

Having it Both Ways? Distilling the Publicness/Private-ness of Charter Schools & Why it Matters for Kids, Teachers & Taxpayers

Bruce D. Baker

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Rhetoric of Reform

- “**Portfolio**” models of schooling
 - Permitting a loosely governed collection of gov’t operated and private providers to compete for students and compete for the right to provide services (under locally managed & state imposed accountability structures)
 - Promoting a “system of great schools” as opposed to a “school system”
- “**Sector Agnosticism**”
 - we need to have a three-sector accountability system that treats similarly district public schools, charter public schools, and private schools; we must focus on school results, not school operator. I call this “sector agnosticism;” in other words, we shouldn’t care who runs a school as long as it is superb.” [Andrew Smarick, Bellwether Ed Partners]
- “**Relinquishment**”
 - Both **Reformers** and **Relinquishers** possess noble aims, but only one group, I think, possesses a sound strategy. Superintendents, in the rest of this letter I hope to convince you to become **Relinquishers**. Specifically, **I will advocate that you return power to parents and educators through the creation of charter school districts, which are the most politically acceptable mechanisms for empowering educators.** [Neerav Kingsland, New Schools for New Orleans]
- **Underlying assumption is that goal is good “outcomes” and that any other trade-offs, if they exist, are innocuous.**

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National Alliance for Public Charter Schools “Definition” of Charter School

- Charter schools are independent public schools allowed freedom to be more innovative, while being held accountable for improved student achievement. They foster a partnership between parents, teachers and students to create an environment in which parents can be more involved, teachers are given the freedom to innovate and students are provided the structure they need to learn, with all three held accountable for improved student achievement.

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DISTRICTS SERVING THE HIGHEST PERCENTAGE OF PUBLIC CHARTER SCHOOL STUDENTS

Rank	School District	State	Charter Market Share	Charter Enrollment	Non-Charter Enrollment	Total District Enrollment	Rank and Market Share In 2011
1.	New Orleans Public School System	LA	76%	32,597	10,098	42,695	#1 and 70%
2.	Detroit Public Schools	MI	41%	47,086	66,626	113,712	#3 and 37%
	District of Columbia Public Schools	DC	41%	31,562	45,191	76,753	#2 and 39%
3.	Kansas City, Missouri School District	MO	37%	9,954	16,610	26,564	#4 and 35%
4.	Flint City School District	MI	33%	4,706	9,606	14,312	#5 and 32%
5.	Gary Community School Corporation	IN	31%	4,549	10,221	14,770	#6 and 30%
	St. Louis Public Schools	MO	31%	11,155	24,665	35,820	#7 and 29%
6.	Cleveland Metropolitan School District	OH	28%	15,886	41,528	57,413	#10 and 23%
	Albany City School District	NY	26%	2,838	7,972	10,810	#10 and 23%
7.	Dayton Public Schools	OH	26%	5,900	16,422	22,321	#8 and 27%
	San Antonio Independent School District	TX	26%	15,114	44,129	59,243	Not in Top 10 and 21%
	Indianapolis Public Schools	IN	25%	10,690	31,998	42,688	Not in Top 10 and 22%
8.	Roosevelt School District 66	AZ	25%	3,590	10,558	14,148	Not in Top 10 and 19%
	Toledo Public Schools	OH	25%	8,209	24,799	33,008	#10 and 23%
	Youngstown City Schools	OH	25%	2,528	7,655	10,183	#9 and 24%
	Adams County School District 50	CO	23%	2,971	9,709	12,680	Not in Top 10 and 22%
9.	Grand Rapids Public Schools	MI	23%	4,967	17,091	22,058	Not in Top 10 and 20%
	The School District of Philadelphia	PA	23%	46,801	154,262	201,063	Not in Top 10 and 20%
10.	Milwaukee Public Schools	WI	22%	18,565	67,429	85,994	Not in Top 10 and 19%
	Phoenix Union High School District	AZ	22%	7,472	25,906	33,378	Not in Top 10 and 19%

http://publiccharters.org/data/files/Publication_docs/NAPCS%202012%20Market%20Share%20Report_20121113T125312.pdf

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DISTRICTS WITH THE HIGHEST GROWTH OF PUBLIC CHARTER SCHOOL STUDENTS

This report also includes a list of districts with the largest growth in the number of public charter students enrolled (this list was selected from the 50 districts with the most public charter school students enrolled; see the districts in Appendix B).

Rank	School District	State	Charter Market Share	2010-2011 Charter Enroll	2011-2012 Charter Enroll	Increase in Charter Enroll	% Growth in Charter Enroll
1.	Clark County School District	NV	2%	4,433	7,271	2,838	64%
2.	Hillsborough County Public Schools	FL	5%	6,207	9,452	3,245	52%
3.	Dallas Independent School District	TX	12%	15,522	20,709	5,187	33%
	Phoenix Union High School District	AZ	22%	5,622	7,472	1,850	33%
4.	Gilbert Public Schools	AZ	13%	4,382	5,718	1,336	30%
5.	Atlanta Public Schools	GA	10%	4,088	5,260	1,172	29%
6.	Broward County Public Schools	FL	12%	24,150	30,438	6,288	26%
7.	Los Angeles Unified School District	CA	15%	79,385	98,576	19,191	24%
	New York City Department of Education	NY	5%	38,743	48,057	9,314	24%
8.	Boston Public Schools	MA	10%	5,202	6,423	1,221	23%
9.	Memphis City School	TN	6%	5,405	6,549	1,144	21%
10.	Minneapolis Public Schools	MN	21%	7,761	9,339	1,578	20%

http://publiccharters.org/data/files/Publication_docs/NAPCS%202012%20Market%20Share%20Report_20121113T125312.pdf

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Publicness/Privatelessness Continuum

- Government Operated Schools
 - Traditional public school districts
 - Elected or appointed (mayoral) governing boards of public officials
 - Local taxing authority
- Government authorized charter schools
 - Privately managed/governed at site level
 - Privately appointed boards of directors (non-government officials)
- Privately authorized charter schools
 - Gov't authorizes privately governed entities to grant charters & oversee "accountability" [universities, non-profit orgs – incl. political think tanks (in OH)]
 - Charters managed/governed as above.... Difference is two layers of non-government officials instead of one.
- Publicly Subsidized Private Schooling
 - Direct Subsidy
 - Indirect Subsidy (via publicly authorized, privately governed scholarship granting entity)
- Private Schooling
 - Note that nearly all private schools are to an extent publicly subsidized via their non-profit status
 - Also, in NJ, private schools have access to textbook funding from host districts & in many cases, significant transportation subsidies.
- Homeschooling

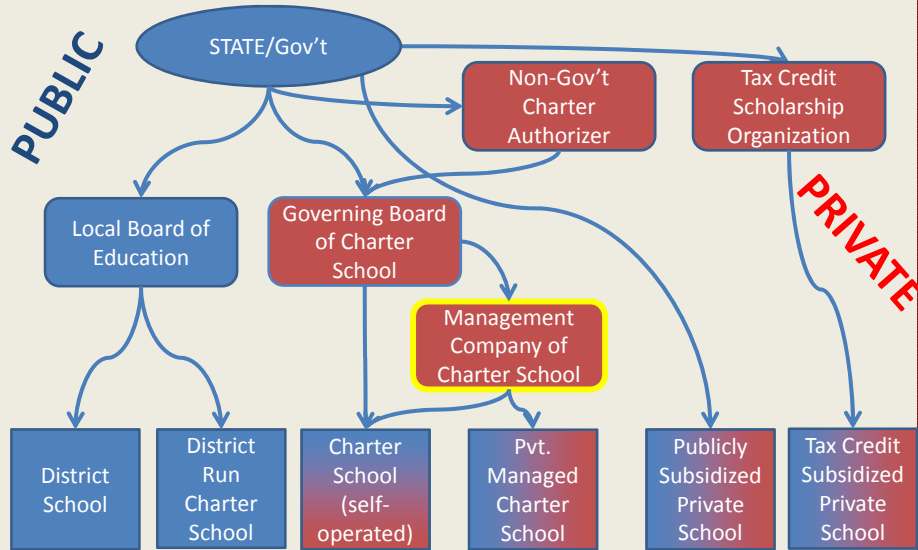
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Charter Schools Are...

Directly (Partially) Publicly Subsidized, Limited Public Access, Publicly or Privately Authorized, Publicly or Privately Governed, Managed and Operated Schools

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Governance Structures



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How & Why this Matters Under U.S. Federal and State Laws

- Government entities & officials (state actors) treated differently than private entities & officials under federal & state constitutions and statutes.
 - Student & Employee Rights
 - Limits on how/when gov't can restrict speech rights
 - Gov't must abide by due process
 - Gov't officials (& their records) often subject to various state sunshine laws & other restrictions
 - Legal pathways to enforcing rights
 - **Section 1983 of the U.S. Code establishes a cause of action for deprivations of federal constitutional and statutory rights under the color of state law. [infringement of federal rights by the state, or a state actor]**
 - Within states & federally (NLRA), labor relations of gov't vs. private entities governed under different rules

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42 U.S.C. § 1983 : US Code - Section 1983: Civil action for deprivation of rights

Every person who, *under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia*, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

<http://codes.lp.findlaw.com/uscode/42/21/1/1983#sthash.56AorYdR.dpuf>

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Application of §1983

- Rendell-Baker v. Kohn (1981) http://www.oyez.org/cases/1980-1989/1981/1981_80_2102
 - Vocational counselor and teachers brought suits claiming that a Mass. Pvt. School that served maladjusted students had fired them in violation of their first, fifth and fourteenth amendment rights.
 - Almost all students in the school were referred by city school committees or state agencies
 - Public funds accounted for 90% of school budget
 - To be eligible to receive students and their funding the school had to follow a number of regulations “concerning matters ranging from record keeping to student teacher ratios.”
 - School had a contract with Boston school committee, which stated that school employees were not city employees.
 - Court reasoned that school was not a state actor....
 - “the ultimate issue in determining whether a person is subject to suit under §1983 is the same question posed in cases arising under the fourteenth amendment: is the alleged infringement of federal rights fairly attributed to the state?”
 - School's relationship with the state “is not fundamentally different from any private corporations whose business depends primarily on contracts to build roads, bridges... for the gov't.”

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How & Why this Matters Under U.S. Federal and State Laws

- Unless explicitly laid out in state charter school statutes (& typically not), privately governed/managed charter schools *may* be treated as “private” and their officials & employees as non-governmental
 - NJ Charter statute does address some of these concerns...
 - <http://www.nj.gov/education/chartsch/cspa95.htm>
 - Charter boards subject to open meetings (but not necessarily private management companies or their boards)
 - Student dismissal protections (as per public schools) ... assuming a dismissal is a dismissal (& not a “transfer”)

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Accountability Framework – “District” vs. Charter Schools		
Dimension	Local Education Agency	Privately Governed Charter (Non-State Actor)
Governance	Governed by public officials (with all rights & immunities) Elected or appointed Necessarily subject to open public records & open meetings laws Necessarily required to comply with public bidding requirements Necessarily required to disclose publicly employee contracts	Governed by appointed (self-appointed) board of private citizens May not be subject to open records or meetings laws May not be required to engage in public contract/bidding requirements Private appointed board may hire private management firm
Finance	Required to disclose finances (reported relatively consistently in most state data systems, including detailed AFRs (annual financial reports) & public posting of budgets)	Usually required to report expenditure of public funding. State data systems spotty and inconsistent on charter school revenue/spending data (may be required to disclose IRS filings [form 990])
Disclosure	Public officials subject to open meetings laws. All documents/employee contracts/financial documents & communications between officials subject to open records laws.	Board members & managers may not be subject to open meetings. Many documents/contracts with private manager, etc. considered private/proprietary.
Employees	Public employees with key constitutional and statutory protections	Private employees, forgoing certain rights to bring legal challenges against their employer
Students	Retain rights to not have their government (school) infringe on various constitutional and statutory rights, and to uphold key statutory obligations.	Students may forgo numerous rights under privately governed discipline codes.

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Accountability Framework – “District” vs. Voucher & Tuition Tax Credit Alternatives			
Element	LEA	Voucher	Tuition Tax Credit
Revenue Raising	Raises local tax revenue (subject to local voter approval) & receives state aid (through legislation/formula adopted by state elected officials)	Permits/requires the transfer of a set per pupil amount of funding from state and/or state/local sources to pay for private school tuition of students	Permits corporations to pay funds to a privately governed, state approved/created/appointed entity (school tuition organization) in lieu of paying taxes.
Governance (records/meetings)	Required to disclose minutes of meetings and related documents pertaining to budget, financial report and any/all contractual agreements.	Assuming voucher program governed by local or state board/public officials, related requirements apply.	Entity governed by appointed private citizens, not public officials. (thus, may not be required to disclose records, open meetings)
Disclosure	Required to report/discard annual budget (for approval by either/both local elected officials and/or local voters) Required to report/discard annual financial report (usually with independent external audits)	Financial disclosure of funds expended (from public agency) on vouchers subject to all public expenditure laws [that is, total allocated to vouchers from budget] Voucher receiving schools not likely required to provide detailed disclosure (non-religious non-profit pvts file with IRS, religious privates not required)	May/may not be subject to disclosure requirements of public officials. If non-religious, organized as non-profit, may be required to report limited finances to IRS.
Use of Funds	Expended directly by publicly governed entities (public officials)	Comingled with all other operating funds of private school entity	Comingled with all other operating funds of private school entity
Governance of Schools	Publicly governed	Private once \$ reaches school	Private once \$ collected to tuition organization
Student/Employee Rights	Public	Private, not state actor	Private, not state actor
Taxpayer/Public Rights	Right to political participation (electing officials, etc.) Right to bring limited legal challenges regarding use of funds Right to request disclosure	Right to bring limited legal challenges regarding use of funds	Limited state legislative options (can try to vote in new legislators) taxpayers lose right to challenge objectionable use of funds because the funds are not considered tax dollars

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Teacher Rights Issues “private status” defense

- *Riester v. Riverside Community School*, a terminated teacher sued the charter school and the management companies that provided services for that school under § 1983. She alleged that the charter school and the management companies violated her First Amendment rights by terminating her in retaliation for her complaints pertaining to the lack of services for a troubled student. 257 F.Supp.2d 968 (S.D. Ohio 2002).
 - The charter school and the management companies then **moved to dismiss on the ground that they were not state actors under § 1983**. The court denied the motion. It found that the state charter school law defined charter schools as public schools. It thus followed that the charter school, and by extension the management companies, were state actors. *Id.* at 970.
- In the 2006 decision, *Matwijko v. Board of Trustees of Global Concepts of Charter School*, a former teacher alleged that the principal and the board of a charter school terminated her in violation of the First Amendment because of her actions as chairperson of the school’s advisory council.
 - The **defendants moved for judgment on the pleadings on the ground that the defendants were not state actors pursuant to § 1983**. 2006 WL 2466868 (W.D.N.Y. 2006).
 - The court denied the defendants’ motion on the ground that the New York charter school statute provides that charter schools are “independent and autonomous public school(s) performing “essential public purposes and governmental purposes of the state.” *Id.* at *5 (emphasis in the original).

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Teacher Rights Issues “private status” defense

- Caviness contended that the charter school, acting under the color of state law, deprived him of his liberty interest in “finding and obtaining work without due process by making ‘several false statements about’ him ‘in connection with his employment’” without providing him notice or a name-clearing hearing. The district court granted Horizon’s motion to dismiss on the ground that Horizon was not a state actor. *Id.*
- Caviness then appealed to the Ninth Circuit. The court affirmed the district court’s motion to dismiss with respect to the § 1983 claim. The Ninth Circuit observed that it would find that Horizon was a state actor “if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the state itself.” To determine whether there was a close nexus, the court’s inquiry began by examining the specific conduct at issue because an entity may be a state actor for some matters but not others. The Ninth Circuit then found that Caviness failed to argue that Horizon’s specific conduct rendered it a state actor. Instead, Caviness asserted that Horizon was a state actor as a matter of law under the state’s charter school scheme. “Therefore,” the court reasoned, “Caviness’s appeal must fail unless being an Arizona charter school, is by that fact alone, sufficient to make Horizon the government for employment purposes.”

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Teacher Rights

Labor Relations & Public/Private Concerns

- Legal battle to unionize teachers at [Cesar Chavez](#) (oh... the irony?) Academy (Detroit)
 - In 2006, a union filed a petition with the Michigan Employment Relations Commission (“Commission”) to represent the teachers, social workers, and school counselors of the Academy pursuant to Michigan’s Public Employment Relations Act.
 - Management company argued that it did not fall under the definition of “public employee” under Michigan’s employment relations statute. *Id.* at *2.
 - The union rebutted that the Commission had jurisdiction because the charter school was a “public school academy” under the state’s charter school statute and was the employer. *Id.*
- Court eventually deferred to NLRB (as per similar Chicago case) where NLRB determined that it would exert its authority under **private sector labor laws**. (NLRA)
 - <http://www.wbez.org/news/chicago-charter-school-subject-private-sector-labor-laws-104660>
 - “Academy administrators agree that teachers have a right to organize and bargain collectively but say they are not obligated to negotiate with the union because Chicago Math and Science Academy is private and falls under federal — not state — labor laws, according to a statement read at a recent meeting of the academy’s board.”
http://www.nytimes.com/2011/04/08/us/08cncharter.html?pagewanted=all&_r=0
- NLRB (instead of state board) overseeing union negotiations in Philly charters: http://articles.philly.com/2013-04-01/news/38192436_1_charter-school-aft-pennsylvania-union-election (on Chicago assumption of “non-public”)

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Differences in State Public Employee Governance vs. NLRA

- Illinois example
 - State permits public sector employees to organize as a bargaining unit through card check process in which majority of employees sign an authorization form stating that they wish to be represented by a union.
 - NLRA permits the employer to petition for a secret ballot election.
 - IL subjects employers to mediation and/or binding interest arbitration to obtain a final contract in case of an impasse
 - NLRA does not impose such requirements, but permits parties to influence negotiations by strike or lockout (several states prohibit “public” employee strikes)

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Children's Rights "private status" defense

- *Irene B. v. Philadelphia Academy Charter School*, parents of a student attending a charter school filed a § 1983 action alleging that a charter school violated the Individuals with Disabilities Education Act (IDEA). 2003 WL 24052009 (E.D.Pa. 2003).
 - The parents asserted that other than speech therapy and bus transportation the charter school failed to provide the services promised to their child under his prior IEP. Also, the parents claimed that the charter school failed to develop a new IEP as it had promised. *Id.*
 - Charter moved to dismiss on basis that it was not a state actor under § 1983
 - The court rejected the charter school's motion to dismiss for failure to state a claim upon which relief could be granted. The court found that the § 1983 claim could proceed because "[i]t is now well-settled that a municipal entity is a state actor for purposes of liability under § 1983." Public school districts were municipal entities. Similarly, the court noted that because charter schools were independent public schools, they were part of the school system. Thus, it was appropriate to treat charter schools as state actors with respect to IDEA claims. *Id.* at *11.

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Children's Rights Recent California Case

Court Rules That Charter Schools Can Dismiss Student Without a Due Process Hearing

by [Rosa K. Hirji](#)

Scott B., a 14 year old student with a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) was dismissed from his charter school by letter from the principal for bringing a knife to school and showing it to another student. There was no hearing, and no finding to support the decision by the charter school's Board of Trustees in the one-sentence dismissal letter. On June 14, 2013, the California Court of Appeal^[1] upheld the dismissal and ruled that charter schools are exempt from California law requiring due process hearing procedures for students undergoing an expulsion from their local public school.

charter schools because Scott was *dismissed* rather than expelled. The court reasoned that an *expulsion* results in a delay in the Student's legitimate interest in an education in that the student cannot re-enroll in a school district for the period of expulsion, and, when he does re-enroll, the student must notify the school of the expulsion thereby negatively impacting the student's reputation. But a *dismissal* of a student from a charter school, according to the court, does not raise such concerns to the same degree reasoning that after being dismissed, the student is free to enroll in the local public school. Unlike public schools, the Court observed, a charter school is a school of choice.

<http://www.bonniezates.com/blogs/articles/court-rules-charter-schools-can-dismiss-student-without-due/>

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Potential Downside of “Private” Status & Alternative Governance?

- Under provisions that funds be directed to or controlled only by “public schools” or government subdivisions?
 - Louisiana Voucher Case
 - The [ruling](#) states that the per-pupil allocation, called the minimum foundation program or MFP, must go to public schools. Justice John Weimer writes, “The state funds approved through the unique MFP process cannot be diverted to nonpublic schools or other nonpublic course providers according to the clear, specific and unambiguous language of the constitution.”
 - Georgia Charter Case (Gwinnett County)
 - GA const grants exclusive authority to County Boards of Education to operate and maintain local public schools.
 - Court prohibited state commission from obligating these county boards to finance charters
 - <http://www.accessnorthga.com/detail.php?n=238715>
 - GA passed referendum (Const Amend) providing for approval by an appointed statewide commission
- Under State Constitutional “Uniformity” clauses?
 - See Bush v. Holmes: <http://www.floridasupremecourt.org/decisions/2006/sc04-2323.pdf> (regarding vouchers)

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Early Charter Financing Challenges

- Michigan (1997)
 - Constitution provides that “No public monies or property shall be appropriated or paid or any public credit utilized... directly or indirectly to aid or maintain any private denominational or other nonpublic, pre-elementary or secondary school”
 - Court reasoned charter funding constitutional because:
 - “They are under the ultimate and immediate control of the state and its agents”
 - The authorizing body could revoke a charter when it had reasonable grounds
 - Authorizing bodies, which were public institutions, exercised control over charter schools through the application/approval process
 - State set qualifications for determining eligibility
- Similar questions litigated in California in 1999 [also hinged on direct state control over authorization & approval]
- Courts in Colorado, California & Ohio have also vetted “common” schools and “uniformity” questions re: funding eligibility.
 - Colorado court reasoned that “thorough and uniform” opportunities needed to exist and not that the state must, and could only provide directly for those opportunities
 - Further, state (Colorado) had almost unlimited power to abolish, divide or alter school districts.
 - Ohio court reasoned largely on basis that charter students still had to take the same tests and charter schools still had to comply with state regulations and characterized charter exemptions from certain regulations as “picayune in nature”

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Recent Figures & News Clips

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CLAMPDOWN BY CHARTERS

Suspension rates at Success Academy Schools (K-5 only) in 2010-11:

Harlem Success 1

22%

Harlem Success 2

15%

Harlem Success 3

14%

Harlem Success 4

19%

Bronx Success 1

9%

VS.

Average public school suspension rates (K-12) in districts where those Success Academy schools are located:

District 3
(upper West Side/Harlem)

6%

District 4
(East Harlem)

7%

District 5
(Central Harlem)

9%

District 7
(South Bronx)

9%

<http://www.nydailynews.com/success-academy-fire-parents-fight-disciplinary-policy-article-1.1438753>

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EXAMPLE #1

Keith, 10, who suffers from attention deficit disorder, started first grade at Success 4 in August 2008.

"They were constantly calling me because he wasn't sitting up straight or because he was throwing a tantrum, and they wanted me to transfer him out," Joseph said.

In mid-2010, Joseph challenged the school's failure to provide her son needed services. She won a settlement that required that a paraprofessional be regularly assigned to him. That November, both Keith and Naomi, a kindergartner, were suddenly discharged from the school.

"They never even gave me written notice they were no longer enrolled," Joseph said.

She got lawyer Mar involved, and the school quickly reinstated the children. That spring, Joseph was told Keith would have to repeat the second grade. Then, this past May, as he was finishing fourth grade, she was told he would have to repeat that grade, too.

EXAMPLE #2

Alhassana and Houssainatou were repeatedly slapped with suspensions for violating school rules, despite having detailed individual education plans that instructed teachers on managing their anger outbursts.

On Nov. 27, Alhassana got a two-day suspension for "purposely walking with his eyes closed and hurting another scholar."

In March, he got a 15-day suspension for "stomping on a teacher's hand" and "throwing the teacher's cell phone to the ground." His sister Houssainatou was only permitted to attend school for half a day for more than two months because of her behavior problems, her mother said.

"That was an illegal act of exclusion without any due process," said Nelson Mar, an attorney from Bronx Legal Services, who filed formal complaints to the school on behalf of the children. Federal law requires schools that suspend a special-education pupil for more than 10 days to seek an impartial hearing on whether the child's behavior is related to his disability. Success officials deny improper treatment of any pupils.

"We have no such policies and have no practice of 'counseling out,' " network spokeswoman Jenny Sedlis said last month.

Read more: <http://www.nydailynews.com/new-york/education/success-academy-fire-parents-fight-disciplinary-policy-article-1.1438753#ixzz2dGuKw4OP>

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New York City "Portfolio"

Affiliation	% Free Lunch	% ELL	% Special Ed	Spending	Elem. Class Size	Grade 8 Math Class Size	Grade 8 ELA Class Size
	Baseline	Baseline	Baseline	Baseline	Baseline	Baseline	Baseline
NYC BOE							
Achievement First	-13.80	-11.61	-4.38	\$1,271	-2.39	-16.23	-5.16
Beginning with Children	-17.59	-13.02	-3.03	\$630	0.29	-4.46	-3.13
Believe	-25.73	-7.53	1.31	\$4,116	0.00	0.00	0.00
Democracy Prep	-2.17	-13.05	-3.67	\$6,605	-1.62	-1.52	-1.82
Explore Schools	-19.40	-14.84	0.67	\$814	-4.72	-2.90	-1.38
Green Dot	3.22	-4.08	-3.81	\$757	0.00	0.00	0.00
Harlem Children's Zone	-11.92	-10.01	-3.17	\$3,958	-6.18	-7.84	-11.90
Hyde Charter	3.43	-6.77	-3.65	-\$178	-1.24	-0.34	0.67
Icahn	-21.37	-13.15	-12.19	\$3,360	-6.88	-2.85	4.42
KIPP	-13.56	-9.67	-2.54	\$5,359	0.08	-6.65	-4.46
Lighthouse Academies	-14.51	-11.30	-8.03	\$1,589	-2.34	0.00	0.00
National Heritage Academy	15.60	-15.84	-7.97	\$1,802	1.43	1.73	2.98
Public Prep	-15.41	-18.01	-8.03	\$4,525	-1.51	0.00	0.00
Success Charter Network	-10.35	-16.54	-5.42	\$2,072	-0.14	0.00	0.00
Uncommon Schools	-22.08	-11.84	-6.31	\$4,091	-0.91	-8.89	-11.99
Victory Education Partners	-19.28	-13.74	-9.39	\$3,348	-0.95	0.00	0.00
Village Academies	-1.03	-11.45	-4.74	\$966	0.00	0.60	-5.97
Unaffiliated	-9.21	-9.93	-2.56	\$2,265	-1.96	-4.60	-3.96

[1] Relative demographics determined by regressing demographic measure on school grade configuration dummy variable, dummy variable indicating geographic location, and year indicators, using data from 2008-2010.

[2] Relative spending determined by regressing spending measure on school grade configuration dummy variable, student demographic factors and year indicators, using data from 2008-2010.

[3] Relative class size determined by regressing class size measure on school grade configuration dummy variable, student demographic factors and year indicators, using data from 2008-2010.

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Student Population Characteristics of Newark Charter Schools

School	School Enrollment	Free Lunch	LEP	SLD & SLI	OTHER
ADELAIDE L. SANDFORD CS	282	62.8%	0.0%	3.2%	0.0%
DISCOVERY CS	62	71.0%	0.0%	0.0%	0.0%
GRAY CS	261	60.2%	0.0%	0.0%	0.0%
GREATER NEWARK CS	167	59.3%	0.0%	3.6%	0.0%
MARION P. THOMAS CS	555	73.5%	0.0%	1.1%	0.0%
NEW HORIZONS COMM. CS	441	80.3%	0.0%	1.4%	0.0%
NORTH STAR ACAD. CS OF N	1,262	55.8%	0.0%	5.5%	0.8%
ROBERT TREAT ACADEMY CS	525	47.8%	1.5%	3.0%	0.0%
TEAM ACADEMY CHARTER SCH	1,277	68.7%	0.0%	9.2%	2.7%
UNIVERSITY HEIGHTS CS	221	77.8%	0.0%	4.1%	0.0%
MARIA L. VARISCO-ROGERS	380	72.1%	2.6%	2.4%	0.0%
NEWARK EDUCATORS CHARTER DISTRICT	31,350	78.5%	7.3%	8.9%	7.0%

[1] Total Enrollment, free lunch and ELL data based on summed school level enrollments, all grades, for all schools within city limits of Newark [based on NJDOE enrollment file & school directory file]

[2] Special Education classification data based on NJDOE classifications totaled across placement types for NPS and for charters in city limits of Newark

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Newark Charter School Effect on District Enrollment Sorting

	District w/ Charter Students Absorbed	District after Charter Transfers	Charter Enroll	Charter as % of Total	District w/ Charter Students Absorbed	District after Charter Transfers
Enrollment	37,026	31,350	5,676	15.3%		
Free Lunch	28,310	24,620	3,690	13.0%	76.5%	78.5%
LEP	2,312	2,294	18	0.8%	6.2%	7.3%
SLD/SLI	3,058	2,803	255	8.3%	8.3%	8.9%
OTHER Disabilities	2,253	2,208	45	2.0%	6.1%	7.0%

[1] Total Enrollment, free lunch and ELL data based on summed school level enrollments, all grades, for all schools within city limits of Newark [based on NJDOE enrollment file & school directory file]

[2] Special Education classification data based on NJDOE classifications totaled across placement types for NPS and for charters in city limits of Newark

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Cohort Attrition in North Star Academy (Uncommon Schools) Newark

Grade	2012-13	2011-12	2010-11	2009-10	2008-09	2007-08	2006-07	2005-06	2004-05	2003-04	2002-03
KG	352	259	174	81	79	76					
01	266	174	81	78	77						
02	171	84	80	73							
03	85	85	72								
04	80	67									
05	341	254	251	159	153	128	122	122	62	42	40
06	255	240	157	145	122	129	126	62	41	42	40
07	209	139	137	112	119	111	52	40	39	42	40
08	133	128	106	104	101	45	33	36	39	38	38
09	115	91	87	81	42	38	26	39	39	36	31
10	89	86	65	38	29	18	33	38	33	24	29
11	73	52	28	24	15	33	29	27	23	25	21
12	53	28	24	14	36	19	27	20	23	19	
TOTAL	2,222	1,687	1,262	909	773	597	451	384	299	268	239
Tested Grade Retention	84%	84%	83%	85%	83%	73%	79%	90%			
Grades 5 to 12 Retention	43%	45%	57%	35%							
Grades 9 to 12 Retention	65%	67%	63%	54%	92%	49%	75%	65%			

Cohort Attrition in North Star Academy (Uncommon Schools) Newark
Black Male Students

Grade	Black Boys											
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
Grade 5	16	21	19	53	43	49	49	57	105	103	107	
Grade 6	12	19	21	21	50	36	45	46	55	100	103	
Grade 7	12	10	13	18	15	37	36	43	42	45	82	
Grade 8	8	12	9	14	14	13	33	26	38	35	40	
Grade 9	9	7	15	9	9	16	13	23	25	30	28	
Grade 10	9	4	8	16	6	5	7	13	15	26	27	
Grade 11	6	7	4	5	9	7	4	4	8	14	20	
Grade 12		5	6	3	5	4	8	2	5	8	14	
Grade 5 to 12								13%	24%	42%	26%	
Grades 5 to 8				88%	67%	68%	62%	60%	78%	71%	70%	
Grade 9 to 12				33%	71%	27%	89%	22%	31%	62%	61%	

<http://www.nj.gov/education/data/enr/>

Suspension Rates: <http://schoolfinance101.files.wordpress.com/2013/07/suspension-rates-for-schools-in-newark.pdf>



The Distribution of Compromised Student & Employee Rights

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DISTRICTS SERVING THE HIGHEST PERCENTAGE OF PUBLIC CHARTER SCHOOL STUDENTS

Rank	School District	State	Charter Market Share	Charter Enroll	Non-Charter Enroll	Total District Enroll	Rank and Market Share in 2011
1.	New Orleans Public School System	LA	76%	32,597	10,098	42,695	#1 and 70%
2.	Detroit Public Schools	MI	41%	47,086	66,626	113,712	#3 and 37%
	District of Columbia Public Schools	DC	41%	31,562	45,191	76,753	#2 and 39%
3.	Kansas City, Missouri School District	MO	37%	9,954	16,610	26,564	#4 and 35%
4.	Flint City School District	MI	33%	4,706	9,606	14,312	#5 and 32%
5.	Gary Community School Corporation	IN	31%	4,549	10,221	14,770	#6 and 30%
	St. Louis Public Schools	MO	31%	11,155	24,665	35,820	#7 and 29%
6.	Cleveland Metropolitan School District	OH	28%	15,886	41,528	57,413	#10 and 23%
7.	Albany City School District	NY	26%	2,838	7,972	10,810	#10 and 23%
	Dayton Public Schools	OH	26%	5,900	16,422	22,321	#8 and 27%
	San Antonio Independent School District	TX	26%	15,114	44,129	59,243	Not in Top 10 and 21%
8.	Indianapolis Public Schools	IN	25%	10,690	31,998	42,688	Not in Top 10 and 22%
	Roosevelt School District 66	AZ	25%	3,590	10,558	14,148	Not in Top 10 and 19%
	Toledo Public Schools	OH	25%	8,209	24,799	33,008	#10 and 23%
	Youngstown City Schools	OH	25%	2,528	7,655	10,183	#9 and 24%
9.	Adams County School District 50	CO	23%	2,971	9,709	12,680	Not in Top 10 and 22%
	Grand Rapids Public Schools	MI	23%	4,967	17,091	22,058	Not in Top 10 and 20%
	The School District of Philadelphia	PA	23%	46,801	154,262	201,063	Not in Top 10 and 20%
10.	Milwaukee Public Schools	WI	22%	18,565	67,429	85,994	Not in Top 10 and 19%
	Phoenix Union High School District	AZ	22%	7,472	25,906	33,378	Not in Top 10 and 19%

http://publiccharters.org/data/files/Publication_docs/NAPCS%202012%20Market%20Share%20Report_20121113T125312.pdf

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DISTRICTS WITH THE HIGHEST GROWTH OF PUBLIC CHARTER SCHOOL STUDENTS

This report also includes a list of districts with the largest growth in the number of public charter students enrolled (this list was selected from the 50 districts with the most public charter school students enrolled; see the districts in Appendix B).

Rank	School District	State	Charter Market Share	2010-2011 Charter Enrollment	2011-2012 Charter Enrollment	Increase in Charter Enrollment	% Growth in Charter Enrollment
1.	Clark County School District	NV	2%	4,433	7,271	2,838	64%
2.	Hillsborough County Public Schools	FL	5%	6,207	9,452	3,245	52%
3.	Dallas Independent School District	TX	12%	15,522	20,709	5,187	33%
	Phoenix Union High School District	AZ	22%	5,622	7,472	1,850	33%
4.	Gilbert Public Schools	AZ	13%	4,382	5,718	1,336	30%
5.	Atlanta Public Schools	GA	10%	4,088	5,260	1,172	29%
6.	Broward County Public Schools	FL	12%	24,150	30,438	6,288	26%
7.	Los Angeles Unified School District	CA	15%	79,385	98,576	19,191	24%
	New York City Department of Education	NY	5%	38,743	48,057	9,314	24%
8.	Boston Public Schools	MA	10%	5,202	6,423	1,221	23%
9.	Memphis City School	TN	6%	5,405	6,549	1,144	21%
10.	Minneapolis Public Schools	MN	21%	7,761	9,339	1,578	20%

http://publiccharters.org/data/files/Publication_docs/NAPCS%202012%20Market%20Share%20Report_20121113T125312.pdf

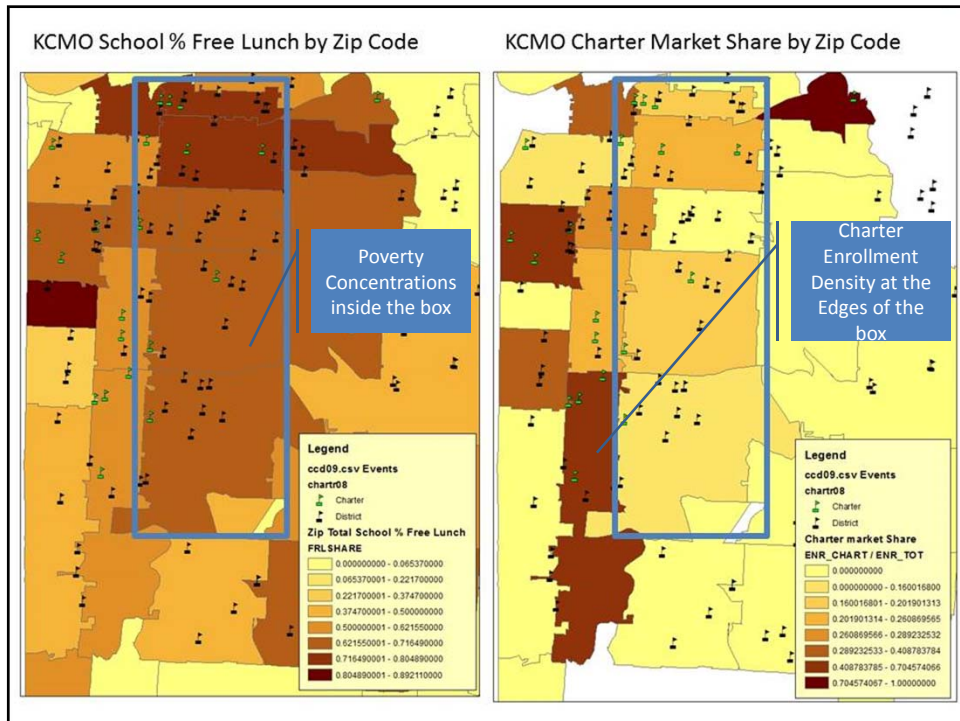
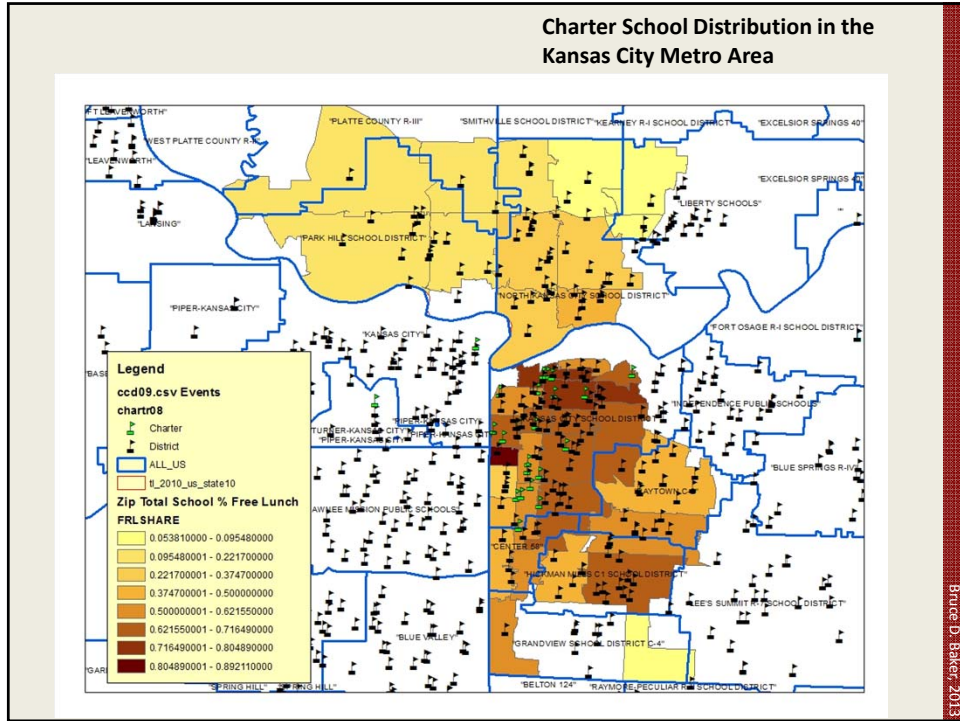
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NOT... Rebuilding New Orleans Schools

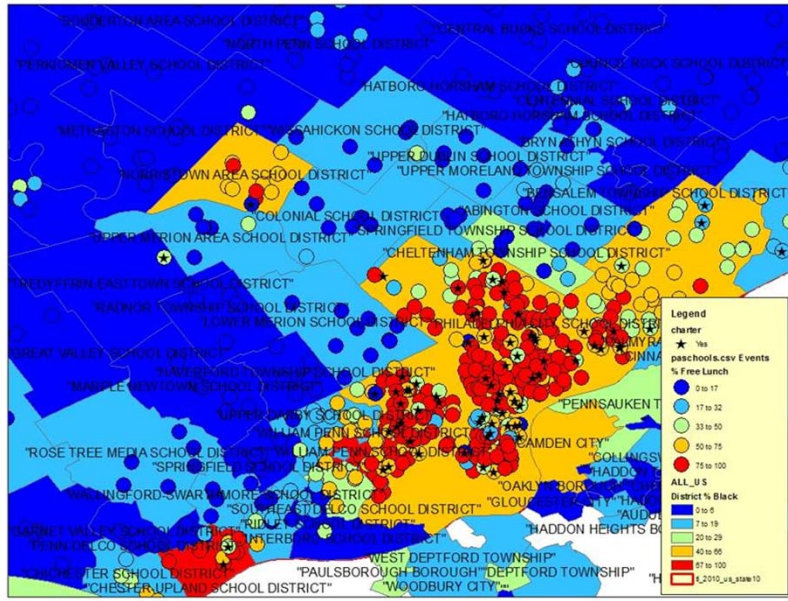
← NOLA 2000

NOLA 2010 →

See Also: Buras, K. L. (2011). Race, charter schools, and conscious capitalism: On the spatial politics of whiteness as property (and the unconscionable assault on black New Orleans). *Harvard Educational Review*, 81(2), 296-331.

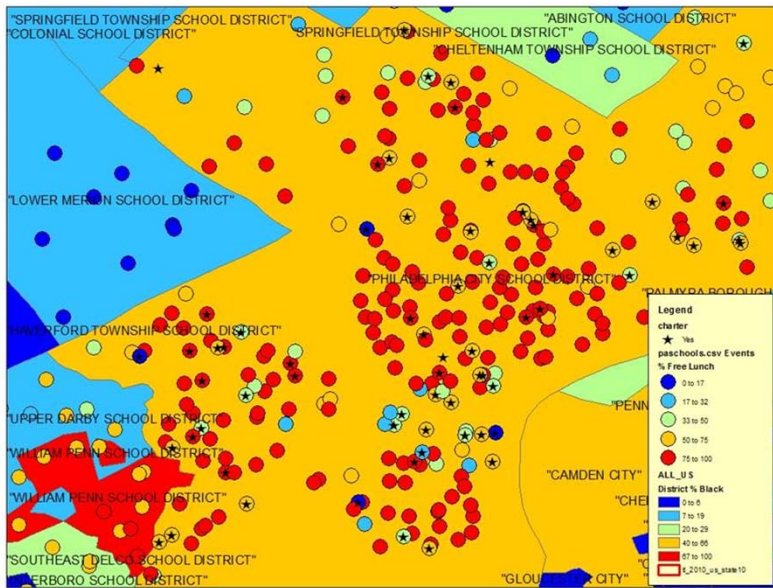


Philadelphia Metro Area Charter School Locations



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Charter Population Sorting within Philly



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Distribution of Enrollments in New Jersey NCES Common Core of Data 2010-11

Core Based Statistical Area	% All Kids in Charters	% Black Kids in Charters	% Hispanic Kids in Charters	% Low Income Kids in Charters
Allentown-Bethlehem-Easton	0.6%	0.1%	0.2%	0.0%
Atlantic City NJ	2.9%	10.6%	2.1%	5.0%
New York-Newark-Edison	1.7%	6.7%	2.1%	3.6%
Ocean City NJ	0.0%	0.0%	0.0%	0.0%
Philadelphia-Camden	1.6%	3.7%	5.7%	4.3%
Trenton-Ewing NJ	4.4%	12.2%	4.1%	11.9%
Vineland-Millville-Bridgeton	0.6%	0.4%	0.7%	0.4%

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Closing Thoughts

- There exist important sector differences in employee and student rights
- Many charter operators seem more than willing to push the envelope w/respect to infringing on student & employee rights & arguing their legal right to do so
 - In some cases, they are winning these legal arguments
- Shifting larger shares of students to charter schools, even if there exist some measurable achievement benefits (debatable), is not a benign choice.
 - Put bluntly, we must consider seriously whether it is appropriate to trade student & employee constitutional rights, and public accountability, for “market” accountability and a few test score points (if that?)
 - Further, we must consider whether it is appropriate that these tradeoffs are far more likely to occur for low income and minority children.
- These tradeoffs must be made clearer to parents choosing charter schools and to teachers and others considering working in charter schools.

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