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## **Charter Schools and Equal Access: Implications for Magnet and Other Choice Schools**

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### Abstract

American public schools have been entrusted with the responsibility of inculcating citizens with democratic values. However, schools have come under attack for a variety of reasons. School choice provides parents with opportunities to select from options, both within and outside the public system of schooling, which will provide their children with the type of education they desire. Among these school choice options are charter and magnet schools. This article begins with a discussion of the basic similarities between magnet and charter schools, followed by a discussion of a legal research study which examined the extent to which U.S. charter school statutes foster equality of student access to charter schools. The data for the study were derived from the U.S. charter school statutes for 36 states, and the investigative framework was provided by seven research questions addressing student recruitment, admission and enrollment, student transportation, and information dissemination. Three areas affecting both magnet and charter schools are identified for which key research findings are presented. The final section discusses the implications the findings have for magnet and other choice schools and concludes with recommendations for policy development.

### Introduction

The task of inculcating democratic values in its citizens has long been considered the responsibility of American public schools. However, recently schools have come under attack as being inefficient, unresponsive to the needs of students and communities, and slow to change to meet the evolving needs of today's students (Good & Braden, 2000; Henig & Sugarman, 1999; Hanson, 1996). Indeed, some critics charge that public schools are monopolies whose existence is guaranteed by a constant supply of students (Henig & Sugarman, 1999; Hanson, 1996). Other commentators point out that although public schools do not have to compete for students, they must compete in a "restricted area" for funds. However, funding is not closely linked to the character or quality of their performance (Hanson, 1996). As a result of these and other issues, parents and educational reformers began to seek alternatives to more traditional public schooling; hence, the emergence of school choice.

Proponents of school choice believe its implementation will provide greater

efficiency and stimulate competition within the educational system, putting pressure on public schools to improve (Sugarman, 1991). They also believe that it provides parents with greater control over the education of their children, while providing a community structure and loyalty "by like-minded parents selecting schools with whose mission and values they identify" (Sugarman, 1991). It is further believed that school choice will contribute to the greater public good by serving public values while providing a wide range of educational options, which makes sense in light of the diversity of the American population (Sugarman, 1991).

Opponents of school choice argue that the purpose of public schools is to provide students a common set of values so that they become fully functional citizens who can contribute to the economic growth and defense of the country. Therefore, they believe that choice undermines students' exposure to common educational experiences. They further contend that it is both economically and racially discriminatory, leading to social stratification and balkanization of the educational process (Wells, 1994).

Approximately half of school choice in America occurs in the public education setting (Henig & Sugarman, 1999). The term school choice typically describes programs that provide opportunities for parents to make educational choices for their children that are outside of their typical district assignments. It has been broadly defined as "any policy designed to break the link between residential location and school attendance zones in order to reduce the geographic constraint inherent in traditional public schooling" (Goldhaber & Eide, 2002, p. 157). Theoretically, school choice extends educational options to all students that were historically only available to the privileged few, including children of "minority and/or low-income parents, who in a traditional school assignment paradigm are more likely to be assigned to a low-quality public school" (Goldhaber & Eide, 2002, p. 161).

Public school choice options are typically described as either intradistrict or interdistrict. Intradistrict choice, the most common type, may be defined as choice opportunities or programs offered by the local school district in addition to school assignments based on residence. It occurs when parents are provided an opportunity to select from educational alternatives provided by schools and programs within the school district where they reside. These alternative schools or programs are not typically located near the family's residence (Henig & Sugarman, 1999; Goldhaber & Eide, 2002). Intradistrict choice options may include alternative, magnet, thematic, experimental, and specialty schools, as well as campus charter schools.

Interdistrict choice occurs when students are allowed to enroll in schools located in districts outside their home district or neighborhood. Theoretically, it allows parents to select from schools throughout the entire state. Hence, this option is typically not widely favored by school districts. (Henig & Sugarman, 1999; Goldhaber & Eide, 2002). Under interdistrict choice, parents may choose from post-secondary options, district-wide open-enrollment choice plans, and open-enrollment charter schools. Both intradistrict and interdistrict choice options may include transfer plans.

## What Are Charter Schools?

Charter schools are the most rapidly expanding form of public school choice at the local level. Since the passage of charter school legislation in 1991, approximately three-fourths of U.S. states have passed charter school legislation. However, although charter schools have been in existence since 1991, not everyone knows what they are and how they differ from traditional public schools. Charter schools are autonomous public schools that may be created by teachers, school administrators, business people, parents, community groups, or other interested parties, depending upon state statutory requirements. They are typically structured to facilitate greater parental involvement. The premise is that charter school operators will, through their charters, commit to greater accountability for enhanced student performance in exchange for greater autonomy.

Most charter schools are small, newly created schools with atypical grade configurations. Their student populations are demographically similar to those of all public schools, although in the aggregate, they tend to enroll a greater proportion of minority students than traditional public schools (Goldhaber & Eide, 2002; U.S. Department of Education, 2000). While many are created to realize an alternative vision of schooling, insufficient fiscal resources continues to be the greatest challenge, especially at the outset.

They differ from traditional public schools in two major ways: (1) they operate on the basis of their charter, which frees them from many regulations that otherwise apply to public schools; and (2) in exchange, they are accountable for improving student performance and achieving goals set forth in the charter. The charter, which serves as a contract between the school and the chartering entity, stipulates how the charter school will operate and how it will be held accountable, including the consequences for failure to meet the terms of the charter. While some commentators fear they operate under insufficient state oversight, charter schools are subject to public oversight. Parents who are dissatisfied with the charter school and/or its offerings can express their displeasure by voting with their feet; i.e., making another choice of educational setting they deem more appropriate for their children's needs. While there is a growing trend to link administrator and teacher evaluations to student outcomes, traditional public schools are typically not subject to closure as a result of poor student performance. Charter schools, on the other hand, are subject to the terms of their charter, which in most cases must include improved student performance.

## How Are Charter Schools Like Magnet Schools?

The term magnet school generally refers to a choice school intentionally developed as part of a school district's plan, sometimes in response to a judicial order, to achieve school desegregation without relying exclusively on mandatory reassignment (Henig & Sugarman, 1999) and forced busing. The term became popular during the 1970s when policymakers were designing desegregation plans to discourage white students from exiting urban areas and schools (i.e., white flight) within the public school system. The intent was to make these schools more attractive to parents, educators, and

students by offering specialized curricular themes or instructional methods. Since then, school districts have begun using magnet schools not only for desegregation purposes, but also to improve academic standards, diversify by race and income and "provide a range of programs to satisfy individual talents and interests" (Smrekar & Goldring, 1999, p. 6). These schools typically employ racial balancing criteria as part of their selection process, and most magnet schools (85 percent) are located in large urban racially heterogeneous inner city districts with large student populations.

Not surprisingly, magnet and charter schools have some characteristics in common. For example, both types of choice schools are public schools that use public funds. Students who select either of these options remain within a public school system, often urban areas, rather than enroll in suburban or private schools. Both generally admit students on a first-come, first-served basis without regard to a student's place of residence (Henig & Sugarman, 1999). However, the charter school statutes in some states require that charter schools specify the area to be served by their school, which may preclude admission of students outside that boundary (Ausbrooks, 2001). For example, Texas and Louisiana statutes require that charter schools designate the geographic area that the school will serve (Tex. Educ. Code \_ 12.111(13); La. Rev. Stat., tit. 17 \_ 3991(B)(4)). As with charter schools, magnet schools enroll a large proportion of black and Latino students (Smrekar & Goldring, 1999).

Since the introduction of charter school legislation, critics have expressed concerns that charter schools will be elitist schools that lure the best and brightest students from traditional education programs and exacerbate racial and class divisions, resulting in racial and economic stratification (Huffman, 1998; Wells, 1994). Similarly, magnet school critics contend that magnet schools can exacerbate existing class or socioeconomic cleavages, especially when magnet schools are academically selective and few in number (Smrekar & Goldring, 1999). Critics of both contend that these schools divert resources that could be used for district-wide public school improvement. Both were touted as being the means to foster educational innovation, but while there are schools that have exceeded expectations, overall, both have fallen short of fulfilling this promise.

### The Context

Before becoming a member of the graduate university faculty, I was the administrator in charge of an international magnet school in a large urban school district. After becoming a member of the faculty, one of the ongoing research projects in which I became involved pertained to charter schools. What I discovered through this research and other related research projects is that many of the access issues for magnet schools and charter schools are the same. Three issues that can potentially exert great impact on equality of student access to charter schools are student transportation, timely access to school information, and equality of opportunity to attend.

My own experiences support this observation. For example, we had to constantly justify why one student was admitted while another was not. Although admission was

open to all students, space was limited, but students had a variety of programmatic options in the district from which to choose. We continually monitored admission guidelines and often wrestled with trying to ensure that balance and fairness were maintained in the admission process, revising as the need arose. Transportation was another issue, for many of the students who attended magnet schools did not live in the areas in which the schools were located, which meant that those who did not provide their own transportation spent long hours riding the bus to and from school. Although efforts were made at both the district and campus levels to ensure that parents received timely information about magnet schools and their offerings, sometimes we missed the mark. For some reason, some parents did not receive the information, did not attend the public meetings, and/or did not follow through with seeking admission for their children.

With these experiences as a backdrop, and in light of concerns expressed by some commentators of charter schools' potential to be elitist schools rather than public schools that provide all parents with educational choices for their children, I began to wonder whether there might be some cause for their concerns. Therefore, supported by a small junior faculty summer research fellowship, I launched an investigation into the extent to which access to U.S. charter schools is equal for all students.

### The Study

Based upon the 10th Amendment's reservation of education to the states, I began with the premise that states play a crucial role in providing guidance to local district schools, particularly through statutory regulations. My rationale was that school district policy is derived from these statutory regulations, which also provide districts with a sense of the national interest. The intent was to lay the foundation for answering a fundamental question: Do charter schools truly provide equal access to all students? I began with an investigation into the extent to which U.S. charter school statutes foster equality of student access to charter schools. The focus of the investigation was on equal access in the areas of student recruitment, admission and enrollment, transportation, and information dissemination. Interestingly, equality issues in magnet schools center around the same three areas. The investigation was framed by the following research questions:

- Do charter school statutes provide regulation or guidance for ensuring that underrepresented student groups have equal access to charter schools?
- Do charter school statutes provide regulation or guidance in how admission policies should be developed, or what they should include?
- Do charter school statutes require that charter schools designate geographic boundaries in their charters?
- Do charter school statutes allow for denial of admission to certain students?
- What happens if charter school enrollment exceeds capacity?

- Are charter schools required to provide free transportation to students who attend them?
- Is statutory guidance provided to ensure that all families have access to information about the charter school?

The data were derived from the U.S. charter school statutes for 36 states, including the District of Columbia. The research consisted of an analysis of each state's charter school statute, using the seven research questions as the investigative framework.

### Key Research Findings

Virtually all U.S. charter school statutes include at least a provision prohibiting charter schools from discriminating on the basis of race, ethnicity, national origin, or other such criteria and that they comply with federal and state civil rights laws. This is not surprising since charter schools are public schools and agents of the state and, thereby, subject to federal and state civil rights laws and regulations. Likewise, it is not surprising that the overwhelming majority of state statutes prohibit charter schools from refusing access to certain students by any means, including admission criteria, geographic restrictions, or failure to provide student transportation or information about the school.

State legislators are concerned about ensuring equality of student access to charter schools, for there are consequences for a public school's failure to comply with state and federal regulations, including loss of federal funding. Loss of financial resources could have devastating consequences for charter schools for which insufficient fiscal resources constitutes a substantial obstacle. Therefore, as federally- and state-funded entities, and as agents of their respective states, charter schools also risk loss of funding for failing to address the needs of any student group for which they are responsible.

The findings suggest that states do an adequate job of ensuring that underrepresented student groups have access to charter schools. The statutes reflect that states are concerned about violations of students' civil rights, which mirrors the U.S. government's interest in eradicating racial discrimination (O'Neill, 1999). This concern is evidenced by the fact that all but two of the statutes analyzed contain some provision with regard to ensuring that underrepresented groups, such as economically disadvantaged, minority and special needs students have the same access to charter schools and the educational opportunities they provide as other students.

This study revealed three key policy development areas that relate to both charter and magnet schools: (1) how students are admitted and who may be denied admission; (2) whether admission is restricted by residence or other criteria, and (3) whether timely information is appropriately disseminated to all families to enable them to make informed educational choices. Research, including that for magnet schools, also supports the need for ensuring equality of student access in these areas (Smrekar & Goldring, 1999; Kemerer, 1998; Levin, 1999) The remainder of this section will focus on the key findings from the aforementioned research that center around these three critical areas. The final

segment discusses some of the implications the findings have for schools of choice.

### Admission Policies and Practices

Although nearly a quarter of all states require that a charter school admit all students who submit a timely application (except in cases where to do so would exceed the capacity of a program, class, grade level or school building), almost one-third permit charter schools to limit student admission based on age, grade level, school focus or lottery (in the case of overenrollment). Less than half of states' statutes include admission preference criteria specifically granting preference to the following:

- returning students,
- siblings of enrolled students,
- students who reside within the boundaries of the school district in which the charter school is located,
- students who reside in a specific geographic area,
- children of the initial members of the charter school's board of directors,
- children of charter school employees,
- students who reside in the attendance area or former attendance area of conversion schools, and/or
- at-risk students.

Less than half of states' charter school statutes specify student admission criteria that are prohibited, including selection based upon student or parent residence, local pupil expenditures of the district in which the student resides, discrimination, desegregation order, intellectual or athletic ability, disability, achievement and federally protected criteria.

It is noteworthy that New Hampshire's statute provides that charter schools may select students based on aptitude, academic achievement, or need, so long as the selection is directly related to the academic goals of the school (N.H. Rev. Stat., tit., 15 @ 194-B:9 (1999)). The District of Columbia requires that limits to admission must be consistent with a school's charter (D.C. Code, ch. 28 \_ 31-2817(a)-(b)), and Louisiana's statute provides that specific requirements must be related to the school's mission (Ls. Rev. Stat, tit. 17 \_ 3991(B)(3)). Only four states specifically provide for the denial of charter school admission to certain students. The only bases for such exclusion are suspension, expulsion, documented history of criminal offense, juvenile court adjudication or discipline problems specified in statute. The statutes are written so as to allow admission of these students after the term of the disciplinary action has expired. None of the statutes

reviewed provide regulations or guidelines specifying how admission policies should be designed.

### Geographic Boundary Restrictions

Fifteen states (slightly less than half of states with charter school laws) include provisions that address the issue of geographic boundaries. Slightly less than one-fourth define the geographic boundaries for charter schools by those of the host district in which the school is located. Slightly more than ten percent of the statutes reviewed either require geographic boundaries or place their designation at the discretion of the charter school. Four states address ethnic, racial or socioeconomic balance with respect to the establishment of geographic boundaries. None of the statutes provide guidance as to how the designation of geographic boundaries may be accomplished without violating equal protection rights.

### Dissemination of Charter School Information

Only 10 states include any provisions for ensuring that all families have access to information about charter schools and their offerings. Of these states, four require that entities other than the charter school, such as the Department of Education or the State Board of Education, disseminate information about these schools. Four states either place the responsibility with the charter school itself, or with the school in cooperation with other entities. One state prohibits local school districts from discriminating against charter schools in publicizing district educational offerings. One other state requires that charter schools' admission criteria and procedures ensure effective public information, although it does not include criteria for how effectiveness may be measured.

### Policy Implications of the Research Findings for Magnet and Other Choice Schools

All students deserve equal access to public schools. If they cannot gain admission to the school, there is no access. Therefore, care must be taken to ensure that all student groups are afforded every opportunity for admission. State legislators appear to recognize that some admission criteria may be inherently discriminatory, and they are addressing these criteria up front in the statutes by prohibiting their use in charter school admission decisions. Good examples include provisions that prohibit charter schools from denying student admission based upon (1) parents' or students' place of residence (N.C. Gen. Stat., pt 6A \_ 115C-238.29F(g)(4); Calif. Educ. Code \_ 47605(d)); (2) local pupil expenditures of the district in which the student resides (Del. Code Unann. \_ 506(a)(4) - (5) (1999)); and (3) intellectual ability (D.C. Code, ch 28 \_ 31-2853.16(b); Minn. Stat \_ 124D.10, subd. 9(1) - (3) (1998); NJ Perm. Stat. \_\_ 18A:36A-7; NY State Consol. Laws, art. 56 \_ 2851(2)(a); 2854(2)(a)). Preference criteria such as age, grade level and the like make sense in terms of effective pedagogical practice. It would neither serve the interests of students nor the school if all applicants were guaranteed admission regardless of age, grade level or whether or not they wish to pursue the school's curricular offerings. Giving preference to students who have siblings who are currently enrolled is also logical so as to avoid separation of family members.

However, there is some concern about requiring charter schools to designate the area they will serve, particularly for open-enrollment charter schools. Such a requirement, in effect, discriminates against students based upon their place of residence, which in some areas means routinely screening out students who are members of racial and ethnic minorities, or others who either cannot afford to live in particular residential areas or who have historically been denied access to them. Many of the charter school statutes either do not address the issue of geographic boundary restrictions or simply default to the use of the host school district's boundary as the service area for the charter school. At any rate, the designation of a service area renders moot the concept of open-enrollment, which generally denotes open to all.

On the other hand, one of the premises of the charter school movement is that they will improve students' academic performance. Therefore, charter school officials may have greater motivation than traditional public schools to control the quality of students selected for admission to the school. One can readily see how a requirement to designate a geographic boundary from which students will be selected may invite abuse of students' equal protection rights, particularly if the boundary designation routinely screens out racial and ethnic minorities. If that is the case, schools and districts may be subject to litigation from those to whom admission has been denied. The same can be said with regard to the use of attendance zones to determine which students are eligible for admission to choice schools. They, too, may inadvertently sort students based upon their place of residence, resulting in the denial of access by race and class.

It is interesting how little statutory guidance is provided with regard to informing the public and potential applicants about charter schools. Parents cannot avail themselves of school choice if they don't know about their options. Therefore, all parents should receive adequate and timely information, written in clear language, about all public schools and their educational offerings.

Critics of school choice also often point to the issue of access to information as one of the major sources of inequity in magnet school programs. In their research, Smrekar and Goldring (1999) found that "economically disadvantaged families do not have adequate access to information, may not be aware of their options for choice, and may not have the formal and informal networks to learn about alternatives" (p. 26). Indeed, others have found that the majority of charter school parents become aware of charter schools via informal networks comprising friends and relatives and through churches. This is noteworthy because such informal networks tend to be highly segregated by race and class. For parents of charter school students who are not at-risk, the second most important source of information is the media; i.e., newspapers, television and radio. Interestingly, after friends and relatives, parents of at-risk charter school students are much more likely to learn of charter schools from traditional public schools or from teachers. The fact that friend and neighbor networks (informal networks) tend to be highly segregated by race and class may partly explain why charter schools are more racially distinctive than public schools in general (Weiher & Tedin, 2000).

Other research also supports the importance of addressing differences in parents' "access to and ability to process information" about choice options, noting the potential for misinformation with regard to educational decisions resulting in poor decision making (Goldhaber & Eide, 2002, p. 170). Perhaps surprisingly, first-come-first-served admission policies may exacerbate these differences, as well. On the surface, such policies may appear equitable; however, they raise some concerns because their use may limit the choices for families who lack adequate information or informal networks.

So, how does one balance statutory requirements with the needs of families and communities while providing equitable educational opportunities for all students? What can be learned from this charter school research? The following are a few recommendations:

- Exercise care in the development of admission policies and procedures, and relate them to the school's vision, goals and objectives. If the school is a charter school, ensure that these policies and procedures are also aligned with the terms of the charter.
- Replace first-come-first-served policies with a random lottery system. In order to ensure that all students have an equal opportunity of being selected, include the names of all age and grade-level eligible students.
- Require that choice schools demonstrate district-wide recruitment efforts, and include policy provisions to ensure range and diversity of students by seeking enrollment of a cross-section (to the extent practicable) of the district's school-age population, including racial, economic, academic factors (N.J. Perm. Stat. § 18A:36A-8(e)). You may also wish to include a process for student appeal; e.g., to the school board, whose decision is final (S.C. Code of Laws, tit. 59, ch. 40 § 59-40-50(C)(1)).
- Include information dissemination efforts that target groups who may not be able to readily take advantage of choice options. Utilize community outlets to increase effectiveness of information dissemination efforts. For example, in addition to the use of the local media to publicize their school and its offerings, one school sends representatives to the major youth organizations in the city and to visit with counselors at other schools in the area. In addition, in an effort to reach groups that tend to be screened out of many information dissemination efforts because of where information is posted or distributed, they also distribute school information at public laundromats and housing projects (Patrick MacGrew, personal communication, 29 November 2001).

### Concluding Remarks

The intent of this paper has been not only to present information on how states are legally addressing the issue of equal student access to charter schools, but to also stimulate critical policy questions in the area of educational equality, including how low-

income and minority families may be provided meaningful opportunities for exercising educational options for their children. For instance, how can the rights of all students to have equal access to schools of choice be balanced against the rights of students to whom preference is granted? In the case of charter schools, how can this right be balanced against the school's requirement to enhance the performance of all students enrolled? How can these schools meet their objective of improving student achievement without discriminating based upon academic ability? Do choice schools, by virtue of their specialization, truly exacerbate racial and class stratification? If so, what changes in policy and procedures can provide a remedy? What impact does school choice have on students who choose to remain in their neighborhood schools? What is the potential impact of school choice on American public schooling in general? The answers to these and other questions yet unasked are critical in reducing inherent inequalities in policy and practice with regard to student access to charter, magnet and other schools of choice.

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