



At What Cost?

The Charter School Model and the Right to Education in the United States

Charter Schools: Securing or Undermining the Right to Education?

Charter schools are an entirely new type of school in the United States (U.S.). Some education experts see this new variety of school as the future of education in the U.S., especially urban education. **While there is value in some aspects of the charter model, there is also reason for concern about the impact of charter school growth on the realization of the right to education in the U.S.**

In recent years, charters have expanded at an unprecedented rate. Between 2000 and 2014, charter enrollment doubled three times over. There are now approximately 6,400 charter schools enrolling more than 2.5 million students. All charters share three characteristics according to the National Conference of State Legislatures: (1) they are publicly funded, free to attend, and part of the state school system, (2) they are “schools of choice,” so enrollment is not based on where students live, and (3) they are privately managed. Though charter schools may be considered “public,” they function more as hybrid, public-private entities, as they operate quite independently of public authority. **The expansion of charter schools is part of a larger trend toward the privatization of U.S. public education.**

Even as charters have gained political support from both State governments and the Federal government, problems have emerged in the model. English Language Learners (ELLs) and Students with Special Needs (SSNs) are often represented at significantly lower percentages of the student body than in traditional public schools. In a 27 state study conducted by Stanford’s Center for Research on Educational Outcomes, the Center found that while SSNs make up around 11% of student bodies in traditional public schools, SSNs make up only 8% of students in charter schools. The same study also found that ELLs make up approximately 13% of students in traditional public schools and only 9% of students in charters. Charter schools exclude less high-achieving students through a variety of tactics including onerous application procedures, academic prerequisites, targeted marketing, and “counseling out,” where employees of the school can discourage the parents of certain students from attending that particular charter.

Also highly problematic is the funding scheme of charter schools, which draws money away from traditional public schools. Indeed, some leaders of charter schools use them as opportunities for financial gain, resulting in numerous cases of reported fraud. A study released in May 2014 by The Center for Popular Democracy and Integrity in Education analyzed charter schools in 15 states and found fraud and waste of over \$100 million. The most common type of fraud found within that study was the use of public funds for the personal gain of charter operators. Even where fraud is not an issue, charters drain resources from traditional public schools. This degrades services provided by public schools to their remaining students and, in some cases, has led to mass public school closures in large urban districts.

The Right to Education in the United States

The U.S. Supreme Court has not recognized a Federal constitutional right to education. However, 22 states do provide for education as a fundamental right in their own constitutions, and the remaining 28 states recognize that students have the right to some degree. Also, certain Acts like the 1964 Civil Rights Act, the 1965 Elementary and Secondary Education Act, and the Individuals with Disabilities Education Act have prioritized equal access to education for all individuals.

THE 4As

Availability:

Charter schools have increased the education choices of families, but they have not increased the availability of education. Once large numbers of students opt to attend charter school, traditional public school must close. This means that those students remaining in traditional public schools lose options.

Accessibility:

Even though charter schools are not allowed to discriminate on any grounds, the numbers show that certain students, like ELLs and SSNs, are underrepresented in charter schools. This suggests that even though charter schools are free and supposedly nondiscriminatory, they use certain tactics, like “counseling out,” that in effect undermine the accessibility to education of certain groups of students.

Acceptability:

Charter schools have increased the acceptability of education for certain students able to adapt to their model. At the same time, by degrading the ability of charter-sending districts to educate the students remaining in public schools, charter growth has made education less acceptable for a much larger group of students.

Adaptability:

Though charter schools formed in response to improve choice and innovation in the education system, they typically function with a surprising lack of adaptability. For example, most of the schools are not operating as laboratories of classroom innovation, and as a whole, they have been slow to reform weak areas such as high attrition rates and low numbers of ELLs and SSNs.

The U.S. has recognized the human right to education by adopting the UDHR and signing, though not ratifying the ICESCR. The U.S. has also ratified CERD and signed, though not ratified, CEDAW, CRPD, and the CRC, all of which protect the right to education free from discrimination.

Furthermore, in providing guidance on the implementation of the ICESCR, the UN Committee on Economic, Social and Cultural Rights established that education “in all its forms and at all levels” must fulfill the “4As” by being **available, accessible, acceptable, and adaptable**. While charter schools can be shown to advance the right to education in some areas, there are important reasons for concern about the explosive growth of charter schools from a human rights perspective.

Recommendations

1. The U.S. should ratify ICESCR, CRC, CEDAW, and CRPD.

Ratification of these human rights instruments would strengthen protection of the right to education and all other human rights in the United States. For example, ratification of the CRPD would put the United States on record recognizing that all states must ensure that “persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.”

2. Charter schools should be governed by stricter oversight legislation to protect from fraud and abuse. Federal funds should be conditioned on transparency and increased accountability to protect against the misuse of funds for education that ultimately hinders the ability of students in both charter and traditional public schools to access an adequate education. Similarly, Federal funds for public schools should not be conditioned on laws that allow for unprecedented charter growth.

3. The Federal government should review its policies toward charters through a right to education perspective. This should include a review of federal policies and a nation-wide, comprehensive review of the operation of charter schools through a right to education lens.

Questions

1. Does the U.S. accept, as the Office of Inspector General found, that state level controls are failing “to provide adequate oversight needed to ensure that Federal funds are properly used and accounted for”? What steps has the U.S. taken to protect against this fraud?

2. Why is federal funding conditioned on states being open to increasing the number of charter schools when only 1 in 5 schools have been found to be successful and ELLs, SSNs, and those remaining in traditional public schools may be harmed by the increase in charter schools in their state or district? What is the U.S. doing to protect against these failures?

For more information on this subject please contact:

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