

Charter School Checkmate



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North Carolina's Success Despite Institutionalized Opposition

by: Terry L. Stoops

IN 1995, DONALD J. STEDMAN HAD A VISION. STEDMAN, THEN DEAN OF THE SCHOOL OF EDUCATION AT UNC-CHAPEL HILL, PREDICTED THAT BY 2015 PUBLIC EDUCATION IN NORTH CAROLINA WOULD DEVOLVE INTO A “MULTI-TIERED, FRAGMENTED AND ALMOST FEUDAL SYSTEM” THAT WOULD DEVASTATE THE STATE AND IMPAIR THE NATION.¹ IN HIS VISION OF PUBLIC EDUCATION, HALF OF NORTH CAROLINA’S CHILDREN WOULD ATTEND PUBLIC SCHOOLS AND HALF WOULD CHOOSE AN ALTERNATIVE. ADMITTEDLY, THIS IS AN APPEALING START, BUT HE WENT FURTHER. POOR, DISABLED, AND MINORITY CHILDREN WOULD BE FORCED TO ATTEND UNDERFUNDED AND DETERIORATING PUBLIC SCHOOLS IN ABANDONED STOREFRONTS OF DOWNTOWN BUSINESSES THAT HAD CLOSED BECAUSE THEY COULD NOT COMPETE WITH WAL-MART AND SUBURBAN SHOPPING CENTERS. WHITE CHILDREN FROM THE MIDDLE AND UPPER CLASSES WOULD ENJOY THE PRIVILEGES OF HOME, CHARTER, AND PRIVATE SCHOOLS IN SCHOLASTIC SHANGRI-LA.

“When North Carolina’s bill passed it was considered one of the best charter school laws in the country.”

Stedman’s predictions about charter schools were particularly fanciful. He envisioned, “About 20 percent of our students attend charter schools, some in former public schools leased or purchased and renovated to provide adequate learning environments. These schools are financed with public funds from special legislative appropriations for private schools. Some are church related. ...Charter school children are mostly white, middle and upper-middle class and college-bound achievers.”² What is useful about Stedman’s vision is that it took him only one paragraph to capture every major talking point that

critics would use to belittle and beleaguer charter schools for the next 15 years. What is not surprising is that he was completely wrong.

An Electoral and Educational Victory

A unique set of circumstances allowed passage of North Carolina’s charter school law. In 1994, North Carolina Republicans enjoyed the electoral benefits of the nationwide revival of American conservatism. For the first time since the Civil War, a Republican majority took control of the North Carolina House of Representatives. Republicans also made significant gains in the state Senate. Shortly after this overwhelming victory, the leaders of the new House majority initiated an ambitious education agenda that included consideration of a number of parent-centered reforms, including vouchers, tax credits, and charter schools.³ Rep. Steve Wood (R–Guilford) introduced a bill in the House. Over in the Senate, Sen. Wib Gulley (D–Durham) had become interested in charter schools and introduced a bill there.

Although a charter school bill failed to pass both houses during the 1995 legislative session, the bipartisan charter school bill approved a year later would not have been possible without the groundwork laid by key school choice proponents. The North Carolina Family Policy Council (NCFPC) led a chorus of concerned citizens and grassroots activists that decried ineffective education policies including substantial increases in public education funding that failed to raise test scores or lower illiteracy rates.⁴ Parents and conservative leaders throughout the state joined the call for large-scale education reforms that would expand parental choice.

Behind the scenes, the NCFPC worked closely with Democratic Senator Wib Gulley and Republican Representative Steve Wood to craft charter school legislation acceptable to the leadership of both chambers. Members of the House conference committee drafted a compromise proposal, which included a 100-school cap, at midnight the day before the 1996 session of the General Assembly was to adjourn. Republican Speaker Harold Brubaker

and his counterpart in the Senate, Democrat President Pro Tempore Mark Basnight, agreed to the provisions in the bill, and North Carolina's charter school legislation passed on June 21, 1996, the last day of the session.⁵ By the start of the 1999 session, the state House reverted to Democratic control and has remained that way since.

Passage of North Carolina's charter school bill put the state at the forefront of the movement. Charter schools and similar choice proposals had been widely discussed in education circles throughout the late 1980s. In 1991, Minnesota became the first state to approve a charter school law, and California passed a charter law a year later.⁶ When North Carolina's bill passed it was considered one of the best charter school laws in the country. Today, 39 states and the District of Columbia have charter school laws. The nation's more than 5,000 charter schools enroll over 1.5 million students. North Carolina's 96 operating charter schools enroll nearly 40,000 students.⁴

What are Charter Schools?

While the modern charter school movement is decades old, independent surveys confirm that majorities of Americans support, but do not fully understand, the concept.⁸ Charter schools are public schools—funded by state, federal, and local taxpayer dollars and subject to many of the same accountability and regulatory requirements as district or traditional public schools. What makes charter schools unique is that they operate under the supervision of a board of directors chosen by the school community, rather than a publicly elected school board. In addition, charter schools have the freedom to employ innovative instructional methods and curricula, although the state still requires all charter school students to participate in the state testing program. Charter schools also have greater flexibility in hiring and compensation of personnel, and are exempt from class size and school hour regulations. Unlike district schools, when a charter school is not properly serving its families, it closes.⁹

Prediction 1:

“About 20 percent of our students attend charter schools...”

During the 2009-10 school year, an estimated 2.6 percent of public school students in North Carolina attended a charter school.¹⁰ But that low percentage says little about the high demand for charter schools across the state. Rather, it is a product of two statutory mechanisms designed by opponents of charter schools to keep this percentage as low as possible.

Cap. First, North Carolina maintains a statewide cap of 100 charter schools and has done so since the passage of the charter school law in 1996. Five years after the passage of the law, the state reached the 100-school cap. This means that very few—if any—charter school slots are available in any given



year. North Carolina is not the only state to enforce a cap on charter schools, but it has one of the more restrictive caps in the nation. On the other hand, Florida, which also passed a charter school law in 1996, has no limits on charter school growth and boasts 410 charter schools in operation with a total enrollment exceeding 135,000 students or nearly five percent of public school students in the state.¹¹ The difference between charter school growth in Florida and North Carolina is a testament to the way that an artificial cap distorts the educational market.

Enrollment. State statutes also restrict the enrollment growth of operating charter schools, allowing schools to increase student enrollment up to 10 percent a year. While 40,000 students have enrolled in charter schools this year, waiting lists continue to grow. Restrictions on growth force popular charter schools like the nationally recognized Raleigh Charter High School, to turn down hundreds of applicants each year. Statewide, there are an estimated 20,000 students on charter school waiting lists.¹² These figures do not take into account the thousands of families who have given up hope and fail to apply or who do not have a charter school in their community because of the cap.

Results from a June 2008 poll by the Civitas Institute found that nearly two-thirds of likely voters would support allowing more charter schools to operate in North Carolina.¹³ The high demand for charter schools is driven by several factors. One theme that clearly emerges from the research literature is that parents choose charter schools because they value the kind of educational environment offered by the school. Parents often want their children to attend smaller schools that increase the sense of community and safety. They want their children to receive individualized attention from dedicated faculty and staff and enjoy greater opportunities for participation in extracurricular activities.

Some desire a school that is close to a residence or employer. Others are simply desperate to withdraw their children from district schools with histories of academic failure or violence. Most charter school parents have one outlook in common. They are fed up with state and district officials who ritualistically promise to improve schools and create hospitable learning conditions but fail to deliver.¹⁴

Restricting Choice. Efforts to lift or raise the cap have been thwarted by powerful special interest groups with close ties to some legislative Democrats and the governor's office. Fearing competition and deregulation, organizations like the North Carolina Association of Educators (NCAE) have been aggressive and largely successful in their opposition to charter school expansion. A slew of advocacy organizations, university faculty, liberal political groups, and the North Carolina State Board of Education have joined the NCAE in a well-funded and coordinated effort to restrict parental choice and strengthen the public school monopoly. Predictably, these special interest groups demand stronger government oversight (or complete discontinuation) of charter schools and strict limitations on their expansion.¹⁵ With an air of condescension, representatives from these groups declare that only the so-called experts know what is in the best interest of each child. The prevailing assumption among critics of school choice is that parents are not intelligent enough to make sound educational choices for their children.

Prediction 2:

“...[some charter schools occupy] former public schools leased or purchased and renovated to provide adequate learning environments.”

According to state statute, charter schools receive no funds for school facilities. Last year, district schools spent an average of \$668 per student on school construction and renovation.¹⁶ There is disagreement within the charter school community about whether charter schools should receive capital funds from state and local governments. On one hand, some proponents of the ban on capital funding believe that charter schools should serve as low cost alternatives to expensive district school construction and renovation projects. Counties throughout North Carolina have spent billions of dollars on school facilities often designed to indulge school boards, district administrators, and athletic boosters, rather than educate children.¹⁷ Charter schools have been remarkably resourceful and frugal in the kinds of facilities used. Some charter schools have rehabilitated vacant factories or storefronts. Others have built high quality school buildings for a fraction of the cost of a new district school.¹⁸

Unequal Treatment. On the other hand, charter schools are public schools and under the North Carolina Constitution, the state must maintain a uniform system of public schools. According to this compelling argument, the state cannot provide

facilities funding to one type of public school and deny it to another. The North Carolina Institute for Constitutional Law is currently litigating the matter on behalf of the state's charter schools. If successful, the court may compel state and local governments to initiate funding streams to charter schools for capital expenses. In practical terms, it would give charter schools a portion of the estimated \$150 million in state lottery money earmarked for school construction, as well as funds received from the sale of municipal bonds.¹⁹

Prediction 3:

“These [charter] schools are financed with public funds from special legislative appropriations for private schools. Some are church related.”

Admittedly, public funding for private and church related charter schools is a good idea, so long as the state does not impose onerous regulations in return. The Democratically-controlled state legislature refuses to debate, much less vote on, tax credits, vouchers, or scholarships for private and religious schools. Like all public schools in North Carolina, charter schools must remain nonsectarian institutions. They are permitted to lease space from a sectarian organization, but charter schools are not permitted to display religious artifacts, symbols, iconography, or materials.²⁰

State Funding. Yet, the issue of funding is an important one because no special legislative appropriations exist for charter schools. In fact, charter schools suffer from an average \$1,100 per student disadvantage compared to the district school average of \$9,331 per pupil.²¹ This funding difference was the basis of a 2007 lawsuit filed on behalf of five Mecklenburg County charter schools. In *Sugar Creek Charter School et al. v. The Charlotte-Mecklenburg Board of Education*, plaintiffs alleged that the Charlotte-Mecklenburg Schools withheld funds that the district was obliged to allocate to charter schools in their jurisdiction.²² The three-judge North Carolina Court of Appeals panel ruled that Charlotte-Mecklenburg Schools unlawfully withheld reserve fund balances, Hurricane Katrina

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relief funds, sales tax reimbursements, preschool programs, donations for specific programs, and capital reimbursements totaling \$1.3 million.²³ Shortly after the unanimous appeals court ruling, brazen officials representing the state’s Department of Public Instruction and Local Government Commission recommended that school districts use an accounting procedure to keep fund balances away from charter schools.²⁴

Federal Funding. The inequitable distribution of federal funds accounted for nearly half of the funding disadvantage. On average, charter schools receive approximately \$500 less in federal money than district schools.²⁵ Beginning in 2001, Congress has provided millions of dollars in grant funds for charter schools. Year after year, however, North Carolina’s cap on charter schools disqualified the state from receiving a large portion of these funds.

Similarly, the charter school cap may have hurt North Carolina’s chances to receive additional federal funds. Despite pushback from teachers unions and his own political party, President Obama and Secretary of Education Arne Duncan called for a nationwide increase in charter schools. To this end, the Obama Administration has dedicated a notable part of his first educational initiative, a \$4.5 billion competitive grant program called Race to the Top, to expanding these “laboratories of innovation” in every state.²⁶

The Race to the Top competition put Governor Bev Perdue and North Carolina education leaders in a quandary. The application for these funds required state officials to demonstrate a commitment to increasing the number of high quality charter schools. North Carolina’s Race to the Top team had no interest in asking legislators to raise the 100-school cap, so they did what any petulant politician would do—complain that the requirements were unfair.

Governor Perdue, State Superintendent June Atkinson, and State Board of Education chair Bill Harrison joined the NCAE and representatives from other public school advocacy organizations to send a letter of protest to Secretary Duncan. Their two-page letter complained that the focus on charter schools is a “very narrow way to look at innovative options for successful schools.”²⁷ They argued that the Department of Education should judge

North Carolina’s application based on a number of costly and unproven education programs implemented by former governors Jim Hunt and Mike Easley. The Department of Education eventually relaxed, but did not eliminate, the charter school requirements in the final Race to the Top guidelines. Even so, North Carolina’s Race to the Top delegation was optimistic.

The prospect of receiving more federal dollars stirred North Carolina’s education establishment into unprecedented action. Perdue assembled a team of 150 consultants and bureaucrats to prepare the 430-page application for \$470 million in federal education funds.²⁸ Fearing that the cap would prove to be a competitive disadvantage, state education officials got creative. Lieutenant Governor Walter Dalton suggested that they label Easley-era education programs “charter-like schools without charters.”²⁹ The unintelligible phrase is laughable at best and deceptive at worst. An infinite number of “charter-like” schools would not change the fact that North Carolina maintains a restrictive 100-school cap on charter schools. After all, a charter-like school without a charter is just another public school.

Legislators in Illinois, Louisiana, Tennessee, and California took notice of Obama and Duncan’s affinity for charter schools, and embraced legitimate, pro-charter laws and policies to make their Race to the Top application more enticing to the Obama Administration.³⁰ North Carolina’s elected officials and education leaders chose the business-as-usual route, and it initially paid off. The state’s application made the first cut. In the end, however, the application and the subsequent Q&A session with state leaders failed to impress Race to the Top evaluators, who ranked North Carolina’s application near the bottom of the group of sixteen finalists. One evaluator observed, “It is evident that this is too limited a cap to provide enough charters in such a large state.”³¹ The five reviewers awarded North Carolina between 13 and 28 out of 40 points in the charter school category. The average point deduction was 17 points, a significant deduction for a state that lost a total of 86 points on the entire application.³²

For the second round of applications, Governor Perdue, still desperate for federal loot, urged legislators to use a similar approach. The North Carolina General Assembly passed a bill that will permit school districts to establish up to 135 so-called “charter-like innovative, autonomous schools.”³³ These district-run schools will reportedly have “all the hallmarks of a charter school,” except the defining characteristic of a genuine charter school—a community board. Sen. Eddie Goodall, President of the North Carolina Association of Public Charter Schools, playfully called these “charter lite” schools.³⁴

Prediction 4:

“Charter school children are mostly white, middle and upper-middle class and college-bound achievers.”

Many opponents of the 1996 charter school law charged that charters would produce a mass exodus of middle and upper class white children from district schools, commonly called “white flight.”³⁵ Much to their surprise, however, charter schools serve populations that are comparable to their district school counterparts. Currently, 39 percent of charter school students are racial or ethnic minorities, while 46 percent of district school students are minorities.³⁶

Ironically, opponents are now more likely to complain about “black flight” than “white flight.” Both white and black critics charge that some charter schools are not diverse enough because they enroll a disproportionate number of African-Americans. Attorneys from the Center for Civil Rights at the UNC-Chapel Hill School of Law accuse North Carolina charter schools of being a “national leader in racial isolation and hyper-segregated learning” because African Americans oversubscribe to a handful of charter schools.³⁷ They complained that nearly half of all African-American charter school students “attend schools that are 90-100 percent African-American.” Curiously, lawyers from the UNC Center for Civil Rights have never accused minority-dominated district schools of practicing racial isolationism or hyper-segregation. According to state enrollment statistics for the 2009-2010 school year, 57 district schools in North Carolina have minority enrollment of 90 percent or higher.³⁸

Editors from the *News & Observer*, who are reliable opponents of charter schools, agreed with the Center for Civil Rights and declared the racial composition of charters to be “outrageous.”³⁹ Darrell Allison, President of Parents for Educational Freedom in North Carolina and an African American leader in the school choice movement, disagreed. In a published response to these charges, he tactfully described their rhetoric as “shortsighted and incendiary.”⁴⁰

The Race Card. Charter schools have been dealing with shortsighted and incendiary rhetoric for years. In 2002, the North Carolina Center for Public Policy Research (NCCPPR) published a report that suggested that charter schools perpetuated racial segregation.⁴¹ In 2007, the NCCPPR published a follow-up report that came to the same conclusion.⁴² The mainstream press and the Left have lauded both reports. They shamelessly continue to lambaste charter schools that enroll too many blacks. Understandably, they refuse to propose a solution to this problem because, logically, it would require them to endorse something akin to affirmative action for white students. When this happens, we will have officially come full circle.

The source of the problem is not racism but a flaw in the charter school statute. The statute mandates that charter schools reflect the racial/ethnic

balance of the school system in which they reside. This requirement contradicts another part of the statute that requires charter schools to use an enrollment lottery when applicants outnumber available seats. Put simply, the statute requires charter schools to use random (lottery) and non-random (affirmative action) methods of selecting students.⁴³ This is simply not possible. It may also be illegal. In an analysis of the statute, the N.C. Attorney General’s Office determined that charter schools are not permitted to set aside seats for minority students.⁴⁴ The law obliges charter school administrators to conduct an admissions lottery. Most parents likely prefer a fair, colorblind admissions process to one that gives preferences to families based on the color of their skin.

Calls to clarify the statute or correct this problem have gone unanswered. In January 2008, the independent North Carolina Blue Ribbon Commission on Charter Schools recommended that the General Assembly amend charter school statutes to eliminate the contradiction.⁴⁵ To date, the legislature has not acted on this or any other substantive recommendation outlined in the commission report. For years, the N.C. State Board of Education has been inanimate on the issue. Last year, however, the board approved a policy that encourages charter school applicants to include a marketing plan designed to promote a diverse student population.⁴⁶

While the affirmative action mandate was designed to protect minority families, research indicates that an overwhelming number of minority parents are not concerned about the lack of ethnic or racial diversity in charter schools attended by their children. According to a recent survey of African American parents in North Carolina, 100 percent of the respondents accepted the lack of diversity in their schools, and 81 percent agreed that the lack of diversity was not significant as long



as their children received a quality education.⁴⁷ The survey indicates that some African American parents even prefer to send their children to a predominately black charter school.

Black flight is so prevalent because African American parents seem to recognize that their children, particularly males, have been ill served in district schools. The statistics are sobering. According to state figures, only 56 percent of African American male students graduate from North Carolina's district schools in four years.⁴⁸ Achievement scores for black males are consistently lower than the state average. Last year, less than half of all black males scored proficient or higher on elementary and middle school reading tests.⁴⁹ A charter school is often their last, best hope.

Grading Charter Schools

Indeed, charter schools often serve as educational sanctuaries, rather than coed finishing schools. While a few of North Carolina's charter schools serve high achieving, college-bound students, others serve children that cannot function in a traditional school setting. Grandfather Academy in Avery County provides special educational opportunities for students who have been hurt by emotional, sexual, or other abuse. Also in Avery County is Crossnore Academy, a residential education setting for children from families in crisis. Kennedy Charter School in Mecklenburg County provides a safe, dynamic, and positive learning environment for students 6-12 at risk of failure in traditional school settings. Crossroads Charter High in Charlotte seeks to achieve academic excellence for high-risk students.⁵⁰

Partly because charter schools serve such a large share of at-risk students, as a group, they have had a record of lower average test scores and graduation rates than their district school counterparts. Critics of charter schools have mobilized academia in an effort to discredit the charter school movement. By far, the most quoted study of charter school performance in North Carolina is Robert Bifulco and Helen Ladd's 2004 study, "The Impacts of Charter Schools on Student Achievement: Evidence from North Carolina."⁵¹

Using state testing data from 1996 to 2002, Bifulco and Ladd concluded that achievement gains in charter schools were smaller than district schools. Furthermore, the authors found that competition from charter schools did not improve performance at district schools. Recently, however, charter schools have appeared to turn the corner on student achievement. Last year, for example, an average of 73.0 percent of charter school students scored "proficient" or higher on state tests, compared to 69.8 percent for the average district school.⁵² While promising, additional research will be required to pinpoint the combination of factors that led to the increase.

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Not surprisingly, many district school advocates complain that state tests are reliable indicators of the quality of charter schools but not *their* district schools. A number of the state's charter schools recognized the mediocrity of North Carolina's state testing program and had the foresight to adopt a reliable assessment of student performance, like the Iowa Test of Basic Skills. The state, however, refuses to acknowledge results from tests that they do not directly control.⁵³

Any trustworthy analysis of charter school performance would have to take into account top-down pressure on North Carolina's charter schools. According to a 2009 Stanford University study, the state's 100-school cap may be producing conditions that lower student performance. States with limitations on the number of charter schools had lower academic growth than those without caps.⁵⁴ Moreover, states that reached the upper limit of their cap, as North Carolina has, the downward pressure on student performance increased.⁵⁵ While the Stanford study is suggestive, the negative effect of the cap may be indicative of larger political, financial, and regulatory pressures on charter schools.

Conclusion

During the current session, legislators in the state House and Senate have introduced bills to raise the cap on charter schools. While raising the statutory limit of 100 charter schools is a laudable goal, the proposed legislation currently being considered asks charter schools to accept additional layers of government control in exchange for a very small increase in schools. Charter school advocates hope that the outcome of the Fall 2010 elections will be favorable to the school choice movement. If it is, the agenda should be simple.

In addition to lifting the cap, the state should allow charter schools that demonstrate academic and financial success to franchise themselves, thereby meeting the demand for seats without undertaking the time-consuming application and approval process. The legislature should also modify the

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charter school statute to authorize charter schools to use a norm-referenced test, such as the Iowa Test of Basic Skills, in lieu of state tests. Finally, legislators should also repeal burdensome regulations, particularly the prohibition on public capital funds for charter schools.

Fortunately, North Carolina's charter school movement is better organized and more vocal than ever. Organizations like the North Carolina Alliance for Public Charter Schools and Parents for Educational Freedom in North Carolina (PEFNC) have picked up where the North Carolina League of Charter Schools left off. The North Carolina Family Policy Council, the John Locke Foundation, the Civitas Institute, Americans for Prosperity, and the North Carolina Institute for Constitutional Law remain stalwart champions of the charter school movement. Maybe to Stedman's dismay, this coalition has one goal in mind—to make sure that all parents have the option of sending their child to a public charter school that will meet the educational needs of their child. ❖

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