%
Washington DC	35%
Detroit MI	24%
San Antonio TX	21%
Milwaukee WI	19%
Cleveland OH	17%
Minneapolis MN	17%
Philadelphia PA	17%
Columbus OH	17%
Indianapolis IN	16%
St. Paul MN	15%
Oakland CA	15%
Houston TX	15%
Tucson Unified AZ	14%
Lake Co FL	13%
Denver (School Dist No. 1) CO	12%
Lee Co FL	11%
Chandler AZ	11%
San Juan (Carmichael) CA	11%
Polk Co FL	11%
San Diego CA	11%
Oklahoma City OK	11%
Newark NJ	10%

Ranked by Charter Growth

Locality	Charter Student Growth 2008-2013
Jefferson Parish LA	2894%
Stockton CA	1034%
Garland TX	702%
Duval Co FL	647%
Davidson Co TN	638%
Gwinnett Co GA	543%
Anne Arundel Co MD	465%
Horry (Conway) SC	398%
Fort Bend TX	373%
Sweetwater CA	364%
Shelby Co TN	329%
Santa Ana CA	306%
Arlington TX	283%
Capistrano CA	246%
San Bernardino City CA	240%
Orange Co FL	235%
Alief ISD (Houston) TX	229%
Clark Co NV	226%
New York City (All Regions)	226%
Pinellas CO FL	210%
Aldine (Houston) TX	206%
Hillsborough Co FL	198%
Austin TX	194%

High School AZ		
Polk Co FL	12,681	13%
Oakland CA	12,224	25%
Lee Co FL	12,041	14%
Tucson Unified AZ	11,939	20%
Indianapolis IN	11,803	28%
Newark NJ	11,714	25%
Fulton Co GA	11,556	12%

Sacramento City CA	10%
Dallas TX	10%
Osceola City FL	9%
Baltimore City MD	9%
Mesa AZ	9%
Boston MA	9%
Los Angeles CA	9%

Riverside CA	193%
Pr. George's Co MD	191%
Atlanta GA	191%
Cherry Creek (Denver/Aurora) CO	188%
St Lucie Co FL	188%
Cumberland Co NC	179%
Deer Valley (Phoenix/Glendale) AZ	165%

Students Served. Given the concentrated growth of charters in urban school districts with higher proportions of minorities, it is unsurprising that charter schools enroll proportionally more minorities than traditional public schools. Nationally, roughly 65% of charter students are minorities, compared to 49% of students in traditional public schools.⁸ Free and reduced lunch students are also overrepresented among charter students, 55.6% compared to 51.6%.

	Traditional	Charter
White	50.6%	34.9%
Hispanic	25.2%	30.0%
African American	14.8%	27.1%
Asian	4.9%	3.7%
Multi racial	3.0%	3.0%
American Indian	1.0%	0.8%
Hawaiian Pacific	0.4%	0.4%
Free/Reduced Lunch	51.6%	55.6%

At the school level, the charter sector shows greater segregation by race, ethnicity and income than exists in the traditional sector.⁹ In addition, as discussed in Section 1F below, charter schools under-enroll special education and English language learners.

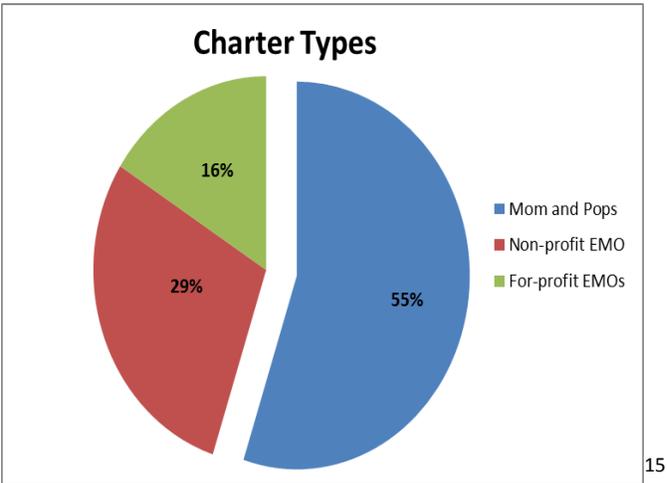
Types of Charter Schools. There are two main types of charter schools. The first type is freestanding organizations sometimes colloquially referred to as “mom and pop” charter schools. These are nonprofit entities independently operated upon being founded, typically, by small groups of educators or other individuals who live in or near the community where the school operates. Roughly 55% of charter schools are freestanding mom and pops. That percentage is declining.¹⁰ These schools enrolled about 1.2 million (48%) out of just over 2.5 million charter students in the school year 2013-2014.¹¹

The other kind of charter school is the chain with multiple locations, operated by an Education Management Organization (EMO) that manages schools, including some traditional public schools. EMOs operate roughly 45% of all charter schools, a proportion that has been rising.¹² Within this 45% of all charter schools managed by EMOs, roughly 65% are operated by nonprofit EMOs and

the remaining 35% are run by for-profit EMOs.¹³ The ratio of nonprofit to for-profit EMO-managed charter schools has been trending upwards.

Charter Management Organizations (CMOs) are non-profit chains that solely operate multiple charter schools. They may be thought of as a type of nonprofit EMO. CMO-operated schools are estimated to account for between 16 and 20 percent of the nation’s charter schools.¹⁴

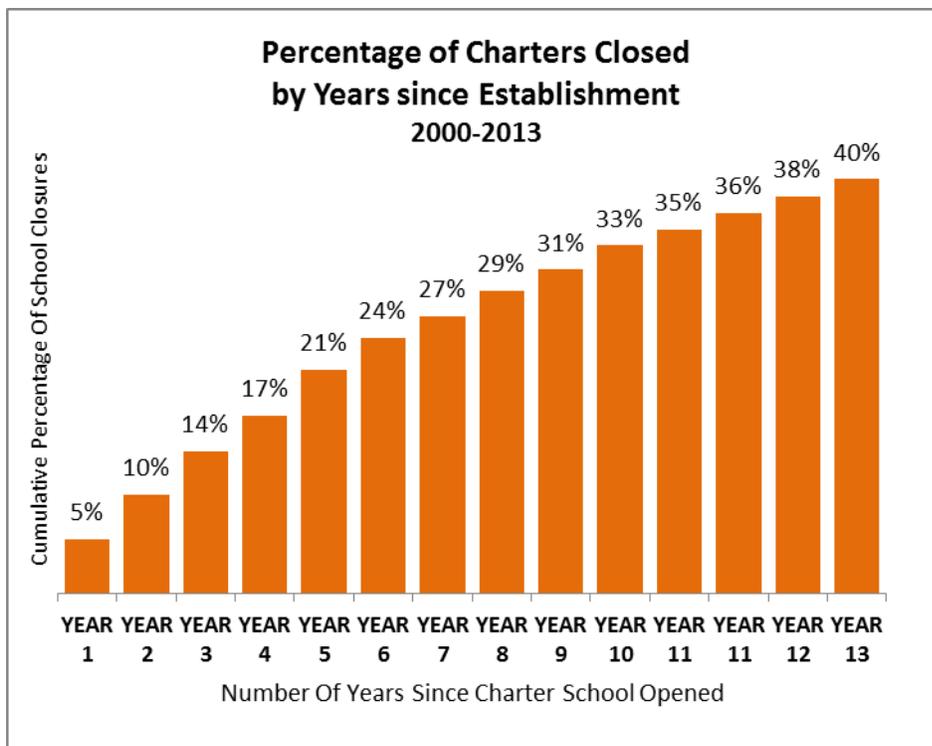
There are a few states that permit the charter holder itself to be a for-profit entity, as distinct from a non-profit entity that contracts management of its charter school to a for-profit EMO. This accounts for a small proportion of all charters nationally. Management of a non-profit charter school by a for-profit EMO is a far more prevalent phenomenon. Here is a break-out:



Along these lines, it should be noted that a traditional public school can be converted into a charter school, although the vast majority of charter schools are “start-ups,” not conversions.¹⁶ Of the 20 high charter states, all appear to permit conversions of traditional schools to charter schools. Eleven of those states require the support of the majority (or super-majority) of teachers and/or parents for a school to be eligible for conversion: California; DC; Florida; Georgia; Illinois; Indiana; Minnesota; New Jersey; New York; North Carolina; and Texas. A twelfth, Ohio, requires the support of a majority of the district’s board of education. Three states allow for the conversion of an entire school district if certain conditions are met (California, Texas, and Wisconsin), and a fourth, Georgia, allows for the conversion of an entire “high school cluster,” meaning a high school and all the elementary and middle schools that matriculate into it. Wisconsin and DC expressly allow private schools to convert into charter schools; Wisconsin prohibits sectarian private schools from converting. Other states, such as California, Florida, Illinois, and Utah, expressly forbid private school conversion.

Turnover. The growing number of charter schools covers up a churn. Charters are opening quickly but closing quickly too. Among charter schools that opened in the year 2000, 5% closed within the first year; 21% closed within the first five years and 33% within the first ten years.¹⁷ In some cases the closure occurs during the course of a school year, leaving students, parents and teachers in

limbo. Many enroll in traditional sector schools which are left to make on-the-fly enrollment adjustments without the resources that are supposed to follow such students. As we discuss below, closures hit Black students disproportionately, and hardest.



Some contend that closures impose accountability, as failing schools close rather than being maintained. Charter advocates claim that students from closed charter schools tend to move into more favorable school placements but the Broader Bolder coalition found that in Chicago, New York, and Washington, DC, charter closures did not lead to students attending better schools.¹⁸ Rather than reflecting a failure to meet high standards by a chartering authority, closures – particularly mid-year closures – appear to reflect poorly conceived schools without comprehensive long-range plans. Closures can also waste money. The federal Charter School Grants Program, which is the major program run by the U.S. Department of Education to fund charters, helped fund over 2,600 charter schools from School Year (SY) 2006-07 to SY 2013-14.¹⁹ However, 430 of those schools subsequently closed and 699 had not yet opened two years later. That makes a [failure rate](#) of at least 17%, which could run or as high as 43%, depending on whether the 699 funded schools ever open.

1C. Charter School Funding: How much and where from

Like that of traditional public schools, charter school funding is a mix of state, local and federal resources. However, the sector is far less transparent and the actual public funding levels for individual charter schools can be difficult to determine. Private philanthropy provides large additional shares of funding to some, usually chain, charter schools, and this is especially difficult

to track. The Walton Family Foundation claims to have provided seed funding to one in four charter schools across the United States but has not disclosed the amounts or recipients of that funding.²⁰

In terms of federal, state and local funding, as is the case for traditional public schools, state and local funds provide the bulk of charter funding. At least for school funding purposes, charters are generally treated as public schools and funded under state and local law in a manner similar to traditional public schools. Federal funding has provided significant support as well.

Federal funding. The federal government Charter Schools Program (“CSP”) is a major source of startup funding for charter schools. Through multiple grant programs, the federal government has spent nearly \$4 billion on planning, startup, facilities acquisition, and replication of charter schools since 1995. The federal program contributed funding to 57% of charter schools opened nationally between school years 2006-07 and 2013-14 (2616 out of 4582) schools.²¹

The 2015 passage of the Every Student Succeeds Act extended the CSP with few, and soft, accountability policy changes from No Child Left Behind but with increased funding ceilings which Congress had already exceeded. Funding for charters increased from \$253.2 to \$333.2 million between Fiscal Year (FY) 2015 and FY 2016 alone, an \$80 million (32%) increase, reflecting the program’s favored status relative to other education programs. The already exceeded authorization ceilings under ESSA peak at \$300 million beginning in FY 2019. These funding increases continue despite ongoing, pointed, internal and external criticism of the U.S. Department of Education’s administration and oversight of CSP funds dating back to 2010.²²

Actual federal appropriations for charter schools:

- FY 2012--\$254.8 million
- FY 2013--\$241.5 million
- FY 2014--\$248.2 million
- FY 2015--\$253.2 million
- FY 2016--\$333.2 million (NCLB transition to ESSA)
- FY 2017: Senate: \$343.172 million; House: \$333.172 million; Obama Administration request: \$350 million; Trump Administration request unknown at this time.

In September 2016, the U.S. Department of Education announced [\\$245 million in new charter school grant awards](#).²³ By way of contrast, *only \$10 million* is specifically authorized in ESSA for full-service community schools, an increasingly popular and promising school improvement and turnaround option. Similarly, the Senate allocated *just \$96.6 million* for the Magnet Schools Assistance program for FY 2017. As of spring 2016, magnet schools enrolled slightly more students than charter schools, even though they receive less than half as much federal funding. Demand for magnet expansion remains high.

As traditional public schools within school districts, magnets are far more stable options than charters. Magnet school programs were initially created in part as a means to increase integration and have often done so, whereas charter schools taken as a whole have done the opposite.²⁴

State and local funding. The 43 states, plus DC, that have charter laws use varying approaches to fund charter schools. Often charter schools receive a specified percentage of the per pupil operational costs allocated to traditional public schools. In some cases the per pupil state funding allocation for charter schools is less than 100% of the allocation for traditional public schools, which can make it appear that charter schools are inequitably underfunded relative to traditional schools.²⁵

Once one accounts for administrative overhead costs, different student populations, and different mixes of services provided, however, the funding picture shifts. Local district revenues “passed through” to charter schools in the form of food and transportation, for example, benefit charter schools. Furthermore, charter schools often provide fewer services than traditional schools in the areas of special education and student support services. Charter schools underserve students with disabilities, particularly students with more severe disabilities, and English language learners, populations whose education often require additional funding. And some charter schools receive substantial private revenue to supplement their public funding.²⁶

ESSA incentivizes states to apply for federal grants that address charter funding equity, without defining how equity will be interpreted.²⁷

Philanthropic funding. [Three large foundations](#) in particular—Gates, Broad and Walton Family—have invested major resources in expanding charter schools. These activities include: developing infrastructure to support charter expansion; marketing the charter brand; funding charter advocacy organizations; and developing pipelines and networks to place Teach for America graduates and others into senior policymaker and policy advocacy roles where they are expected to advocate further charter proliferation and other market-based reform policies.²⁸

The Walton Family Foundation announced in January 2016 that it is investing \$1 billion over the next five years to expand the charter sector and other choice initiatives, matching its K-12 education spending over the previous 20 years combined.²⁹

Direct philanthropic funding can provide substantial additional resources to charter schools. For example, Knowledge is Power Program (KIPP) charter chain schools received an average of \$5,700 per pupil in private sources of revenue in 2008. Combining public and private sources of revenue, KIPP received, on average, \$18,491 per pupil in 2007-08, fully \$6,500 more per pupil (54%) than what the local school districts received in revenues.³⁰

Philanthropic funding can support politics as well as operations. The charter advocacy infrastructure includes organizations such as the American Legislative Exchange Council (ALEC), and well developed ties with both Democratic and Republican elected officials at the national, state and local level.

1D. Legal Governance

Charter school laws vary considerably. The following overview summarizes the state of the law for the twenty states that now enroll 90% of charter school students (“high charter states”). Citations and additional detail can be found in Exhibit A, which provides an overview of existing state charter laws.

Charter Authorizers, Applicants and Caps. States generally provide that local school districts and state education agencies may authorize charters, depending on the type of charter school. Arizona, California, Florida, Michigan, Pennsylvania, and Texas all follow this model. Some states provide that if a charter application is denied, the denial can be appealed to the state education agency. California, Florida, Pennsylvania and Tennessee have such appeal mechanisms, which can allow for the state education agencies to override the decisions of local communities about their public schools.³¹

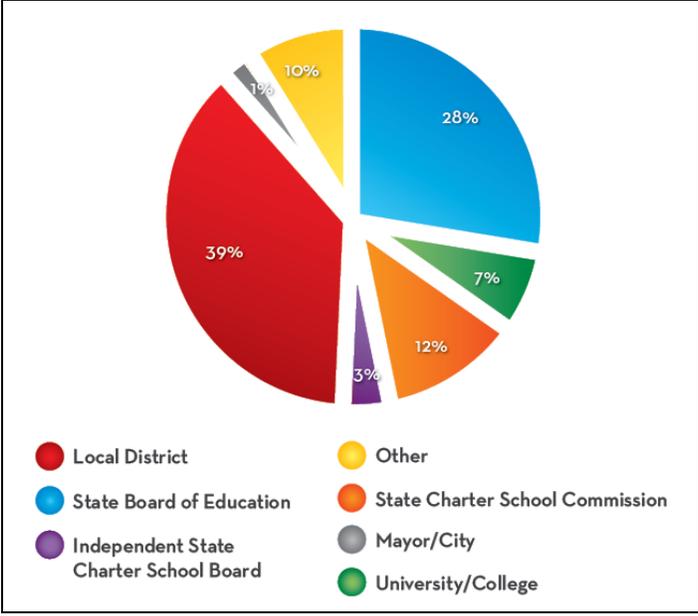
Half of the high charter states have state charter agencies, separate and apart from their departments of education, with some degree of authority – either primary, appellate, or concurrent – to authorize charters. The states with state charter agencies are Arizona, Colorado, DC, Florida, Georgia, Illinois, Indiana, North Carolina, Pennsylvania and Utah. Of these, three may only authorize certain types of charters (GA, IL, CO).

Eight of the 20 high charter states permit universities or colleges to authorize charters, at least for certain types of schools. Those states are Arizona, Florida, Indiana, Michigan, Minnesota, New York, Utah and Wisconsin. Minnesota permits non-profit organizations to act as authorizers.

Only in Pennsylvania is the local school district the only entity that can authorize a charter school, although the decision of the local district can be appealed to the state Charter School Appeal Board. In another 6 states (CA, CO, FL, GA, LA, TX) the local school district is the primary authorizer, but only for certain types of charter schools.

As a factual matter, more than 60% of charter schools are authorized by entities other than local school districts, as reflected in this chart:

Charter Authorizers³²



Some states require a public hearing convened by an authorizer when opening a charter is under consideration. Where states allow charter authorizers that are not the local school district or are not based in the local community, there is an ever-present possibility that new charter schools will be approved without a local and coordinated process that involves the school district and takes into consideration projected impacts on student enrollments and district financial stability. Efforts to expand charter density left Detroit with roughly 30,000 more traditional and charter school seats—all funded by taxpayers—

than students.³³

State laws vary as to the type of entities that may apply for a charter. One key point is whether a state permits for-profit entities to apply for charters. Some states clearly prohibit them: Indiana and Massachusetts. Others expressly permit them: New York and Pennsylvania. Most leave the door open by listing “other entities” among those eligible to apply (*e.g.*, Florida and Ohio) or through statutory silence. And even where a for-profit may not apply for a charter, it may still serve as an EMO for a charter obtained by a non-profit entity.

Among the 20 states that now enroll 90% of charter school students, only a handful impose a hard cap on the number of charter schools. The limit in Texas is 255, increasing by 15 for each of the next two years. In New York, the cap is set at 460 charter schools and in Illinois, there may currently be no more than 120. These caps appear in state statute and are often set to increase over time. California’s cap is particularly liberal: set at 250 in 1998, it increases by 100 annually.

Charter Approval, Renewal and Evaluation. States have taken several approaches to setting standards for initial charter approval. In rare instances – Arizona and New Jersey – the charter school law does not speak to approval standards. But most states do. California, Michigan and Colorado distinguish themselves by defining in some detail the standards that must be applied when approving a charter. Standards may include: resources available to the proposed charter school; the population to be served; the applicant’s track record in other schools, if any; and the graduation rate of the school district. Some states – such as Florida, Texas and Massachusetts – instead direct their state departments of education to promulgate standards for authorizing charters.

Minnesota law requires a charter *authorizer* (rather than applicant) to submit its standards to the state education commissioner for approval. Indiana and Wisconsin require that authorizers use standards defined by a nationally recognized organization.

Statutes in the 20 states that enroll 90% of charter students all set standards for charter renewal, which typically consist of compliance with the charter agreement itself. In addition, state renewal standards commonly reiterate that compliance with the charter law is required.

Most of the high charter states also require some type of reporting or assessment of authorized charter schools. However, those oversight mechanisms do not tend to be robust. In a number of states, the annual report on authorized charters, for example, pertains only to the overall charter sector, not the performance of individual schools. (Georgia, Indiana, North Carolina, New York and Ohio). Or annual reports are submitted regarding school performance only by the charter authorizer. (Arizona, Colorado, Florida and Massachusetts). In only two states – Minnesota and New Jersey – does the authorizing authority (in those states, the state department of education) assess individual charter schools.

In some states, state education agencies claim to have no legal authority to monitor the performance of their authorizers, some of which engage in excellent, conscientious oversight and monitoring, although others of which do not. Poor performance by individual authorizers can lead to the opening of charter schools that end up being closed due to poor academic performance or financial mismanagement, where such damaging consequences for students, families and communities might have been avoided with adequate initial vetting of an application.

ESSA asks states to consider charter authorizer accountability.³⁴ It remains to be seen whether and how states will act on this provision, and whether and how the U.S. Department of Education will monitor compliance and/or offer policy guidance or other technical assistance.

Governance at the Charter School Level. Charter schools have distinctive governance structures. Their governing boards typically are appointed rather than elected, and they may or may not have local roots. National chains in particular are likely to have boards with less connection to local communities.

The creation of charter school governing structures can overlap or compete with already existing school structures.³⁵ Some functions end up being duplicated, and charter schools generally spend far more on central administrative functions than traditional school districts.³⁶ Management fees to EMOs in New York City in 2010 were typically in excess of \$1,000 per student. EMO executive compensation typically far exceeds salaries of administrators of public school districts enrolling far larger numbers of students.

Public or Private? – And the Significance of that Classification. As a matter of law, the decision as to whether or not a charter school is a public entity or a private one has significant consequences for the rights of charter school employees, the good government type laws that may apply to the school, and even the funding streams that may be available to the schools as public school funding is often set off and restricted to public schools under state constitutional provisions.

Labor Law Consequences. Public employees have the right to organize under state laws or not at all. Private employees have the right to organize under the National Labor Relations Act (“NLRA”).

One of the threshold questions that must be answered when organizing charter school employees is whether they should be considered public employees that may be organized under the state public sector collective bargaining law (if there is one) or the NLRA.

The National Labor Relations Board (“NLRB”) has issued a series of rulings since 2012 determining that certain charter schools are private employers subject to NLRA jurisdiction. *Hyde Leadership Charter Sch.*, 364 NLRB No. 88 (Aug. 24, 2016); *Pennsylvania Virtual Charter Sch.*, 364 NLRB No. 87 (Aug. 24, 2016); *Chicago Mathematics & Science Academy Charter School*, 359 NLRB No. 41 (Dec. 14, 2012). In *Chicago Math*, the NLRB initially staked out its view that charter schools are private employers so long as their governing body is neither appointed nor subject to removal by a public entity. In its most recent decision of *Hyde Leadership*, the NLRB narrowed its test even further, finding that a New York charter school was a private employer even though under state law its initial board was subject to a public entity’s approval and board members could be removed by public authorities under certain circumstances.

It remains to be seen whether the NLRB will continue with this line of reasoning. Two out of the five Board seats on the NLRB are now vacant, and a change in the composition of the Board may change the NLRB’s rulings on this point.

Pension Implications. Private employers generally cannot participate in state public pension systems. Accordingly, the classification of charter school employees as public or private has significant consequences for their pension rights. Public pension rights reside in state (and in some cases municipal) law. Some state laws now provide that charter employees are eligible to participate in the public retirement system. *See, e.g.*, Ohio and Minnesota statutes. Others specify what types of charter schools are eligible to participate – seeming to include those that are most public in nature. *See, e.g.*, Arizona (charters sponsored by public education agencies). Another approach, taken in Georgia, is to leave it to the pension board’s discretion to determine whether charter employees may participate, whereas Utah leaves it up to the charter employer to elect to participate.

Public Sector Transparency and Accountability Standards Applied Sporadically. Publicly funded institutions are generally subject to transparency and public accountability requirements. Holding meetings open to the public; producing most types of records upon request; ensuring governing board members are free from conflicts of interest; competitive bidding by contractors – these are standard public sector requirements. But in the case of charter schools, state laws are often silent, unclear, or partial.

The lack of clarity has led to disputes over whether state entities even have the authority to investigate a charter school. In only a few states does the law expressly provide that charter schools are subject to certain of these basic public sector standards. For example, Florida explicitly provides that public record disclosure requirements apply to charter schools. Texas differentiates among types of charter schools, requiring public record disclosure of only some. While many charter schools in California do comply, the state presently has no law explicitly requiring public

access to charter records or meetings. [Assembly Bill 709](#), which would have clarified that those requirements apply, was vetoed by the governor on September 30, 2016.

Deviations from Public Education Quality Standards. One standard to ensure quality education is the certification of the teaching staff. Only seven of the states surveyed expressly apply the same teacher certification requirements to charter schools that apply to public schools. (Florida, Massachusetts, Michigan, Minnesota, New Jersey, Ohio and Wisconsin). A few do not. (Arizona, DC and Texas). Some require only that a certain percentage of educators at a charter school hold state certification. Indiana requires 90%; Pennsylvania 75%; North Carolina 50%; and New York 30%. Others require some alternative minimum qualifications, such as a B.A. (Louisiana) or a B.A. and five years of experience in the subject matter taught (Illinois). Still others permit waivers that exempt charter schools from teacher certification requirements. (Colorado, Georgia and Indiana). State assessments and academic standards, however, do apply to charter schools in all 20 high charter states surveyed here.

One type of charter school that has come under scrutiny for its quality of education is the “virtual” or “cyber” school model. Most of the high charter states do permit K-12 public education to be delivered 100% online. One – Illinois – permits the authorization of virtual charter schools, but currently has a moratorium in place. Another, Michigan, caps the number of virtual charter schools at 15. Five of the 20 high charter states simply make no reference to virtual charter schools in their state statutes. Needless to say, this statutory silence does not clearly bar the creation of virtual charters.

2. Educational Quality

2A. Charter School Performance

Unsurprisingly, there are more and less successful charter schools, just as there are more and less successful traditional public schools. Also unsurprising is that most schools are somewhere in the middle. In general, neither charter schools nor public schools can fairly claim to be more successful at raising student achievement. Numerous studies have compared charters and traditional schools, across a significant sample size and student achievement or achievement gains. Together, “over 80 independent and generally accepted studies...yield the consistent finding that, after controlling for student demographics, charter schools show test-score results at levels that are [not meaningfully better or worse than district schools](#).”³⁷

The most comprehensive and recent national study was done by the [Center for Research on Education Outcomes \(CREDO\)](#) at Stanford University in 2013. The CREDO national study considered student test score data from 27 states that permit charter schools, encompassing 95% of all students attending charters.³⁸ The principal study was published in 2013 with an update for some urban districts published in 2015.³⁹

The principal CREDO study 'matched' each charter student with up to seven students in traditional public school based on school feeder pattern (the traditional school students attended the same school or same feeder-pattern schools that the charter students would have attended), demographic characteristics (gender, free/reduced price lunch, race/ethnicity, ELL status, special education status), grade level, and standardized test scores.

The researchers then compared the growth in the standardized test scores for each charter student to a composite score calculated by averaging the growth of the traditional school students to which the charter student was matched. Thus, the study does not involve a one-to-one comparison between a student in a charter school and a similar student in a traditional public school, it is a comparison between a student in a charter school and a combination of up to seven similar students in a traditional public school.

The study's strength is its breadth and rigor. The study's weaknesses include the inability of researchers to 'match' 15 percent of students attending charters to traditional school peers, which could have resulted in masking exceptionally high or low student achievers. In addition, the study did not attempt to control for any parental differences between charter students and the traditional school students to whom they are compared.

CREDO Key Findings. The CREDO results are decidedly mixed, with charters coming out ahead of, the same as, or behind traditional public schools in terms of student growth depending on the subject area, the demographic characteristics of individual students, and the length of time a school has been in operation.

Overall, attending a charter school is associated with higher student growth in reading and no difference in math in comparison to attending a traditional public school.

Although the researchers find many instances of statistically significant differences in student growth between charters and traditional public schools, the *size* of these effects is generally quite small.

Effects for black and Hispanic students depend in part on their poverty status. Black students in poverty who attend charter schools show greater growth in math and reading than their peers in traditional public schools, but there is no benefit or drawback to attending a charter for black students who are not poor. For Hispanic students, those in poverty show *more* growth in charter schools than in traditional public schools, but those who are not poor show *less* growth in charters than in traditional schools.

Both white and Asian students show less growth in math when attending charters rather than traditional schools. The same holds true for white students in reading, while charter schools offer no advantage or disadvantage to Asian students in this subject.

The researchers find that the length of time a charter has been in existence makes a difference. Students attending 'continuing' charters showed greater growth in comparison to traditional schools than did students in 'new' charter schools.

The CREDO results also vary widely by state. The researchers also note that charter schools vary widely in quality. These differences are statistically accounted for, but indicate that a consistent positive or negative effect for charter schools as a whole may not exist.

Beyond the CREDO study, two other significant studies of student achievement in charters reached similar conclusions. See Mathematica Policy Research, "Do Charter Schools Improve Student Achievement? Evidence from a National Randomized Study" (December 2011);⁴⁰ Mathematica/Center for Revitalization of Public Education study of CMO operated schools (2012).⁴¹ Neither study showed a significant impact overall, though both studies indicated impacts on some subjects in some populations. Mathematica/CPRE study at 42. The impact, however, was indistinguishable from selection bias or increased coaching for test results, reaffirming the conclusion that charters have a negligible impact on student achievement. Thus, as these studies indicate, student learning outcomes in charter schools in general is no better or worse than those of traditional public schools.

Teacher Quality and Professional Standards. Teaching staffs in charter schools tend to be younger and less experienced, with higher turnover rates, especially in the growing sector of chain-managed charter schools. As two prominent researchers noted in their December 2015 analysis:

- Low cost labor, in the form of young, short-term teachers, is key to the business model of many charter school EMOs. For example, charter school teacher annual salaries in an earlier Pennsylvania study were found to be \$18,000 per year lower on average than teacher salaries in district schools, and \$11,300 lower than traditional sector teachers with similar experience and credentials.
- Higher staff turnover significantly reduces health care and retirement benefits costs.
- Charter schools hire higher proportions of unlicensed educators than do traditional schools.⁴³

These are trends, however, and exceptions exist. Most notably, KIPP schools reportedly pay teachers 15-20% more than traditional public schools to compensate for longer work hours.

2B. Impact on Communities and School Districts

Beyond test scores and teacher certification requirements, there is reason for concern about the impact that charters have on students and the communities in which they exist. Because public funds follow the student, charter schools drain funds from traditional public schools and tend to cherry-pick students, leaving the public system with less money but more children with higher needs.

Financial Pressure. School districts with growing numbers of students in charter schools can face heightened financial pressures, especially in areas that are already economically distressed. School

districts must spread fixed costs, including administrative overhead and benefits, over fewer students and schools. A 2014 study of an area with moderate charter sector density — Boston (15%) — concluded: “the ongoing expansion of the charter sector, along with the accompanying pressure on public school budgets, undermines the ability of some local districts to preserve and protect the rights of the larger group of children remaining in traditional public schools.”⁴⁴

A study in Nashville, Tennessee highlighted the importance of fixed costs. As charter schools drain students from traditional public schools, the money follows the child. The report explains the state payment to the school district like this:⁴⁵

“The loss of even a single student will reduce the revenue received; however, the reduction of a single student in a classroom will not alleviate the need to have a teacher in that classroom. In this case, there would be a reduction in cost for per student allocations to the schools ... but **all other district expenditures** would remain in place. In fact, the per pupil cost for that classroom or school would increase because the fixed expenses would remain, but the revenue to support them would be decreased.” (Emphasis in original).

Moody's Investors Service even found that charter schools can [negatively affect the district's credit ratings](#).⁴⁶ “[A] small but growing number [of school districts] face financial stress due to the movement of students to charters,” Moody's observes.

“Shifts in student enrollment from district schools to charters, while resulting in a transfer of a portion of district revenues to charter schools, do not typically result in a full shift of operating costs away from district public schools.”⁴⁷

In November 2016, after Massachusetts voters defeated the ballot initiative that would have raised the cap on charter schools, Moody's informed Massachusetts cities that the decision was “credit positive” and will help keep their borrowing costs lower.⁴⁸

Conventional wisdom suggests that as charter density increases, district solvency could be threatened. Passing a threshold or “tipping point” arguably threatens the education of the remaining students and opens the door to state takeovers, “recovery zones” or privatization schemes. If that is correct, it is especially worrisome because charter school chains appear most frequently in neighborhoods with large populations of low income, ELL, and other high-need student populations. Many of these districts have historically faced serious challenges. The rapid expansion of the charter sector can create additional complexities and further instability for both educators and students.

Exclusionary Practices. Charter school enrollment and disciplinary practices also raise concerns. Charter schools have been found to under-enroll students with disabilities, particularly students with severe disabilities, and English language learners.

There are multiple mechanisms of exclusion, beginning with enrollment. Some charter schools use “parent contract” requirements, for example, mandating that parents or guardians commit to

minimum time or responsibility at the school as a condition for having their child's application to the school considered. Such contracts can preclude those whose job, transportation or other circumstances prevent them from making such commitments from applying for admission.

Some charter schools use recruitment practices aimed at helping them secure selective student enrollments. A Philadelphia charter school made its application available only one day each year, and only provided at the school's open house, which at one point was held at a private golf club in the suburbs.⁴⁹

Student Discipline. Charter school disciplinary practices vary widely, but suspension and expulsion rates in some charter schools are very high and have been the subject of explosive public controversy.⁵⁰ School discipline practices are of particular concern given the role that school discipline can play in pushing students out of school and into the school to prison pipeline.

The most comprehensive report on disciplinary practices in the charter sector was published in March of 2016.⁵¹ Focusing on out-of-school suspension rates at the elementary and secondary levels, it reported data from 5,250 elementary and secondary charter schools and included an analysis of the extent to which charter schools suspend children of color and children with disabilities at excessive and disparate rates. Although the researchers pointed out that many charter schools use suspension only as a last resort and utilize effective non-punitive approaches to school discipline, charters as a whole use discipline more frequently and more harshly than do traditional public schools:

- In 2011-12, the average suspension rate for all charter schools combined was 7.8%. The average for all non-charter schools was 6.7%. Put differently, the charter school suspension rate was 16% higher than the non-charter school suspension rate.
- The troubling Black-White disparity in student suspension rates is even higher in the charter sector than the traditional sector, and this disparity is reported for both the k-8 and high school level.
- Charter schools consistently suspended students with disabilities at a higher rate than non-charters; the rate was 15.5% for charters, compared with 13.7% for non-charters.
- In the 2011-12 school year, 374 charter schools suspended 25% of their enrolled student body at least once.
- Nearly half of all Black secondary charter school students attended charter schools in which the aggregate Black suspension rate was 25%.
- More than 500 charter schools suspended Black charter students at a rate that was at least 10 percentage points higher than the rate for white charter students.

The study also found the following severe disparities in a subset of schools studied:

- 1,093 charter schools suspended students with disabilities at a rate that was 10 or more percentage points higher than for students without disabilities.
- At 484 charter schools, the suspension rate for students with disabilities was 20 percentage points higher than for those without disabilities.

- 235 charter schools suspended more than 50% of their enrolled students with disabilities.

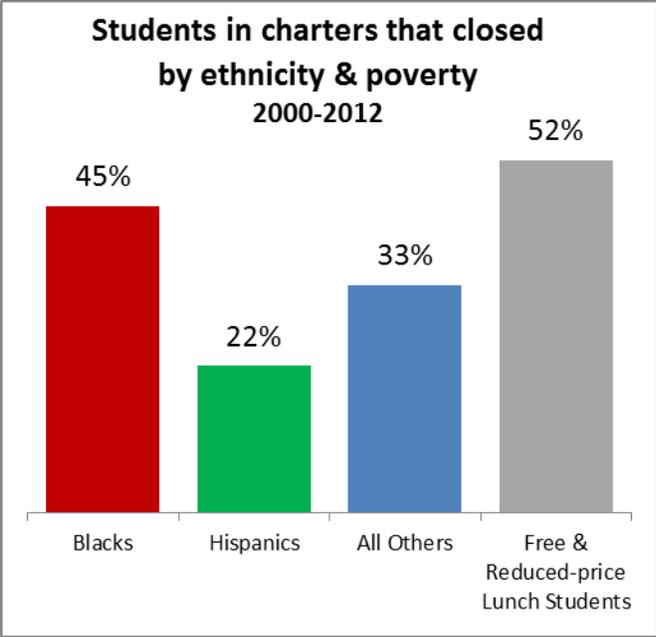
Notably, these statistics may understate the issue. Data from the U.S. Department of Education Office for Civil Rights (OCR) suggest that more than 17% of all secondary-level charter schools suspended no students. For non-charters, just over 8% of secondary schools suspended zero students. OCR believes this raises a possibility that some charter schools may be violating civil rights laws by not reporting data about whom they exclude from school on disciplinary grounds.

It also bears mentioning that under the Obama administration OCR did actively investigate charter schools for compliance with federal civil rights laws and has reached compliance agreements with several schools resolving some of these practices.

Student Attrition: Student attrition rates at some charter chains, such as KIPP, which claims high postsecondary enrollment proportions among graduating students, are known to be high. This raises questions about whether all that could be done to retain struggling students by well financed schools such as the KIPP schools is actually done. Indeed, some charter school supporters consider greater charter sector selectivity “a [feature, not a bug](#).”⁵²

Seen from the other side, charter school “push out” drives higher-need students back into traditional public schools. While the student returns, the funding does not, leaving the traditional public school in the position of taking back responsibility for the student’s education, without being provided the funding to do so. Test scores of these transient students are of course amalgamated into student outcome data reported by the traditional public school sector and the individual receiving school.

School Closures. As noted above, charter school closure rates are considerably higher than for traditional schools. But the closure rate is highest for schools attended by minority students. Nearly half (45%) of students whose charter schools closed between 2000 and 2012 were African American, though African Americans comprised only 30% of students enrolled in charter schools during that time period.



3. Charter School Accountability

As the charter industry grows, especially among charter management organizations, efforts to expand the fledging accountability standards that now apply to charters become increasingly important.

Such accountability campaigns are strongly supported by the public. Public opinion research by the [Center for Public Democracy](#) (CPD) and In the Public Interest (ITPI) shows concern about holding charter schools accountable to the public trust.⁵³ [Supermajorities of registered voters](#) support transparency measures such as open board meetings (92% support), regular audits (88%), and full disclosure of budgets and contracts (90%).

Similarly, the public strongly supports protecting neighborhood public schools from the impact of charters. Supermajorities support requiring that neighborhood public schools do not lose funding if a new charter opens (78%), that charter schools return money if children leave the charter for a traditional school during the year (80%), and that charter school teachers have the same training and qualification requirements as traditional public school teachers (89%).

ITPI CPD ⁵⁴	Total Support
Require companies and organizations that manage charter schools to open board meetings to parents and the public, similar to public school board meetings	92% (69% strongly)
Require companies and organizations that manage charter schools to	90%

release to parents and the public how they spend taxpayer money , including their annual budgets and contracts	(75% strongly)
Ensure that neighborhood public schools do not lose funding when new charter schools open in their area	78% (59% strongly)
Require state officials to conduct regular audits of charter schools' finances to detect fraud, waste of abuse of public funds	88% (72% strongly)
Require charter schools to return taxpayer money to the school district for any student that leaves the charter school to return to a neighborhood public school during the school year	80% (57% strongly)
Require all teachers who work in taxpayer funded schools, including neighborhood public schools and charter schools, to meet the same training and qualification requirements	80% (58% strongly)
Require charter schools to serve high-need students such as special education students, at the same level as neighborhood public schools.	89% (71% strongly)
Require charter schools to use enrollment and registration policies that encourage special needs students to enroll at the same level as neighborhood public schools	77% (51% strongly)
Prohibit charter schools from using practices that result in pushing out children who they perceive as not a good fit for their school	49% (29% strongly)

3A. Charter Waste, Fraud, and Abuse

One of the advantages cited by proponents of charter expansion is reduced regulation. One of the consequences is increased fraud and abuse. In Ohio, charter schools were determined to have falsified performance reports, had leaders with personal conflicts of interest, and misspent public money nearly four times more often than any other taxpayer-funded agency.⁵⁵ State auditors found that nearly half of the Ohio charter schools they examined claimed funding for more students than actually attended.⁵⁶

The [Center for Popular Democracy](#) (CPD) has issued a series of reports that detail over \$200 million in fraud in the charter sector and call for greater oversight.⁵⁷ The CPD reports include such examples as that of a New York charter school that borrowed \$5.1 million to purchase and renovate a building whose actual purchase and renovation cost was \$1.4 million, with the rest going to developer fees and financing charges at an interest rate of 20%.⁵⁸ Professors Bruce Baker and Gary Miron, writing for the National Education Policy Center, concluded: “[W]e identified far more than we ever expected in terms of ways in which rents are being extracted from public education revenues through charter schooling business models. Some are inadvertent. Some are entirely intentional. Most can be mitigated at least partially by good public policy....”⁵⁹

At the federal level, as noted above, Charter School Program funding has been awarded to 699 “prospective schools” that have not yet opened.⁶⁰ The Department of Education cannot determine how many will eventually be opened, by when, or how initial dollar amounts allocated for the projected school openings will compare to actual spending. It has no accounting and oversight practices in place that would enable it to determine what is being done with the money it awarded for this purpose.

In March of 2010, the U.S. Department of Education’s Office of Inspector General issued a memorandum to the Office of Innovation and Improvement (OII) “to alert you of our concern about vulnerabilities in the oversight of charter schools,” with an itemized list of examples.⁶¹ In September of 2012, an [OIG audit](#) issued the same warnings again:

“We determined that OII did not effectively oversee and monitor the SEA [State Educational Agencies] and non-SEA grants and did not have an adequate process to ensure SEAs effectively oversaw and monitored their subgrantees. Specifically, OII did not have an adequate corrective action plan process in place to ensure grantees corrected deficiencies noted in annual monitoring reports, did not have a risk-based approach for selecting non-SEA grantees for monitoring, and did not adequately review SEA and non-SEA grantees’ fiscal activities.

In addition, we found that OII did not provide the SEAs with adequate guidance on the monitoring activities they were to conduct in order to comply with applicable Federal laws and regulations. We identified internal control deficiencies in the monitoring and oversight of charter schools that received the SEA grant at all three of the SEAs we reviewed. Specifically, we found that none of the three SEAs:

- adequately monitored charter schools receiving the SEA grants;
- had adequate methodologies to select charter schools for onsite monitoring; or
- monitored authorizing agencies.”⁶²

More recently, in October 2016, the [OIG audit](#) found “22 of the 33 charter schools in our review had 36 examples of internal control weaknesses related to the charter schools’ relationships with their CMOs (concerning conflicts of interest, related-party transactions, and insufficient segregation of duties).”⁶³ The results of such lax oversight included:

“The Chief Executive Officer (CEO) of one CMO in Pennsylvania had the authority to write and issue checks without charter school board approval and [wrote checks to himself](#) from the charter school’s accounts totaling about \$11 million during the 2008–2009 school year.”⁶⁴

3B. Raising charter accountability standards

In recent years, the Annenberg Institute for School Reform has worked to develop standards that hold charters accountable to the public and ensure equity and access for all students. The main

tenets are simple and should be adopted everywhere as a matter of basic good government standards:

- School governance should be representative and transparent;
- Charter schools should ensure equal access to interested students and prohibit practices that discourage enrollment or disproportionately push-out enrolled students;
- Traditional school districts and charter schools should collaborate to ensure a coordinated approach that serves all children;
- New charter schools should not adversely impact neighborhood public schools;
- All students deserve equitable and adequate school facilities. Districts and charter schools should collaborate to ensure facility arrangements do not disadvantage students in either sector;
- Online charter schools should be better regulated for quality, transparency and the protection of student data;
- Monitoring and oversight of charter schools are critical to protect the public interest; oversight should be strong and fully state funded.

To date, the standards have not been adopted in federal law.

In the lead up to ESSA, Senator Sherrod Brown (D-OH) introduced [S. 1708](#), the Charter School Accountability Act of 2015. The bill intended to impose guardrail accountability and transparency on state charter policies as a precondition for eligibility for receiving additional federal charter expansion funding. Specifically, the Brown bill would have required as a condition of charter expansion funding that charters:

1. comply with the same open meeting and open records laws as traditional public schools;
2. comply with fiduciary duty and conflict of interest prohibitions or face civil and, in some instances, criminal liability;
3. file annual independent financial audits with the state to be made publicly available;
4. disclose the legal title holder of the land and school facilities used by charter schools;
5. disclose to parents and guardians the charter's rules and policies regarding student behavior and disciplinary policies and practices.

In addition, the Brown bill would have required, as a condition of the same funding that local and state educational agencies receive, that the following steps be taken for charters:

1. LEAs would have been required to do an impact statement, and make it public prior to authorizing a charter's operation, that assessed the proposed charter's impact on the districtwide multi-year plan and identified the role that the charter proposes to fill within the LEA.

2. SEAs would need to report annually on the impact of charter schools on LEAs in the State, including a review of funding and student enrollment and educational outcomes.
3. States would need to establish clearly the authority of authorizers to inspect and obtain copies of any books and records of charter schools they authorize, including all contracts entered into, and conduct a review or audit of educational performance and financial operations of the charter schools they authorize.
4. Adopt a policy stating how charter schools are monitored and held accountable for providing equitable access of all students, including students with disabilities and English learners.

The Brown bill ultimately was not passed in Congress. Some charter provisions were included in the final ESSA law but are not as strong as those in the Brown bill. Specifically, as passed by Congress the ESSA provisions:⁶⁵

1. Require a description of “how the State addressed charter schools in the State’s open meetings and open records law,” rather than the mandate in the Brown bill that such laws be applied to charters. (ESSA Section 4304(f)(1)(F)).
2. Require that charter schools agree “to comply with the same Federal and State audit requirements as do other elementary and secondary schools in the State, unless such States audit requirements are waived by the State.” (ESSA 4305(c)(4)(I)).
3. Charter authorizers of schools receiving CSP funds are to adequately monitor recruitment and enrollment practices and ensure that charters meet the needs of all students, including children with disabilities and English learners.
4. States are to promote quality authorizer practices such as assessing annual performance data of the schools, including, graduation rates, student academic growth, and rates of student attrition, and reviewing the schools’ independent, annual audits of financial statements conducted in accordance with generally accepted accounting principles, and ensure any such audits are publicly reported. (ESSA 4303(f)(1)(A)(xii)).

In addition, ESSA specifies that the U.S. Department of Education may not impose any federal requirement that states lift or raise caps. ESSA also encourages multiple authorizer options in a state, which can encourage charters to forum shop for the authorizer with the least demanding requirements. (ESSA 4303(g)(2)(A)(i) and 4303(a)(3)).

4. Civil Rights and the Advocacy Community

The National Association for the Advancement of Colored People (NAACP) made headlines with its July 2016 call for a moratorium on privately managed charter schools.⁶⁶ The NAACP did not come out against charter schools in principle, only privately managed schools, but the language of the resolution reflects the NAACP's serious concerns about charter schools:

- “Charter schools have contributed to the increased segregation rather than diverse integration of our public school system.”
- “Weak oversight of charter schools puts students and communities at risk of harm, public funds at risk of being wasted, and further erodes local control of public education.”

The NAACP moratorium echoes critical statements by the Advancement Project, which in 2014, called on the U.S. Department of Justice to investigate the closure of public schools in three cities on the grounds that the closings were racially motivated. “By stealth, seizure, and sabotage, these corporate profiteers are closing and privatizing our schools, keeping public education for children of color, not only separate, not only unequal, but increasingly not public at all,” said the letter to the U.S. Departments of Justice and Education.⁶⁷ Similarly, the Journey for Justice, a member of the Alliance to Reclaim Our Schools (AROS), declared in 2012 that “corporate education reformers are destroying our public schools altogether, closing them, turning them over to private management, firing our teachers and squeezing education budgets in the name of ‘reform.’”⁶⁸

Other civil rights groups have also been proponents of charter school accountability. For example, the National Asian American Education Advocates Network (NAAEA) warned, in the 2012 debate over the reauthorization of the Elementary and Secondary Education Act, that:⁶⁹

Federal legislation must hold charter schools more accountable. Recent studies indicate that charter schools are highly segregated, and less likely to enroll ELLs and students with disabilities. Charter schools must uphold the same standards of integration and access as other public schools. Parents and communities must also have a meaningful voice in charter school governance. Additionally, while many charter schools are excellent, research shows that charters are no more effective overall than traditional public schools. Therefore, federal funding should not promote the unfettered proliferation of privately run charter schools at the expense of traditional public schools.

Similarly, the National Parent Teachers Association (PTA) **has also called for greater accountability in the charter sector:**⁷⁰

National PTA supports public school choice and acknowledges public charter schools as one of many avenues to improving student achievement. National PTA supports public charter schools provided the authorizing bodies and schools reflect the positions and principles of National PTA in charters granted and implemented. National PTA values all PTA units within or affiliated with public charter schools.

National PTA supports legislation or policy decisions relating to charter schools that meet the following conditions:

Charter Authorizing Bodies must:

- Meet the highest level of accountability;
- Ensure transparent charter application, review, and decision-making processes;
- Meaningfully engage parents (any adult who has primary responsibility for the education and welfare of a child) in transparent authorizing, review, and decision-making processes, including the involvement of at least one parent on each charter school board;
- Engage in ongoing, comprehensive charter school data collection and evaluation processes, and make that information available to the public in a manner that complies with applicable state and federal laws; and
- Require performance-based charter contracts.

Public Charter Schools must:

- Be open to all students and free of both tuition charges and fees that exceed state or federal laws;
- Be supported by specifically allocated public funds in amounts that do not exceed and do not divert funding from non-charter public schools;
- Be legally organized as a 501(c)(3) nonprofit organization not affiliated with non-public sectarian, religious, or home-based school organizations;
- Adhere to all federal and state laws that protect the health and safety of children, prohibit discrimination, ensure access for all children, and comply with the Freedom of Information and Open Meetings Act;
- Comply with federal and state laws governing public schools that require fiscal transparency, responsibility and accountability;
- Provide all education stakeholders, including parents, with absolute transparency concerning both non-public funding sources and any external organization(s) with which the charter school enters into fee-for-service contract(s);
- Ensure that professional staff is certified for the position(s) they hold;
- Work collaboratively with parents to ensure meaningful family engagement in student learning and school success, including the presence of at least one parent on the charter school board; and
- Adhere to mechanism(s) for periodic, independent data collection and evaluation to determine alignment with provisions of the stated charter and ability to meet or exceed expectations required of non-charter public schools.

ENDNOTES

¹ Albert Shanker, President, American Federation of Teachers, [National Press Club Speech](#), March 31, 1988,

² National Center for Education Statistics, Common Core of Data, Public Elementary/Secondary School Universe Survey for 2000-01 - 2013-14.

³ National Alliance of Public Charter Schools, “[A Closer Look at the Charter School Movement](#),” February 2016. The NAPCS data are more current but not as reliable as that collected by NCES.

⁴ National Center for Education Statistics, [Common Core of Data](#), Public Elementary/Secondary School Universe Survey for 2000-01 - 2014-15.

⁵ Center for Education Reform, “[Charter School Laws Across the States](#),” 2015.

⁶ National Center for Education Statistics, Digest of Education Statistics, [Table 216.90](#), Public elementary and secondary charter schools and enrollment by state, through 2014-15. We observe minor inconsistencies between the NCES data series here for state numbers and the NCES Common Core data series used for national numbers, endnote 4. We do not attempt to resolve them, simply accepted the data in each series on its own.

⁷ National Center for Education Statistics, Common Core of Data, Public Elementary/Secondary School Universe Survey Data, 2008-2009, 2013-14. Analysis by NEA EquityBase Team. Charter schools are included in the data for the regular school district within whose geographic boundaries the school is located, regardless of whether they are administered by that district or a charter-only district. Efforts were made to remove virtual schools from the data because they often serve students across geographic lines. For 2008, virtual schools were identified with a keyword search of school name and district name (keywords include 'cyber', 'virtual', 'distant', 'correspondence,' etc.). For 2013, NCES added a virtual school flag to the data; this variable, supplemented by a keyword name search was the basis for identifying virtual schools.

⁸ National Center for Education Statistics, Common Core of Data, Public Elementary/Secondary School Universe Survey Data, 2013-14. Analysis by NEA EquityBase Team.

⁹ Erica Frankenberg, et al., “[Choice Without Equity: Charter School Segregation and the Need for Civil Rights Standards](#),” [UCLA Civil Rights Project, 2009](#); Iris C. Rotberg, “[Charter Schools and the Risk of Increased Segregation](#)”, Education Week online March 27, 2014 (“Studies in a number of different states and school districts in the U.S. show that charter schools often lead to increased school segregation (Bifulco & Ladd, 2007; Booker, Zimmer, & Buddin, 2005; Cobb & Glass, 2003; Clotfelter, Ladd, & Vigdor, 2013; Frankenberg, Siegel-Hawley, & Wang, 2011; Furgeson et al., 2012; Garcia, 2008; Glenn, 2011; Michelson, Bottia, & Southworth, 2008; Nathanson, Corcoran, & Baker-Smith, 2013).

¹⁰ Gary Miron and Bruce Baker, “[The Business of Charter Schooling](#),” National Education Policy Center, December 2015, p. 7.

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