



Policy Perspective

Charter School Reform: Past, Present, and Future

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RECOMMENDATIONS

- Increase or altogether remove the cap on the number of charter schools.
- Free charter schools from excessive regulation.
- Measure academic achievement using student growth from year to year.
- Encourage charter school growth by lowering barriers to expansion.

Texas has one of the largest and most flexible charter school programs in the country. This has led to the creation of hundreds of charter schools enrolling tens of thousands of Texas public school students. However, pressure to both improve and constrain charters has led to an erosion of charter school flexibility through increased regulation.

Many charter school supporters have pushed for greater state control in the name of increased accountability and improved public relations, while opponents have labored for mandates that restrict charter school growth and stifle the competition faced by traditional public schools. The opposing ends, but similar means, of these groups have resulted in ever-increasing restrictions on Texas charter schools.

Reformers have good reason to seek improved public opinion of charter schools. A handful of irresponsible and even unethical charter operators have overshadowed the success of the majority of charter schools. But while weeding out these bad apples, it is imperative to avoid tying the hands of the majority of charter operators seeking to expand, innovate, and improve student achievement. Regulation of the charter school movement should be left to the market, not placed under an arbitrary set of state controls.

The following excerpt of testimony provided to the Senate Education Committee outlines what should be the essential backdrop of all charter school reform:

“... we must keep in mind two things. On the whole, parents know better than the government what is best for their chil-

dren, and parents are choosing to enroll their children in charter schools—‘underperforming’ or not. We must also consider whether lack of progress among some charter schools is a call for increased regulation, or if it is, as I believe, caused by having too many regulations.”¹

Charter school reform should be built on freedom and autonomy. While some restrictions protecting student wellbeing and taxpayer dollars are sensible, charter school operators need relief from unwieldy mandates so that they are free to maximize student achievement. Likewise, parents should be free to select from the largest variety of schools possible, and should be trusted with the ability to choose the best educational setting for their children. Unfortunately, the direction of charter school reform has been to decrease freedom, not uphold it.

HISTORY OF CHARTER SCHOOLS AND THEIR REGULATION IN TEXAS

Charter schools were authorized by the Texas Legislature in 1995, with the first schools opening their doors in the fall of 1996. According to the Texas Education Agency (TEA), this “first generation” of charters included 17 schools and 2,412 students. While the number of open-enrollment charters was initially limited to 20, the Legislature increased the cap to 100 in 1997 and 215 in 2001, excluding from the cap charters granted to universities or colleges. By the 2005–06 school year, 239 open-enrollment charter schools enrolled 89,171 students, or less than 3 percent of the Texas public school population.²

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In 1999, the Legislature added a requirement that charters meet satisfactory performance on state assessments.³ But the most substantial legislative change to charter school law came in 2001, when House Bill 6 (HB 6) of the 77th Legislature imposed dozens of new mandates on Texas charter schools. Spurred by instances of corruption or ineptitude on the part of charter holders, the Legislature moved to increase charter regulation. As a result, HB 6 placed a two-year moratorium on additional charter schools. It also increased the number of traditional public school laws and rules with which charter schools must comply, including rules for purchasing and contracting, minimum length of the school day, open meetings, public information, record-keeping, criminal history checks, and school board training.

TalkingPoint:

House Bill 6 followed a common practice of government—aiming for improvement by increasing control, when deregulation would actually lead to better results.

House Bill 6 also placed mandates on charter schools that do not even apply to traditional public schools. Such measures include:

- Authorizing the Commissioner to set operational, financial, and governing standards for charter schools;
- Authorizing the Commissioner to approve the curriculum and instruction in charter schools;
- Identifying who may and may not serve as members of charter school boards;
- Requiring charter schools to specifically define and limit the authority of board members; the law specifically prohibits charter school boards from delegating established authorities;
- Requiring legislators and school boards to be notified whenever a charter school is created within their districts;
- Requiring charter schools to provide parents with written information regarding the qualifications of all professional employees;
- Authorizing the Commissioner to shut down charter schools that “fail to protect the health, safety, or welfare of students;”
- Limiting where a charter school can obtain funds;
- Authorizing the Commissioner to approve or disapprove a charter school’s choice of a management firm; and
- Requiring charter schools to submit all banking information to the Commissioner.⁴

In the name of improving charter school performance, HB 6 left charter schools largely indistinguishable from traditional public schools. Mike Lopez, Director of the John H. Wood Charter School in San Antonio, expressed his frustration with this current state of affairs: “We continually hear from legislators who say that charters are free from so many restrictions compared to traditional schools. I don’t know what these restrictions are. What are we free from?”⁵

House Bill 6 followed a common practice of government—aiming for improvement by increasing control, when deregulation would actually lead to better results. This is especially true for charter schools, whose success lies in two principal components: freedom from government mandates and the ability of parents to choose the best education setting for their children. Excessive control of charters by the Texas Legislature has severely hindered the workings of both of these necessary conditions.

ARE CHARTER SCHOOLS SUCCEEDING IN THEIR MISSION?

One effect of HB 6 in 2001 was the codifying of essentially a mission statement for charter schools. According to Section 12.001 of the Texas Education Code, the purposes of the charter school law are to:

1. Improve student learning;
2. Increase the choice of learning opportunities within the public school system;
3. Create professional opportunities that

- will attract new teachers to the public school system;
4. Establish a new form of accountability for public schools; and
 5. Encourage different and innovative learning methods.⁶

Are charter schools able to accomplish each of these five goals? It is beneficial to examine each separately.

Improve student learning

Upon close observation, there is little doubt that charter schools are improving student learning. The charter school population is not an exact reflection, demographically or academically, of the general public school population. This is because a disproportionate number of low-performing students make the choice to leave public schools for charters, and also because the majority of charters are located within the boundaries of large urban districts. Charter schools enroll a large percentage of both low-income and at-risk students compared to public schools as a whole.⁷ As a result, the typical charter school student exhibits academic performance below that of the typical public school student.⁸

However, there is substantial evidence that charter school students exhibit greater academic growth each year than do traditional public school students. A Texas Public Policy Foundation study found that non-high school students at charters exhibit greater increases in student achievement than do their traditional public school counterparts. And the longer students remain at charter schools, the greater their gains in performance.⁹ Similarly, a TEA-commissioned study found that the longer students spend in charter schools, the greater their performance.¹⁰ This trend helps explain the commendable achievement demonstrated by charter schools today. The same TEA study revealed that non-alternative education char-

ter schools actually outperformed traditional public schools on the mathematics portion of the TAKS in 2006, and performed as well as traditional schools in language arts.¹¹

Increase choice

By offering an alternative to assigned public schools, charters provide increased choice to parents and students. Anecdotal evidence, however, suggests that current demand for charter schools exceeds supply. For example, the Fort Worth campus of Harmony Science Academy attracted more than 1500 applicants for only 350 available places in its inaugural year.¹² The Science Academy of South Texas had to turn applicants away when demand exceeded capacity for the most recent school year.¹³ Charter schools from across the state report similar excess demand.

The legislative cap of 215 charters has placed an artificial limit on the supply of charter schools. While charter schools do increase parental choice, the cap prevents them from fulfilling consumer demand.

Attract new teachers to the field

Unfortunately, there has been little research into whether charter schools are attracting new teachers to the field. Charter schools have a greater proportion of new teachers than do traditional public schools (26 percent and 7 percent, respectively),¹⁴ but it is unknown whether or not these new teachers began teaching specifically because of charter schools. A survey of charter teachers in Texas might help to answer this question scientifically. However, because charter school teachers are not required to meet state certification requirements, charters likely attract teachers who otherwise wouldn't be certified to teach in public schools.

Increase accountability for public schools

As referenced earlier, the cap on charter schools has limited their proliferation. While charter enrollment has steadily grown

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to more than 89,000 students, this translates to less than 3 percent of the public school population—hardly a substantial enough mass to maximize charters’ potential impact on public schools.

Despite the limitation in supply, the nominal amount of competition provided by charters has helped to break up the traditional public school monopoly. All public schools are measured by the statewide “accountability” system; but with almost no meaningful sanctions, the system fails to truly hold schools accountable. However, public schools facing competition from charter schools face true accountability—parental choice. If a nearby charter school exists (and has available capacity), unhappy public school parents can move their children to a charter. Therefore, public schools have an incentive to improve academic performance and parent satisfaction, or risk losing students and the funding that goes with them.

In practice, evidence suggests that public schools are improving in response to the competition offered by charter schools. A Texas Public Policy Foundation study found

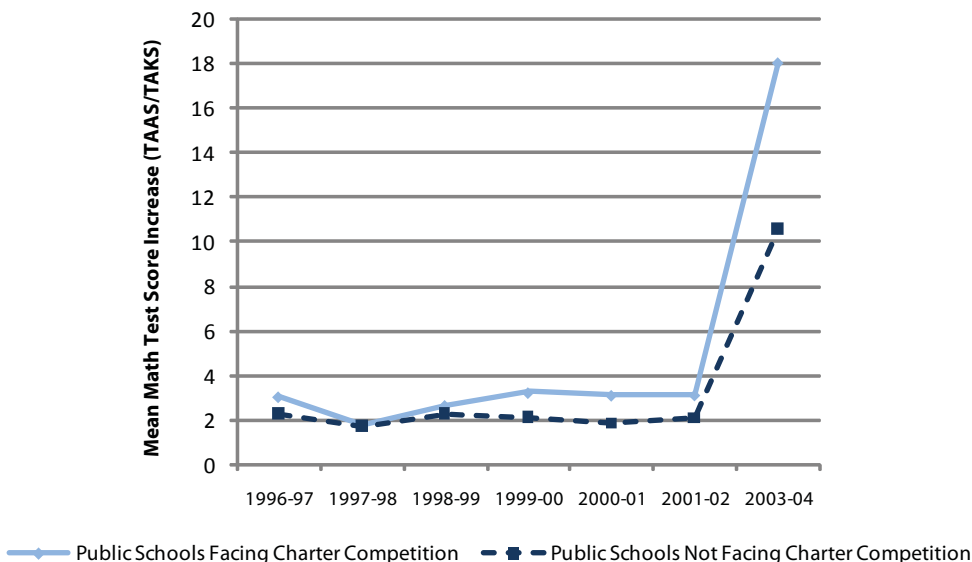
that public schools facing charter competition exhibit higher increases in test scores and passing rates than public schools facing no competition from charters.¹⁵ (chart below) If the Legislature were to lift the charter cap and more students had the option to attend charter schools, one would expect charters to have an even greater effect on public school performance.

Encourage innovation

Despite ever-increasing regulations, charter schools have demonstrated great innovation in the delivery of education to students of all backgrounds. Many charters have found success through methods such as longer school days, parent-teacher contracts, and ensuring student access to their teachers by cell phone during evenings and weekends. Others have increased academic expectations by requiring additional math or science courses, or by creating a college-going culture on campus. Charters serving at-risk students have discovered ways to deliver the curriculum in shortened school days, which is often a necessity for students who have parenting or work duties outside of school.

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Public schools facing charter school competition show greater gains in test scores



Source: Drs. Timothy J. Gronberg and Dennis W. Jansen, “Texas Charter Schools: An Assessment in 2005,” Texas Public Policy Foundation (Sept. 2005) 39. NOTE: 2002-03 not available due to transition from TAAS to TAKS.

While charter schools have risen to the challenge to innovate, most traditional public schools have been disappointingly slow to respond. In a survey of district officials aware of nearby charter schools, 71 percent replied that they had developed new educational programs, but only 6 percent said that the presence of charter schools motivated this change.¹⁶ However, the story is different in Houston Independent School District (HISD), which faces competition from approximately 90 charter schools. With Houston charter school enrollment of nearly 20,000,¹⁷ which is equivalent to 10 percent of the district's enrollment, HISD faces substantial competition from charters. The district has responded to this competition by increasing student choice within the HISD framework, through such options as open enrollment, district-operated charters, district-charter partnerships, virtual courses, and magnet schools. In recent years, the district has also adopted innovative programs such as performance-based pay for teachers and principals.

HISD's leadership has successfully embraced competition. It is no coincidence that HISD, with its significant charter competition, is one of the most innovative urban districts in the country. If charter schools were allowed to expand more freely throughout the state, other Texas districts might be motivated to undertake similar reforms in response to charter competition.

To the extent possible, charter schools are succeeding at each of their five purposes: improving student learning, increasing parental choice, attracting new teachers to the field, introducing new accountability to public schools, and encouraging innovation among charter and traditional public schools alike. The extent to which they've accomplished these goals has been limited only by excessive regulation—embodied in the cap and the increasing number of state mandates.

Although evidence indicates that legislators should move in the direction of deregulating charter schools, recent “reform” efforts have continued to take the opposite approach.

SENATE BILL 4

The most recent attempt to increase regulation on charter schools came by way of Senate Bill 4 (SB 4) in the 2007 legislative session. SB 4 would have eliminated Chapter 12, Subchapter D—the existing charter school law—from the Texas Education Code, and replaced it with an entire new subchapter in Chapter 11. Named “The Champion Charter School Act,” SB 4 was written with the admirable intentions of closing down bad charters and rewarding good ones.

In fact, the bill did have several positive provisions:

- Creation of the Blue Ribbon Charter program, which would allow a handful of successful charters to replicate more easily.
- Creation of perpetual charters, which could make it easier for charter operators to secure financing and construct long-term plans.
- Allowance for single-sex classrooms and campuses, which research has shown can improve academic outcomes and close the gender gap in science and technology-related fields.¹⁸

Unfortunately, these positive steps were outweighed by a multitude of regulations and sanctions that would serve to further limit the innovation and success of charter schools. Problematic portions of the bill included:

- **The dissolution of every existing charter contract, to be replaced with a licensure process.** While the move to perpetual rather than short- or medium-term charters is a positive one, it is a dangerous precedent to use legislation

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to immediately dissolve existing binding contracts.

- **Substantial elimination of due process.** Under SB 4, the Texas Education Agency “could modify, place on probation, or revoke a charter without a hearing if the commissioner determined that the charter holder committed a material violation of the charter, failed to satisfy generally accepted accounting standards of fiscal management, failed to protect the health, safety, welfare or best interests of the students, or failed to comply with regulations governing charter schools.” Some of these actions, such as endangerment of a child, may warrant closure. However, the provision gives far too much unchecked power to the TEA and its commissioner, and allows the commissioner to create the appeals process. Parents, not the TEA, should determine whether a charter school is adequately serving their children.
- **A minimum and maximum on student enrollment for each charter campus.** Each campus would be prohibited from enrolling fewer than 100 or more than 500 students in its first year, although it could request approval to enroll fewer than 100 students. Proven charter school operators should be allowed to enroll large numbers of students if demand exists. Similarly, if a charter school can enroll a small number of students and still be financially solvent, it should be allowed to do so.
- **State restriction on increasing enrollment.** Similar to the restrictions on minimum and maximum size, SB 4 would require charters to request approval for increasing student enrollment. If there is demand, and the school has capacity, it should be allowed to increase enrollment without going through additional bureaucracy.
- **Definition and potential closure of a “bad” charter based solely on test scores.** This provision would close any charter campus in which fewer than 25 percent

of students passed the math and language arts portions of the Texas Assessment of Knowledge and Skills (TAKS), or any campus that has been rated academically unacceptable two years in a row. While this may sound like a low threshold, many students enter charter schools several grade levels behind and may need multiple years to catch up. Traditional public schools—whose students are assigned to attend there and may have no other alternatives—do not face the same sanctions.

In addition, it is important to correct the myth that “bad” charter schools never shut down. Thirteen operators have had their charters revoked or have been denied renewal by the State Board of Education. Charter schools also practice self-regulation, with an additional 33 operators electing to return their charters or allow them to expire, and 15 opting to merge with another existing charter. In total, 62 of 260 awarded charters, or 24 percent, have been removed due to regulation by the State Board of Education or the charters themselves.¹⁹

- **Removal of statewide charter provision.** While this option has never been exercised, current law allows for a statewide charter. For example, a successful charter such as KIPP Academy could be granted a statewide charter to expand at will. This option—which could be exercised by the elected State Board of Education—is vital for continued growth of the charter movement, especially in light of the current cap on charters.

In total, SB 4 was more than 120 pages of legislation that largely extended or sustained mandates placed on Texas charter schools. Despite it being a legislative priority for the Senate leadership, and despite last-minute attempts to revive it, SB 4 perished in the waning days of the 80th Legislative Session. Hopefully the lessons learned by supporters, opponents, and reformers of the bill will drive positive charter school reform in the

direction of deregulation and increased parental choice, not state control.

RECOMMENDATIONS FOR REFORM

Charter school success has come not because, but in spite of increasing state control over charters. Future changes to charter school law should focus on reducing mandates and empowering parents with the widest variety of options. The following are recommendations for charter school supporters and reform-minded legislators looking forward to the 81st Legislature:

- **Increase or altogether remove the cap on the number of charters.** Evidence from existing schools indicates that parental demand for charter schools exceeds supply. Further, experience from Houston suggests that greater competition from charter schools drives public schools to innovate and improve. Charter schools will never reach their full potential to improve student achievement until they are allowed to expand to meet consumer demand.
- **Free charter schools from excessive regulation.** The 12 years since charter schools were established in Texas

have brought increased regulation. In dozens of cases, charter schools face mandates that even traditional public schools do not face. The “reforms” of 2001 should be repealed, and additional options for deregulating charter schools should be explored.

- **Measure academic achievement using student growth.** Ultimately, parents should be the sole deciders of whether or not a charter school is academically serving its students. However, to the extent the state is involved, student achievement should be measured in growth from year to year. Charter school students (and all public school students, for that matter) should be expected to accomplish at least one grade level’s worth of growth each year. This would take into account the different student populations among traditional public and charter schools.
- **Encourage charter school growth by lowering barriers to expansion.** Barriers that limit student enrollment, growth in enrollment, and charter school replication only serve to limit options for parents and the ultimate success of the charter school movement. ★

ENDNOTES

- ¹ Jamie Story, “Testimony to the Senate Education Committee on Senate Bill 4” (Feb. 2007) <http://www.texaspolicy.com/pdf/2007-02-Senateedtestimony-js.pdf>.
- ² Charter School Policy Institute, “Overview of Texas Charter Schools in 2006,” CSPI Policy Brief No. 1.
- ³ Texas Education Code, Section 12.104(b).
- ⁴ Summarized from “HB 6: Increased Regulation Over Charter Schools. Enforcing a Double Standard,” Texas Public Policy Foundation (Nov. 2001) <http://www.texaspolicy.com/pdf/2001-11-01-education-hb6.pdf>.
- ⁵ Texas Center for Educational Research, “Texas Open-Enrollment Charter Schools: 2005-06 Evaluation” (Mar. 2007) 40-41.
- ⁶ Section 12.001, Texas Education Code.
- ⁷ Drs. Timothy J. Gronberg and Dennis W. Jansen, “Texas Charter Schools: An Assessment in 2005,” Texas Public Policy Foundation (Sept. 2005) 12.
- ⁸ *Ibid.* 18-20.
- ⁹ *Ibid.*
- ¹⁰ Texas Center for Educational Research, 144.
- ¹¹ *Ibid.* 134.
- ¹² Jamie Story, “21st Century High Schools: New Designs Produce New Results,” Texas Public Policy Foundation (Aug. 2006) 3.
- ¹³ *Ibid.* 4.
- ¹⁴ Texas Center for Educational Research, 20.
- ¹⁵ Drs. Timothy J. Gronberg and Dennis W. Jansen, 37-45.
- ¹⁶ Texas Center for Educational Research, 84.
- ¹⁷ Charter School Policy Institute, <http://www.charterschoolpolicy.org>.
- ¹⁸ National Association for Single Sex Public Education, <http://www.singlesexschools.org>.
- ¹⁹ Texas Education Agency, Division of Charter Schools, “Summary of Awards and Closures,” <http://www.tea.state.tx.us/charter/reports/closed.pdf>.

About the Author

Jamie Story joined the Texas Public Policy Foundation in September 2005 as an education policy analyst within the Center for Education Policy.

She previously served as an associate consultant in the Dallas office of Bain & Company, one of the top strategic management consulting firms in the world, helping many Fortune 500 companies to redefine strategy and realize greater efficiency.

Prior to joining the Foundation, Jamie completed her year of service as Miss Texas 2004, during which she spoke to public school students, educators, government leaders, and civic organizations.

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