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COMMENTS

THE PAPER SCHOOL HOUSE: THE “BUSINESS” OF TEXAS CHARTER SCHOOLS AND THEIR EFFECT ON THE MINORITY STUDENT POPULATION

ANNA LISA GARCIA†

INTRODUCTION

I began my first year of teaching with the kind of optimism and enthusiasm that makes you feel like you can move mountains. My ideology of education reform fit in perfect with the charter school’s projected agenda. I would use my own experiences of educational struggle to inspire, to teach, to be innovative, to make change. I would have never imagined the hard lessons I was about to learn about the business of charter school education.¹

Equality in education for minorities has undergone tremendous change in the past fifty years. The 1954 landmark decision of *Brown v. Board of Education*² in which the Supreme Court ruled that separate was no longer

† St. Mary’s University School of Law, Candidate for J.D., May 2004; Texas A&M University, College Station, B.S. Psychology, May 1999. The author dedicates this comment to the most influential teacher in her life, her mother, Ms. Catherine C. Garcia. Special thanks are extended to Yvette Aguilar and Alexander Neill, for their invaluable help in drafting and developing this comment as editors. The author would also like to thank *The Scholar* staff, her family, and her friends for their patience, support, and contributions to this work. This comment is inspired by all the individuals who teach, mentor, and inspire the children of our future, may we never give up the fight for equality in education.

1. The author was employed at a Houston Charter School during the 1999-2000 academic year. These are reflections of her experiences that have inspired her to write this comment.

2. 347 U.S. 483 (1954).

equal,³ set the stage for change in unequal education. The *Brown v. Board of Education* decision however, was only the beginning of a very long struggle for equality in educational opportunities for minorities. Equal education advocates would have to deal with the enforcement of desegregation orders throughout the 1950s and 1960s,⁴ the unequal school financing systems in the 1970s and 1980s,⁵ and of course affirmative action challenges in the 1990s.⁶ Now in the twenty-first century, equality for minority education has taken on a new challenge at the state level with the implementation of charter schools.

Thirty-two years after *Brown*, a different type of desegregation battle would be fought in San Antonio, Texas. The fight would be for the desegregation of funding amid the public school system.⁷ In 1987, the Edgewood Independent School District, along with numerous other districts and individuals, unsuccessfully sought a “judicial declaration that the state public school finance system was unconstitutional.”⁸

The petitioner’s argument was based on the United States Supreme Court’s holding in *Pierce v. Society of Sisters*.⁹ In *Pierce*, the U.S. Supreme Court unanimously ruled that parents have a constitutional right to send their children to private schools.¹⁰ Families who were not affluent enough to send their children to private schools, however, had no choice other than the state public schools. Public schools were estab-

3. *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

4. *See* *Bush v. Orleans Parish Sch. Bd.*, 190 F. Supp. 861, 865 (E.D. La. 1960) (addressing school desegregation where the Louisiana legislature “initially enacted measures to deprive the Board of the power to comply with the orders of the court”); *see also* *Youngblood v. Bd. of Pub. Instruction*, 230 F. Supp. 74 (N.D. Fla. 1964) (examining a class action brought by minor African American children for the establishment and enforcement of desegregation procedures); *Ross v. Dyer*, 312 F.2d 191 (5th Cir. 1962) (arguing for the enforcement of a desegregation plan).

5. *See* *San Antonio v. Rodriguez*, 411 U.S. 1 (1973) (evaluating a class action brought on behalf of poor school-children residing in school districts with a low school property tax claiming that Texas’ reliance on local property taxes favors the affluent and violates the Equal Protection Clause of the Fourteenth Amendment); *Kirby v. Edgewood Indep. Sch. Dist.*, 761 S.W.2d 859 (Tex. App. – Austin 1988), *rev’d* 804 S.W.2d 491 (Tex. 1991) (stating that the state school financing system was not in violation of the Constitution of Texas).

6. *United States v. Fordice*, 505 U.S. 717 (1992); *Wessmann v. Gittens*, 160 F.3d 790 (1st Cir. 1998); *Taxman v. Bd. of Educ.*, 91 F.3d 1547 (3d Cir. 1996); *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).

7. *Edgewood Indep. Sch. Dist.*, 804 S.W.2d at 491.

8. *Id.* at 493.

9. 268 U.S. 510 (1925).

10. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925) (explaining that children cannot be forced to attend public schools).

lished by geographic regions, thus leaving the underprivileged in poor school districts and the affluent in wealthy school districts.¹¹

When the attempts to equalize funding among school districts failed, Texas legislation turned to charter schools to combat the inequity in its educational system.¹² A charter school can be defined as a “public school of choice which is authorized by state statute and which is established by and operates under the terms of a charter granted to school organizers by a public sponsoring agency to whom the school is thereafter accountable.”¹³

Charter schools were to be “schools of choice” for families who had no alternative to what they perceived to be the failing public school system.¹⁴ In 1995, the Texas State legislature passed Senate Bill 1, which enabled the creation of up to twenty open-enrollment charter schools.¹⁵ There has been much discussion and controversy in the past six years surrounding the idea of charter schools.¹⁶ In theory, charter schools were established to meet the educational needs of certain populations or reach a specific targeted goal that traditional public schools were failing to meet.¹⁷ Proponents of charter schools envisioned lower teacher-to-student ratios, development of new and innovative teaching techniques, and improved service to many students who had fallen through the cracks of

11. See Kenneth Godwin & Frank R. Kemerer, *School Choice Trade-Offs*, EDUC. WK., May 15, 2002, at <http://www.edweek.org/ew/newstory.cfm?slug=36godwin.h21> (last visited Mar. 27, 2003) (reporting that poor children often attend poorly funded schools and lag behind their peers from above average funded schools); Pearl Rock Kane & Christopher J. Lauricella, *Assessing the Growth and Potential of Charter Schools*, in *PRIVATIZING EDUCATION: CAN THE MARKETPLACE DELIVER CHOICE, EFFICIENCY, EQUITY, AND SOCIAL COHESION?* 222-23 (Henry M. Levin ed., 2001); John C. Goodman, *School Choice vs. School Choice*, 45 HOW. L.J. 375, 377 (2002).

12. TEX. EDUC. AGENCY, TEXAS CHARTER SCHOOLS: FREQUENTLY ASKED QUESTIONS, at <http://www.tea.state.tx.us/charter/faq.html#3> (last visited March 27, 2003).

13. CATHERINE BLAKEMORE, *A PUBLIC SCHOOL OF YOUR OWN: YOUR GUIDE TO CREATING AND RUNNING A CHARTER SCHOOL 1-2* (1998).

14. See Kane & Lauricella, *supra* note 11 (explaining that school choice could bring benefits to students from destitute families).

15. Tex. S.B. 1, 74th Leg., R.S. (1995) (codified as amended at TEX. EDUC. CODE ANN. § 12.101(b) (Vernon 1996)). The statute has since been amended to allow up to two hundred and fifteen charter schools. TEX. EDUC. CODE ANN. § 12.101(b) (Vernon Supp. 2003).

16. See Alan Richard, *States' Work on Charter Still Unfolding*, EDUC. WK., Mar. 20, 2002 at <http://www.educationweek.org/ew/newstory.cfm?slug=27charter.h21&keywords=alan%2Richard> (last visited Mar. 27, 2003).

17. See DANNY WEIL, *CHARTER SCHOOLS: A REFERENCE HANDBOOK* 120 (2000). “[T]he whole point of charter schools is to answer today’s call for bold school reform by injecting freedom, choice and accountability into school system and thereby providing a better education for America’s children.” *Id.* (quoting VANOUREK ET AL. 23 (1997)).

traditional public schools.¹⁸ They argued that charter schools would make the education market more competitive by offering an alternative to public schools, thereby forcing traditional public schools to improve their programs or face losing their students.¹⁹

Conversely, opponents argued that since charter schools can enroll students from all districts, they would attract students from the most affluent families, leaving public schools with low-performing students.²⁰ Others have suggested that charter schools promote segregation, enticing students and families to migrate towards a “one race school,” thereby defeating the gains made by the school desegregation movement.²¹ Opponents also worried that charter schools would be established and managed by unqualified professionals.²² Since charter school regulations vary from state to state,²³ the potential for abuse in the process and the successes or failures of charter schools is dependant on a number of factors including the state’s governing legislation.²⁴

This comment will focus on the effect charter schools have had on Texas’ minority student population over the last five years. The comment

18. See Judith Johnson & Alex Medler, *The Conceptual and Practical Development of Charter Schools*, 11 STAN. L. & POL’Y REV. 291, 294-96 (identifying charter schools with highly innovative practices, and stating that charter schools are smaller than traditional schools and usually include population of students at risk of failing in traditional public education).

19. JOHN MERROW, CHOOSING EXCELLENCE: “GOOD ENOUGH” SCHOOLS ARE NOT GOOD ENOUGH 139-40 (2001).

20. See Kevin S. Huffman, *Charter Schools, Equal Protection Litigation, and the New School Reform Movement*, 73 N.Y.U. L. REV. 1290, 1302 (1998) (stating that opponents of charter schools fear that traditional schools will deteriorate and the charter school movement will burden lower classes and children of color).

21. See Wendy Parker, *The Color of Choice: Race and Charter Schools*, 75 TUL. L. REV. 563, 568-69 (2001); Lynn Schnaiberg, *Charter Schools: Choice, Diversity May Be At Odds*, EDUC. WK., May 10, 2000, <http://www.educationweek.org> (last visited Mar. 27, 2003) (providing information on two charter schools in Arizona that have evolved to be racially segregated).

22. See Robin D. Barnes, *Black America and School Choice: Charting a New Course*, 106 YALE L.J. 2375, 2400 (1997) (contending that charter schools lack professional requirements).

23. MERROW, *supra* note 19, at 140.

24. See CTR. FOR EDUC. REFORM, RANKING OF CHARTER LEGISLATION RELEASED (1998), available at <http://www.edreform.com/press/9812rank.htm> (last visited Mar. 27, 2003). Of the thirty-four states that have passed legislation on charter schools, twenty-four of the laws are ranked as “strong or moderately strong” and eleven of the laws are ranked as “weak.” *Id.* Ironically the states ranked as weak have stronger legislative laws while the stronger ranked states have more permissive legislative laws. *Id.*; see also Kane & Lauricella, *supra* note 11, at 211 (stating the variability of oversight implemented by each state weakens both the “enforceability of the charter contract and the inherent incentives to maintain quality academic programs”).

will demonstrate how legislation originally enacted to cure the defects in an unequal education system has failed and consequently produced a negative impact on minority students. Part II provides a structure to assess the prevailing problems of charter schools in Texas. Part III discusses the history of charter school legislation. Part IV analyzes how lax enforcement of charter school legislation in Texas has led to a “paper school house effect” in which attendance fraud and financial mismanagement are rampant. Part V examines the evaluation reports that have emerged to assess the successes and failures of Texas charter schools. Part VI provides a legal analysis of the most recent legislative reform to charter school laws and evaluates whether the amended provisions are in conflict with the goals the Bill proposes to accomplish. Part VII offers a proposal for the “redistricting” of charter schools and for stronger legislative laws to improve the quality of education in these schools.

II. THE PROBLEM WITH CHARTER SCHOOLS IN TEXAS

Between 1995 and 2000, Texas experienced a dramatic expansion of charter schools, with approximately 146 charter schools being established.²⁵ Minority students made up approximately 77.9% of this charter school population.²⁶ These 146 plus charter schools had minimal legislative regulations governing them.²⁷ These three factors combined produce an effect contrary to what many charter schools claim to try and accomplish.²⁸ Instead of helping at-risk and minority students excel, charter school are leaving a great deal of minority students without an adequate education.²⁹ Recent media and newspaper reports have brought the lack of accountability and abuse of the system to the attention of the public. Alberta Phillips, a staff writer for the Austin American-Statesman, illustrates:

25. SCH. OF URBAN & PUB. AFFIARS, UNIV. TEX. AT ARLINGTON ET AL., TEXAS OPEN-ENROLLMENT CHARTER SCHOOLS FIFTH-YEAR EVALUATION: EXECUTIVE SUMMARY 3 (2002) [hereinafter CHARTER SCHOOLS FIFTH YEAR EVALUATION].

26. TEX. EDUC. AGENCY, TEXAS CHARTER SCHOOLS: SUMMARY INFORMATION, at <http://www.tea.state.tx.us/charter/stats.htm> (last visited Mar. 27, 2003).

27. See Jason Lance Wren, Note, *Charter Schools: Public or Private? An Application of the Fourteenth Amendment's State Action Doctrine to These Innovative Schools*, 19 REV. LITIG. 135, 139 (2000) (citing an interview with Brooks Flemister, Senior Director of Charter Schools for the Texas Education Agency in which Mr. Flemister notes that charter schools are free to perform any activity not covered by the limited legislative restrictions).

28. See Rebecca Rodriguez, *Charter Pupils Lag Behind Public School Peers, Study Shows*, FT. WORTH STAR-TELEGRAM, Sept. 3, 2002, available at 2002 WL 24696286 (stating that fifty-nine percent of students at traditional schools scored better than charter school students in a privately conducted study).

29. See *id.* (noting that some states seek out low achieving students and those attending schools are typically several years behind students in traditional schools).

The Rev. Harold Wayne Wilcox pays himself an annual salary of \$210,000. He enjoys hotel living and is a generous husband, paying his wife \$50,000 a year to work as his secretary. The good reverend, who sometimes is accompanied by bodyguards, is living large. That certainly would be none of my business, except he is doing it on my dime and yours. Wilcox is superintendent of Prepared Table Charter School, with campuses in Houston and Humble.³⁰

Despite the fact the Rev. Wilcox is paying himself a six-figure salary, without having a college degree,³¹ and the fact that Texas Education Agency (TEA) said “the school’s charter should be revoked because of continuing financial irregularities,” Prepared Table School has continued to receive some \$15 million in tax dollars since May 2001.³² The Rev. Wilcox serves approximately 1,300 predominately African-American students at three different campuses.³³ Only 23% of students at the Prepared Table’s main campus and 18% at its east campus passed the Texas Assessment of Academic Skills³⁴ Test (TAAS) this past year.³⁵

These problems have not gone unnoticed however, and because of cases like Prepared Table and other charter school horror stories scattered about Texas, the legislature has begun to seek “reform” in the charter school arena.³⁶ In March of 2001, the House Committee on Public Education approved a moratorium to temporarily halt the expansion of charter schools.³⁷ At a House subcommittee hearing on charter schools, State Representative Jim Dunnam addressed the problems that plagued some Texas charter schools and called for the reform through House Bill

30. Alberta Phillips, *Charter Schools Free and Easy with Our Money*, AUSTIN AM. - STATESMAN, May 23, 2001, at A21, available at 2001 WL 4579766.

31. Janet Elliott & Melanie Markley, *Despite Hopes, Trouble Plagues Charter Schools*, HOUS. CHRON., June 24, 2002, available at 2002 WL 23203825.

32. *Id.*

33. *Id.*

34. DIV. OF STUDENT ASSESSMENTS, TEX. EDUC. AGENCY, HOME PAGE, available at <http://www.tea.state.tx.us/student.assessment/> (last visited Mar. 28, 2003). The Texas Assessment of Academic Skills (TAAS) “measures the statewide curriculum in reading, mathematics and writing at the exit level. *Id.* TAAS will remain the graduation requirement for students who were enrolled in Grade 9 or higher on January 1, 2001”). *Id.*

35. Elliott & Markley, *supra* note 31.

36. See Bess Keller, *Texas Legislature Places Restrictions on Charter Schools*, EDUC. WK., June 6, 2001, at <http://www.edweek.org/ew/ewstory.cfm?slug=39texas.h20> (last visited Mar. 31, 2003) (reporting that media coverage of the scandals and failures of charter schools has put pressure on Texas legislators to increase charter school oversight); Maeve Reston, *Series: 77th Legislature: Panel OKs Charter School Moratorium, Sponsor Says Time Gives Education Agency Better Oversight Ability*, AUSTIN AM.- STATESMAN, Mar. 21, 2001, at B5, available at 2001 WL 4577315.

37. Reston, *supra* note 36.

6.³⁸ The original bill proposed more regulations and accountability on charter schools, required teachers to hold a minimum of a bachelor's degree,³⁹ and made criminal background checks on charter school employees mandatory.⁴⁰ However, these provisions resemble the basic rules that our traditional public school systems have been following for years. In fact, Texas law mandates higher standards for traditional public school teachers, requiring them to be certified or pursuing certification.⁴¹ They also must undergo a criminal background check as part of their certification process.⁴² So is House Bill 6 really the cure for the bad business of charter schools?

III. HISTORY OF CHARTER SCHOOL LEGISLATION

*I didn't think much of the schoolhouse or its facilities when I first arrived, but I didn't let that discourage me. The staff spent the first couple of weeks before the school opened cleaning and making repairs on the building. Teachers did everything, from cleaning the carpets to painting the walls. I did my best with what I had, and spent some of my own money to decorate my room. I have to admit I was pretty proud of my make-shift classroom, even if it did have picnic tables as desks.*⁴³

A. The Beginning of Charter Schools

Ray Budde, an educator and administrator, first introduced the concept of charter schools, in his 1988 book, *Education by Charter: Restructuring School Districts*.⁴⁴ Budde's ideas consisted of restructuring a "department" or discipline *within* a school, and giving teams of teachers within that school a charter to establish new and innovative programs.⁴⁵ The teams of teachers would have three to five years to internally run their charter without interference from the principal or central office staff.⁴⁶

38. See Maeve Reston et al., *Series: 77th Legislature: Charter School Bill Goes to Perry, Lawmakers Also Pass School Employee Health Insurance Legislation*, AUSTIN AM.-STATESMAN, May 28, 2001, at B1, available at 2001 WL 4579958.

39. HOUSE COMM. ON PUBLIC EDUC., BILL ANALYSIS, INTRODUCED, TEX. H.B. 6, 77th Leg., R.S. (2001).

40. TEX. EDUC. CODE ANN. § 12.120 (Vernon Supp. 2003).

41. *Id.* § 21.003 (Vernon 1996).

42. *Id.* § 22.082.

43. Author recounting on how the school's facilities were inadequate and how the staff and teachers were responsible for their own classroom maintenance and renovations.

44. Johnson & Medler, *supra* note 18, at 292.

45. *Id.*

46. *Id.*

Another contributor to the charter school movement was the late Albert Shanker, former president of the American Federation of Teachers.⁴⁷ Shanker, however, envisioned charter schools as autonomous entities separate from the traditional public education system.⁴⁸ The charter school movement embraced Shanker's autonomous entity ideas and in 1991, Minnesota became the first state to pass charter school legislation.⁴⁹ Nationwide there are now approximately 2,400 charter schools operating in thirty-four states and the District of Columbia.⁵⁰

Charter schools in Texas were introduced in 1995 with Senate House Bill 1, which gave the State Board of Education authorization to establish the first twenty open-enrollment charter schools.⁵¹ The charter schools have grown increasingly popular in Texas and as of May 2002, TEA reports that there are now approximately 200 charter schools operating in the state.⁵²

Chapter 12 of the Texas Education Code outlines the rules and regulations that govern charter schools.⁵³ Before the amended acts added by the last legislative session in 2001 (House Bill 6), the requirements for opening and operating a charter school were minimal.⁵⁴ Basically, organizations or groups of individuals that fell within the requirements of section 12.101 could apply for a charter with the State Board of Education to open a charter school.⁵⁵ Section 12.110 of the Texas Education Code requires the State Board of Education adopt an application procedure and criteria to use in selecting programs for which to grant a charter.⁵⁶ However, the only two mandated requirements section 12.110 forces the State Board of Education to include in its application procedures are:

- (1) criteria relating to improving student performance and encouraging innovative programs; and
- (2) a statement from any school district whose enrollment is likely to be affected by the open-enrollment charter school, including in-

47. *Id.*

48. Albert Shanker, *Where We Stand*, N.Y. TIMES, July 10, 1988, at E7.

49. See Karla A. Turekain, Note, *Traversing the Minefields of Education Reform: The Legality of Charter Schools*, 29 CONN. L. REV. 1365, 1372 (1997) (providing background information on the establishment of charter schools).

50. CTR. FOR EDUC. REFORM, EDUCATION REFORM UPDATE, at <http://edreform.com/press/2001/010917.html>.

51. Wren, *supra* note 27, at 138.

52. TEX. EDUC. AGENCY, *supra* note 12.

53. TEX. EDUC. CODE ANN. Ch. 12 (Vernon 1996).

54. See Wren, *supra* note 27, at 138 (stating that charter schools were "free to do whatever they want").

55. TEX. EDUC. CODE ANN. § 12.101(a) (Vernon Supp. 2003).

56. *Id.* § 12.110(a) (Vernon 1996)

formation relating to any financial difficulty that a loss in enrollment may have on the district.⁵⁷

The Texas State Board of Education has set the remaining criteria in its application to include such things as: a description of the educational plan to be implemented, a description of management structure, a plan for parent and community involvement in the charter school, present and future funding plans, and details of how students in the community will learn about the charter school and be provided with an equal opportunity to attend.⁵⁸

B. *Who Can Open a Charter School?*

Section 12.101 authorizes the State Board of Education to grant open-enrollment charters to a governmental entity, institutions of higher education, or tax-exempt non-profit corporations.⁵⁹ Non-profit corporations hold a majority of the open-enrollment charters that have been granted.⁶⁰ The idea of a non-profit corporation can be misleading because any person or group can establish a non-profit corporation by filing articles of incorporation with the Texas Secretary of State.⁶¹ Once the fees have been paid and the articles fall in compliance with the Texas Non-profit Corporation Act, the Secretary of State will issue a “certificate of incorporation.”⁶² The next step is to request tax-exempt status from the IRS under section 501(c)(3) of the Internal Revenue Code.⁶³ After these two steps have been met, the individual or group can submit their application for a charter school to the TEA for review.⁶⁴

When charter schools were first created in 1995, the legislature imagined that teachers and business people would be the ones applying for the charters.⁶⁵ Instead, people with no educational expertise like the Rev. Wilcox applied and were granted charters.⁶⁶ Opening and operating a charter school in Texas became such a popular idea that books like *A Public School of Your Own: Your Guide to Creating and Running a Char-*

57. *Id.*

58. TEX. EDUC. AGENCY, PUBLIC SCHOOLS START-UP GRANT: APPLICATION FOR GENERATION 8, <http://www.tea.state.tx.us.charter/applications/rfa8.doc> (last visited Apr. 1, 2003).

59. TEX. EDUC. CODE ANN. § 12.101(a) (Vernon Supp. 2003).

60. TEX. EDUC. AGENCY, *supra* note 12.

61. *Id.*; TEX. REV. CIV. STAT. ANN. art. 1396-3.01 (Vernon 1997).

62. TEX. EDUC. AGENCY, *supra* note 12; TEX. REV. CIV. STAT. ANN. art. 1396-3.01 (Vernon 1997).

63. TEX. EDUC. AGENCY, *supra* note 12; 26 U.S.C. § 501(c)(3) (2000).

64. TEX. EDUC. AGENCY, *supra* note 12.

65. Phillips, *supra* note 30.

66. *Id.*

ter School, became available as “step-by-step guides” to running these educational institutions.⁶⁷ Patsy O’Neill, director of the Charter School Resource Center of Texas, believes that many of the current problems stem from the third round of charters that were granted to the 109 charter holders during the 1998-1999 school year.⁶⁸ According to O’Neill the State Board of Education granted charters to just about everyone who applied that year.⁶⁹ The State Board of Education, through House Bill 6, has now capped the number of open-enrollment charter schools at 215.⁷⁰ However, once a charter is granted it may have more than one campus operating under it.⁷¹ As of 2002, Texas has a reported 261 campuses operating under 200 various charters.⁷²

C. Charter School Funding

Even though charter schools are not subject to many of the rules and regulations imposed on traditional public schools, they still receive public funds.⁷³ Open-enrollment charter school funds are based on the school’s average daily attendance of students.⁷⁴ Section 12.106 entitled “State Funding” of the Texas Education Code has been amended to add that open-enrollment charter schools are now entitled to receive funds such as grants or other discretionary funding, that are available to school districts from the Texas Education Agency or the commissioner.⁷⁵ The charter schools are entitled to these funds unless the statute authorizing the funds explicitly states that open-enrollment charter schools are prohibited from receiving funds.⁷⁶

Some charter schools seem to be receiving more than their fair share of these funds. The San Antonio Express-News reported, “when the Texas

67. See generally BLAKEMORE, *supra* note 13.

68. Elliott & Markley, *supra* note 31; CHARTER SCHOOL RESOURCE CTR. OF TEXAS, FREQUENTLY ASKED QUESTIONS, at http://www.charterstexas.org/about_csrtc.php (last visited Apr. 2, 2003). Charter School Resource Center of Texas is a non-profit organization started by Texas business leaders who support charter schools. *Id.*

69. Elliott & Markley, *supra* note 31.

70. Tex. H.B. 6, 77th Leg., R.S. § 12.101(b) (2001).

71. Jim Suydam, *Lawmakers Discuss Charter Schools’ Problems; Troubles Worry Some, But Board Says it’s Now More Choosy About Approving Applications*, AUSTIN AM. - STATESMAN, June 28, 2002, at B9, available at 2002 WL 24074363 (stating that additional campuses have to be approved by the state’s education commissioner education board).

72. *Id.*; TEX. EDUC. AGENCY, CHARTER CAMPUS BY SELECTED CITY(S), at <http://www.tea.state.tx.us/charter/bycity.rtf> (last visited Apr. 2, 2003).

73. TEX. EDUC. CODE ANN. Ch. 12 (Vernon 1996).

74. See TEX. EDUC. AGENCY, TEXAS CHARTER SCHOOLS: FREQUENTLY ASKED QUESTIONS: FUNDING, at <http://www.tea.state.tx.us/charter/faqfunding.htm> (last updated May 1, 2003).

75. TEX. EDUC. CODE ANN. § 12.106(b) (Vernon Supp. 2003).

76. *Id.*

Education Agency decided how to distribute federal funds for its new school repair and renovation grant program, 40 percent of the \$72 million went to charter schools.”⁷⁷ This figure is appalling considering “only one of every 100 schoolchildren attends a charter school.”⁷⁸ Only 16 of the 344 applications the TEA received from public school districts were awarded facility grants.⁷⁹ On the other hand more than half (47) of the charter schools that applied received grant funding.⁸⁰ The only requirements that the legislature imposed on the TEA were that they favor rural and low-income schools.⁸¹ Otherwise, the TEA had considerable freedom to implement its own criteria as it saw appropriate.⁸²

D. *Accountability*

The word accountability is supposed to be synonymous with the idea of charter schools.⁸³ Everywhere you read about school choice you read that accountability is one of the main arguments in support of charter schools.⁸⁴ In theory, the idea of accountability works like this: “Show results, or go out of business!”⁸⁵ Charter schools are granted a charter to fulfill some specific goal or purpose, for example, lowering the dropout rate of inner-city youth or minorities.⁸⁶ In exchange for promises to perform this objective, the charter schools are released from a great amount of the traditional public school system’s regulations.⁸⁷ Presumptively, this gives them the flexibility to tackle the problem from new and innovative angles. They can hire specialized teachers at any pay, choose to

77. Editorial, *TEA’s Grant Program Unfair to Public Schools; Charter Schools Should not Receive Disproportionate Funding for School Repairs and Renovations*, SAN ANTONIO EXPRESS-NEWS, June 30, 2002, at O2G, available at 2002 WL 20701482.

78. *Id.*

79. Michelle Galley, *Texas Charters Win Big In Facility-Grant Competition*, EDUC. WK., Aug. 7, 2002, at <http://www.edweek.org/ew/ewstory.cfm?slug=43texas.h21&keywords=%22Texas%20Charters%20Win%20Big%22> (last visited May 13, 2003).

80. *Id.*

81. *Id.*

82. *Id.*

83. See Julie F. Mead & Preston C. Green, III, *Keeping Promises: An Examination of Charter Schools’ Vulnerability to Claims for Educational Liability*, 2001 BYU EDUC. & L.J. 35, 58 (2001) (noting that “[c]harter schools are the apex of an educational accountability movement”); Kane & Lauricella, *supra* note 11, at 210; MERROW, *supra* note 19, at 140, 142.

84. BLAKEMORE, *supra* note 13, at 5; Kane & Lauricella, *supra* note 11, at 210; MERROW, *supra* note 19, at 142.

85. MERROW, *supra* note 19, at 139.

86. BLAKEMORE, *supra* note 13, at 11-12; JOE NATHAN, CHARTER SCHOOLS: CREATING HOPE AND OPPORTUNITY FOR AMERICAN EDUCATION 171 (1996).

87. NATHAN, *supra* note 86, at 3.

spend their funding as they see appropriate, and even choose their own curriculum.⁸⁸

The charter is granted for a certain period of time; in Texas this span is usually five to ten years.⁸⁹ Charter school proponents claim that they have no choice but to provide adequate and improved education to meet their goals; otherwise, their charter is subject to revocation.⁹⁰ On the other hand, because there is little oversight until the charter is due to expire, charter schools are not being held accountable during the majority of a charter's existence.⁹¹ If the charter school fails to meet its objectives, its charter will probably be revoked, but only after hefty economic and social costs. The state will lose the millions of dollars spent on the venture,⁹² and the students will fail to receive the enhanced educational environment they were promised.⁹³

Hypothetically, after five years, the incoming freshmen of the charter school have graduated, and equipped with their paper diplomas, are ready to compete with traditional public school graduates for college scholarships or positions in the job market. If they did not get the education they were entitled to, there is really no cause of action for their damages. As of now the courts do not favor educational malpractice or education negligence suits.⁹⁴ The Supreme Court held in *San Antonio v. Rodriguez*,⁹⁵ that education is not a fundamental right.⁹⁶ Overall, it seems that charter schools lack the greatest accountability to the students.⁹⁷ Proponents of charter schools seem to believe that this predicament would never happen or at least not happen for long because the parents of the children would ultimately complain or pull their children out of the school. Theoretically, this might be true for those parents

88. FREDICK A. BIRKETT, ED.M., *CHARTER SCHOOLS: THE PARENT'S COMPLETE GUIDE* 13 (2000).

89. Maeve Reston et al., *Charter Schools' Contracts Renewed State Board Adds Five Years To Compacts, Approves Informal Review*, AUSTIN AM. - STATESMAN, Mar. 31, 2001, at B3, available at 2001 WL 4577672.

90. MERROW, *supra* note 19, at 142; Kane & Lauricella, *supra* note 11, at 210.

91. MERROW, *supra* note 19, at 142.

92. See Jennifer Radcliffe, *Charter System Tries to Rebound*, FT. WORTH STAR-TELEGRAM, Aug. 17, 2002, available at 2002 WL 24694823 (reporting that Pinnacle Charter school is having to repay the state \$2.1 million in funding that it received based on inflated enrollment).

93. See MERROW, *supra* note 19, at 142 (noting that there are consequences for children's education due to minimal oversight of failing charter schools).

94. See Thomas G. Eschweiler, *Educational Malpractice in Sex Education*, 49 SMU L. REV. 101, 131 (1995) (relating that the judicial reaction to the tort of educational malpractice has been negative).

95. 411 U.S. 1 (1973).

96. *San Antonio v. Rodriguez*, 411 U.S. 1, 37 (1973).

97. MERROW, *supra* note 19, at 142.

whose involvement includes going to open houses and meeting their children's teachers on a regular basis. Statistically however, involved parents tend to be upper middle class families and predominately white.⁹⁸

That is not to say that minority or low-income families are not concerned with their children's educational welfare; in reality it's the social and economical dynamics of the situation. A recent Twentieth Century Fund Report presented that parents are not "natural consumers of education" and that "few parents of any social class appear willing to acquire the information necessary to make active and informed educational choices."⁹⁹ Another public survey conducted by Education Week also found that most parents did not have a method to either rank their children's educational level nor evaluate the school's performance.¹⁰⁰

For example, a study was conducted in four local school districts in the New York area where parents were surveyed to estimate the level of several dimensions in their child's school.¹⁰¹ Dimensions ranged from the perception of their child's academic performance to their perception of their child's class size.¹⁰² The perception data was then compared against the actual official reported data.¹⁰³ The study found that the majority of parents can not accurately pinpoint basic school level factors.¹⁰⁴ Even more so, inner-city parents were less accurate in their estimates than their suburban counterparts.¹⁰⁵

Race and educational levels also affected the accuracy of the estimates.¹⁰⁶ Minority families, especially Hispanic families, and families with less formal education displayed a greater lack of knowledge of basic school level factors.¹⁰⁷ Several socioeconomic factors may contribute to the differences in the accuracy of the estimates, even though this basic

98. See Mark Schneider, *Information and Choice in Educational Privatization*, in *PRIVATIZING EDUCATION: CAN THE MARKETPLACE DELIVER CHOICE, EFFICIENCY, EQUITY, AND SOCIAL COHESION?*, *supra* note 11, at 78 (stating that parents with a higher socioeconomic status construct efficient networks to discuss education whereas parents with a lower socioeconomic status lack these networks).

99. CAROL ASCHER ET AL., *HARD LESSONS: PUBLIC SCHOOL AND PRIVATIZATION* vii, 40-41 (1996).

100. *Quality Counts '98: The Urban Challenge, Public Survey*, EDUC. WK., Jan. 8, 1998, at <http://www.edweek.com/sreports/qc98/agenda/ag-n.htm> (last visited Apr. 11, 2003) (stating that out of 700 parents interviewed, in a national random sample, only 55% knew about their children's school curriculum and academic goals, and only 35% of them knew how their children's school ranked in their perspective state).

101. Schneider, *supra* note 98, at 75-77.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

study did not expose such factors. Many low-income families may have parents who both work or work two jobs¹⁰⁸ in comparison to middle or upper income families. In the Hispanic community many of the parents may not speak English as their first language.¹⁰⁹ Other families may simply be unaware of the situation because no one is sharing the necessary information. Basically, the parents are trusting that the system provides what it claims to be providing.

Another reason for charter school enrollment is that parents have run out of options because their at-risk child has been expelled from traditional schools due to discipline problems. The State mandates that parents send their children to school until the age of seventeen or face fines.¹¹⁰ Clearly though, one would think that if all this corruption and abuse was really happening, the grades, the attendance, and the numbers would reflect the truth. After all, numbers never lie, or do they?

IV. THE PAPER SCHOOL HOUSE EFFECT

*By December of 1999, I had already experienced some indiscretions in the school system. I tried addressing my concerns with the veteran teachers, but I was more or less told that I would eventually “learn the ropes.” It wasn’t until I realized that most of my attendance records had been altered to show inflated attendance that I really began to ask questions.*¹¹¹

A. *The Potential for Fraud*

The importance of “numbers” plays a significant role in many aspects of the charter school system. First, charter schools receive funding “based on the average daily attendance (ADA) of students.”¹¹² There-

108. See Mayra Rodriguez Valladares, *The Crisis Among Hispanic Students*, *HISP.*, Dec. 2002, at 36, 42 (explaining that Hispanic parents are often “overwhelmed with one or two concurrent jobs, that they don’t have the time or knowledge to help their children”).

109. See U.S. CENSUS BUREAU, LANGUAGE USE AND ENGLISH ABILITY, PERSONS 18 YEARS AND OVER, BY STATE: 1990 CENSUS, available at <http://www.census.gov/population/socdemo/language/table3.txt> (last visited Apr. 14, 2003) (reporting that in 1990 out of 12,151,158 people surveyed in Texas, 2,550,722 people were Spanish speaking adults); see also Valladares, *supra* note 108, at 36, 38 (describing the problems language proficiency plays in the cycle of education for parents who speak Spanish).

110. MERROW, *supra* note 19, at 141.

111. Author began to document attendance and enrollment fraud after she was asked to sign bogus attendance records. She did not reveal her activity to any of the staff members because they all appeared to condone the activity. Instead, she began to compile a report that would be sent to TEA at the end of the school year. (Complaint report filed with TEA on April 2000, also on file with author).

112. See *TEX. EDUC. AGENCY*, *supra* note 12.

fore, an increase in student attendance equates to an increase of funding. The money the charter school receives based on the ADA does not have to be allocated directly back to the individual students.¹¹³ Most charter schools are free to spend the funds as they see appropriate.¹¹⁴ Funds can be spent on almost anything from teacher's salaries to school renovations.¹¹⁵

The schools themselves are in charge of taking and keeping track of school attendance.¹¹⁶ Allegations of charter schools over reporting students' attendance have recently surfaced in the media.¹¹⁷ In December 2001 there were allegations of attendance falsification surrounding a Southeast Austin charter school.¹¹⁸ Teachers and employees at Echelon Honors Academy charter school accused school officials of altering school attendance records in order to increase funding from the state.¹¹⁹ Letters and memos were obtained from the charter school employees to the superintendent of the school stating that there were serious discrepancies in attendance counts.¹²⁰ The memos disclosed concerns from a supervisor at the school about students who were truant and then later counted as present by school officials.¹²¹ In Fort Worth, reports of the attendance violations of Pinnacle School, a charter school run by Honors Academy, in Dallas, Texas, also emerged.¹²² Honors Academy is in the process of repaying the state some \$2.1 million in state funding that it received through inflated enrollment reports.¹²³

Attendance records are not the only thing charter schools have been accused of altering. Allegations of state funds being used to buy personal items for some staff members have also come to light. Life Support Center Charter School in Houston, operated by Alphonso Crutch, faces losing its charter due to financial mismanagement stemming from allega-

113. *See id.*

114. BIRKETT, *supra* note 88, at 13.

115. *Id.*

116. *See* Kathy Walt, *Audit: Closed Charter School Owes State \$1.9 Million, Renaissance is Accused of Using Inflated Figures*, HOUS. CHRON., Oct. 9, 2000, available at 2000 WL 24521908 (noting that the charter school kept such poor attendance records that TEA could not tell if the students really attended).

117. *See id.*; *see also* Maeve Reston, *Memos Allege Charter Pupils Overcounted; Austin School Inflates Attendance Numbers, Workers Tell Supervisors*, AUSTIN AM. - STATESMAN, Dec. 23, 2001, at B1, available at 2001 WL 4587611 (reporting that an Austin, Texas, school is facing employee allegation of inflating attendance records).

118. Reston, *supra* note 117.

119. *Id.*

120. *Id.*

121. *Id.*

122. Radcliffe, *supra* note 92.

123. *Id.*

tions that school officials used state funds to purchase a soft-core pornographic video and lingerie.¹²⁴ Then there is the case of Prepared Table Charter School and the Reverend Wilcox, discussed earlier, who was paying himself and his wife an exorbitant combined salary of \$260,000 dollars a year in state money.¹²⁵

Finally, systems that measure school performance rely heavily on numbers. Since charter schools are based on a contract with the state to fulfill a mission or goal, performance is not easy to measure numerically.¹²⁶ Factors that are most often taken into account are student performance on state-mandated tests, average daily attendance, total student enrollment, any record of serious discipline problems, and truancy rates.¹²⁷ While the results of state mandated tests might be hard to falsify, the rest of the factors can literally be altered to collectively reflect a paper schoolhouse.

Although there are only a handful of charter schools that have been exposed for fraud in the media, numerous complaints have been filed with the Texas Education Agency regarding approximately 55 different charter schools.¹²⁸ Allegations of failure to teach, poor educational conditions, student harassment, failure to meet payroll, and unprofessional behavior are just some of the more common complaints filed.¹²⁹

The potential for similar incidents happening at other charter schools is not inconceivable. Imagine a small inner-city charter school with only one person as both the superintendent and principal, operating out of a small schoolhouse building owned by the same individual. Imagine a staff of only six teachers and one attendance clerk and a student body of approximately 100 students, 95% of whom are minorities. In this scenario, the superintendent has the ability to pay himself a salary as superintendent and acting principal, pay himself rent for the building the charter school uses, and pay his staff a salary above that paid to a traditional public school teacher. With no other oversight from TEA and no requirements, other than to turn in the attendance records,¹³⁰ the potential for attendance fraud and financial mismanagement is great. This poten-

124. Suydam, *supra* note 79.

125. Phillips, *supra* note 30.

126. See Kathleen Conn, *When School Management Companies Fail: Righting the Educational Wrongs*, 31 J.L. & EDUC. 245, 258 (2002) (summarizing the key performance indicators may include student performance on exams, student enrollment, and attendance).

127. *Id.*

128. TEXAS FREEDOM NETWORK EDUC. FUND, *BROKEN PROMISES II: THE TEXAS CHARTER SCHOOL SYSTEM AT FIVE YEARS* (Appendix G) (2001) [hereinafter *BROKEN PROMISES II*].

129. *Id.*

130. Reston, *supra* note 117 (commenting in Texas public school, including charter schools, the state pays each school money based on average school attendance).

tial for mismanagement and fraud has elicited suggested improvements from a variety of organizations. For example, the National Education Association has compiled a list of “Charter School Criteria” that promotes higher standards, increased accountability and local control, and outlines provisions to ensure that all students enrolled in charter schools receive a quality education.¹³¹ What kind of evaluation tools can be used to give us an accurate picture of how Texas charter schools have progressed since their inauguration in 1995?

V. EVALUATIONS OF TEXAS CHARTER SCHOOLS

I had seriously debated returning to the charter school after Christmas break. The situation had gotten worse, and it seemed like no one was interested in fixing it. We had already gone through three English teachers, the need for a lunch program still hadn't been addressed, and we had even lost the school janitor. After a heated debate on whether or not the staff would be in charge of handling janitorial duties, the administration eventually pushed the duty over to the students. In exchange for cleaning and maintaining the school, certain students would receive credit for “office support.”¹³²

Not surprisingly, reports of progress and evaluations of Texas charter schools have emerged from both ends of the spectrum and reach very different conclusions.¹³³ The State Board of Education has also published its annual evaluation of charter schools pursuant to the Texas Education Code.¹³⁴

131. NAT'L EDUC. ASS'N, CHARTER SCHOOL CRITERIA (2001), at <http://www.nea.org/charter/sidebar.html> (last visited Apr. 4, 2002).

132. Author documented other activity in the school such as bogus classes, student discipline problems, inadequate facilities, and the lack of a lunch program for the students. Students contributed by providing the author with video documentation of the school. (Video on file with Author).

133. See Keller, *supra* note 36. One study found “charter schools serving students at risk of failure seem to be more effective in fostering academic achievement than traditional public schools, while other charter school seem to be at least as effective. . .” *Id.* Another study noted that “just five charter schools received the highest possible rating from the [TEA], which rates all public schools on their students’ performance, and called for an overhaul of the system. *Id.* .

134. TEX. EDUC. CODE ANN. § 12.118 (Vernon Supp. 2003). The statute requires that an “impartial organization with experience in evaluating school choice programs” be designated to “conduct an annual evaluation of open-enrollment schools.” *Id.* The organization is to look at the following criteria in making its evaluation: scores on assessment tests, attendance, grades, instances regarding student discipline, socioeconomic data regarding students’ families, and parental and student satisfaction with the schools. *Id.* In addition, the organization must also consider cost incurred in the administration of the charter

A. *The Texas Public Policy Foundation Report*

The Texas Public Policy Foundation (TPPF), a San Antonio-based advocate of charter schools, found that charter schools who serve at-risk youth seem to have a positive “value added” effect in comparison to traditional public schools.¹³⁵ Focusing on the charter school population of only at-risk students, the study concluded that over time “at-risk students in charters improve their test scores at greater rates than their at-risk traditional public school comparators.”¹³⁶ The TPPF’s report also highlighted the cost efficiency of charter schools, claiming that charter schools had the ability to achieve student performance at a “lower expenditure per student.”¹³⁷ The TPPF’s study acknowledged that charter schools have a higher minority student population, namely African-American students, than their traditional public school counterparts.¹³⁸ It went on to say that this factor, along with the disproportionately large percentage of economically disadvantaged and at-risk students, must be recognized and taken into account in order to assess a meaningful evaluation.¹³⁹

B. *The Texas Freedom Network Education Fund Report*

In contrast, the Texas Freedom Network Education Fund, a project headed under the Austin Freedom Network, published its report with findings of significantly below state average TAAS scores for charter schools during the 1999-2000 school year.¹⁴⁰ Charter schools had less than half of the state average with only a 37.4% passage rate, while the state average for traditional public school was at an 80% passage rate.¹⁴¹ In addition, only five out of 98 charter schools received the highest possible rating of “exemplary.”¹⁴² The report also declared that Texas has lost over “\$4.4 million dollars due to charter school closures and revocations” and has “made overpayments of at least \$3.3 million to charter schools

school, the effect of the charter school on the school district in which it resides, and any other issue determined by the commissioner. *Id.*

135. Chris Patterson, *Foreward* to TEXAS PUB. POL’Y FOUND., NAVIGATING NEWLY CHARTERED WATERS: AN ANALYSIS OF TEXAS CHARTER SCHOOL PERFORMANCE (2001).

136. TIMOTHY J. GRONBERG & DENNIS W. JANSEN, TEXAS PUB. POL’Y FOUND., NAVIGATING NEWLY CHARTERED WATERS: AN ANALYSIS OF TEXAS CHARTER SCHOOL PERFORMANCE 1 (2001).

137. *Id.*

138. *Id.*

139. *Id.* at 2.

140. BROKEN PROMISES II, *supra* note 128, at 11.

141. *Id.* at 2.

142. *Id.* at 3.

inflating their enrollment figures.”¹⁴³ Most charter schools have not established a Limited English Proficiency program nor a Language Proficiency Assessment Committee in their school.¹⁴⁴ This finding directly affects minority students because Hispanics embody approximately 38.8% of the charter school population.¹⁴⁵

C. *Texas Open-Enrollment Charter Schools Fifth-Year Evaluation*

The Texas Education Code mandates a nonbiased assessment of Texas charter schools each year.¹⁴⁶ A team comprised of researchers from the School of Urban and Public Affairs at the University of Texas at Arlington, the Center for the Study of Education Reform at the University of North Texas, the Center for Public Policy at the University of Houston, and the Texas Center for Educational Research collectively gathered information to generate a five year research study of Texas charter schools.¹⁴⁷

1. Research Limitations

The report begins with the researchers acknowledging five main limitations and complications of analyzing charter school data. First, because charter schools have expanded dramatically over the five-year period, evaluation of change over time may be problematic.¹⁴⁸ Next, the issue of data accuracy, as discussed previously, had researchers recognize that with the exception of the TAAS test, the majority of the data collected was self-reported.¹⁴⁹ Third, is the factor of student mobility.¹⁵⁰ It “reduces the number of charter school students included in the state accountability system.”¹⁵¹ Fourth, a distinction between charter schools as campuses and charter schools as districts had to be drawn, with analysis involving both categories.¹⁵² Finally, researchers emphasized that for the greater part of assessment, the school was used as the unit of analysis; whereas, for student performance “the student is the analysis unit” statistically giving more weight in those measurement categories to schools with higher enrollments.¹⁵³

143. *Id.*

144. *Id.*

145. *Id.*

146. TEX. EDUC. CODE ANN. § 12.118 (Vernon 1996 & Supp. 2003).

147. CHARTER SCHOOLS FIFTH-YEAR EVALUATION, *supra* note 25.

148. *Id.* at 2.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

2. Major Findings

The dramatic expansion of charter schools was evident. Between 1996 and 2001, the number of Texas charter schools grew from 17 to 160.¹⁵⁴ Student enrollment has increased, correspondingly, from 2,498 to 37,696.¹⁵⁵ As of 2001, five open-enrollment charters have had their charter revoked by the State Board of Education and four out of five of the revocations have been for financial irregularities.¹⁵⁶ During the same period, “eighteen schools have returned their charters” to the state.¹⁵⁷ Additionally, all of the eighteen first-generation schools that applied for renewal applications received ten-year charter renewals.¹⁵⁸

3. Student Body Composition

Sixty-seven out of the 200 charter school campuses served 75% or more at-risk, meaning economically disadvantaged, students, while 133 campuses served less than 75% at-risk students.¹⁵⁹ This study once again confirmed the disproportionate percentage of minority students who attended charter schools. Forty-one percent of students enrolled in charter schools are African American versus 14% of African American students that are enrolled in traditional public school.¹⁶⁰ The Hispanic student population at charter schools was originally higher than the state average,¹⁶¹ but is now more in line with public school enrollment, and equally represented at both charter (37%) and traditional public schools (41%).¹⁶² White students were the most underrepresented class comprising only 20% of the enrollment in charter schools as compared to 42% of the enrollment in traditional public schools.¹⁶³ There are even fewer White students in charter schools that serve a majority of at-risk students. Whites are 7% of the student population at schools serving economically disadvantaged students, and at charter schools serving less at-risk students white enrollment is at 27%.¹⁶⁴ While the percentage of economically disadvantaged is somewhat higher in charter schools (54%) than in

154. *Id.* at 3.

155. *Id.*

156. *Id.* at 4; see also Karla Scoon Reid, *News in Brief: National Roundup: Texas Charter School Closes*, EDUC. WK., September 27, 2000, at <http://www.edweek.org/> (last visited Apr. 13, 2003).

157. CHARTER SCHOOLS FIFTH-YEAR EVALUATION, *supra* note 25, at 4.

158. *Id.*

159. *Id.*

160. *Id.* at 5.

161. *Id.*

162. *Id.* at 4.

163. *Id.*

164. *Id.*

traditional public schools (49%), fewer charter school students are being identified as needing special services.¹⁶⁵ The state average is 14% for students having a limited English proficiency (LEP) and 12% for students in need of special education instruction, whereas, charter schools average only 4% for LEP and 8% for special education students.¹⁶⁶

4. Teacher Characteristics

On average, charter school teachers have less teaching experience (5.0 years) than their traditional public school counterparts (11.9 years).¹⁶⁷ There is also a greater number of less experienced teachers (47%) at charter schools than at the traditional public schools (27%).¹⁶⁸ One positive factor affecting minorities in education is the higher percentage of minority teachers employed at charter schools compared to the state system (58% versus 27%).¹⁶⁹ Unfortunately, the downside to that paradigm is that only 69% of charter school educators have bachelor's degrees in contrast to 75% of traditional public school educators.¹⁷⁰ Even worse, in charter schools, the percentage of educators with no degree has increased from 2.6% to 15.8% over the five years of the study.¹⁷¹ This could be one reason that charter school teachers have been paid considerably less than traditional public school teachers over the past five years.¹⁷² In 2000-2001, the average salary for charter school teachers was \$28,054 compared to \$38,361 for traditional public school teachers.¹⁷³ Charter schools also experienced a significantly higher teacher turnover rate (46%) compared to the state average in 2000-01(16%).¹⁷⁴

5. Campus-Level Performance of Charter Schools

Over time, the quality of charter school education has declined rather than improved. Between 2000 and 2001, low-performing charter schools increased from 32% to 44%, whereas, traditional public schools remained "consistently low" across school years at only 2%.¹⁷⁵ Charter schools also declined in their ratings from 19% to 14% of either "Exemplary" or

165. *Id.* at 5.

166. *Id.*

167. *Id.* at 6.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.* at 7.

172. *Id.* at 6.

173. *Id.* at 6.

174. *Id.* at 11.

175. *Id.* (noting that the teacher turnover rate in charter schools was 46% while the state average was 16%).

“Recognized” status while traditional public schools increased from 52% to 60% over the same period.¹⁷⁶ Charter students TAAS passing rates improved between 2000-2001, however when compared to the traditional public schools, the passing rates are still well below the state average in all areas.¹⁷⁷ For example, the TAAS passing rate for the at-risk student (economically disadvantaged) population in charter schools was 45.8% compared to the passing rate of 73.6% for the same student group in traditional public schools.¹⁷⁸ Proponents of charter schools often cite the high enrollment of minority students and at-risk students as the contributing factor to these low TAAS passing rates.¹⁷⁹ However, students in charter schools “have less advanced course completions and lower end-of-course passing rates” in comparison to traditional public schools.¹⁸⁰ Attendance and dropout rates are higher at charter schools than they are at equivalent state school groups.¹⁸¹

6. Effects of Charter Schools on Traditional School Districts

One prediction that was on the top of the list of charter schools was that charter schools would produce a rippling effect throughout the entire public school system forcing traditional public schools to improve.¹⁸² The study reported however that there has been little impact on practices and educational approaches of traditional public schools.¹⁸³ Many traditional public schools reported that they were unaware of the charter schools near or in their district.¹⁸⁴ Those who were aware had little if any interaction between their district and the charter school.¹⁸⁵

When traditional public school officials were aware of the charter schools in their area, many of them voiced concerns with the charter school system.¹⁸⁶ Of responding district officials, approximately 75% noted apprehensions regarding the quality of charter school teaching, 60% reported concerns with the grading system of charter schools, and

176. CHARTER SCHOOLS FIFTH-YEAR EVALUATION, *supra* note 25, at 11.

177. *Id.*

178. *Id.* at 12.

179. See GRONBERG & JANSEN, *supra* note 136, at 1 (2001) “Compared to traditional public schools, a disproportionately large percentage of at-risk students, minority students, and economically disadvantaged students choose to attend charter schools. A meaningful evaluation of the performance of charter schools must recognize and account for these facts.” *Id.*

180. CHARTER SCHOOLS FIFTH-YEAR EVALUATION, *supra* note 25, at 13.

181. *Id.*

182. MERROW, *supra* note 19, at 139-40.

183. CHARTER SCHOOLS FIFTH-YEAR EVALUATION, *supra* note 25, at 17.

184. *Id.* at 16.

185. *Id.*

186. *Id.* at 17.

more than half (56%) expressed worries that specialized needs of charter school students are not being addressed nor are they receiving an appropriate education.¹⁸⁷

The results in the Texas Open-Enrollment Charter Schools Fifth Year Evaluation demonstrated that there was a need for change. In its next legislative session, the Texas legislature responded by passing a bill to combat the problems and scandals occurring in charter schools.

VI. LEGAL ANALYSIS OF HOUSE BILL 6

*The ultimate impropriety came when the school principal instructed me to “correct” grades I had entered for certain students. According to him I was not allowed to give a student a grade below a 70, even if they had not attended class for the semester. He explained that if students were failing my class or not attending then it was because I was not instructing them correctly. When I explained to him that most of the students who received grades below a 70 were students who had several absences, he simply asked me to “fix” the problem and resubmit my grades.*¹⁸⁸

A. Closer Look at House Bill 6

The Texas Open-Enrollment Charter Schools Fifth-Year Evaluation report prompted the legislature to take corrective action.¹⁸⁹ The House Public Education Committee concluded that stricter rules providing more accountability and oversight provisions for the operation of open-enrollment were needed.¹⁹⁰ Without stricter rules, problems would “continue to occur at a faster rate than the State Board of Education could discover and solve.”¹⁹¹ State Representative Jim Dunnam responded to these problems with the introduction of House Bill 6.¹⁹² Some of the stronger aspects of Dunnam’s proposal included a moratorium on the expansion of charter schools, specification that charter schools be subjected to the

187. *Id.*

188. The principal asked author to give students passing grades even though the students had several absences, had never attended class, or were no longer attending the school.

189. HOUSE COMM. ON EDUCATION, BILL ANALYSIS, INTRODUCED, Tex. H.B. 6, 77th Leg., R.S. (2001). The House Public Education Committee created an interim subcommittee to evaluate the programs of charter schools and report the results to the 77th Legislature. *Id.* The results indicated that there was minimum to no evidence supporting charter schools as utilizing innovative teaching techniques or that they were performing as well as their traditional counterparts. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

same state and federal laws governing public school districts, and the requirement that teachers have at least a bachelor's degree.¹⁹³ The final enactment of House Bill 6 turned out to be a compromise between those wanting stricter legislative restrictions and those who opposed the charter school bill. What developed from the compromise was a version of House Bill 6 that although strengthens accountability and oversight standards, left room for loopholes in the system that allow for abuse of the system to continue.

House Bill 6 begins with an amendment to Chapter 12 of the Education Code by adding section 12.0011 to include the purposes of the charter schools, which are:

- (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.¹⁹⁴

Many of the amended provisions of House Bill 6 are contradictory to what the above stated purposes suggest.

B. *Improve Student Learning*

As the Fifth-Year Evaluation report demonstrated, charter schools have not measured up to their contentions that they are using innovative teaching techniques or that they are performing up to par with the traditional public schools.¹⁹⁵ The original proposed version of House Bill 6 called for the requirement that a school day be at a minimum seven hours long unless the commissioner granted a waiver to the charter school.¹⁹⁶ The revised House Committee Report changed the waiver provision to read that the bill prohibited the commissioner from denying the waiver if the charter school had received an academically acceptable rating in the preceding three years.¹⁹⁷ In the end, neither the original proposed school day length provision nor the amendment adaptation made it into the en-

193. *Id.*

194. Tex. H.B. 6, 77th Leg., R.S., § 12.0011 (2001).

195. See generally CHARTER SCHOOLS FIFTH-YEAR EVALUATION, *supra* note 25 (discussing the shortcomings of charter schools in Texas).

196. HOUSE COMM. ON EDUC., BILL ANALYSIS, INTRODUCED, Tex. H.B. 6, 77th Leg., R.S. (2001).

197. HOUSE COMM. ON EDUC., BILL ANALYSIS, COMMITTEE REPORT, Tex. H.B. 6, 77th Leg., R.S. (2001).

acted version of the bill.¹⁹⁸ Charter schools do not have to provide a minimum seven-hour learning day.¹⁹⁹

House Bill 6 did pass with an amendment to include a biennially review of the performance of each campus²⁰⁰ using the indicators adopted under Section 39.051 of the Education Code.²⁰¹ These indicators would be used to determine the accreditation status of the campus and whether the school would be recognized for acknowledgement.²⁰² Indicators that are used to measure the quality of learning on a campus include results of assessment instruments (e.g. TAAS and grades), dropout and completion rates, student attendance rates, “the percentage of graduating students who meet the course requirements, and performance on scholastic measurements by graduating seniors” (e.g. SAT scores and completion of accelerated courses).²⁰³ However, the purpose of this provision might be negated by the subsequent provision in House Bill 6 which provides an “alternative accreditation status” for charter schools that primarily serve at-risk students.²⁰⁴ Also, charter schools that are not required to administer assessment instruments under certain exemptions may be eligible to receive “alternative accreditation status.”²⁰⁵ One-third of the charter schools in Texas serve at-risk students,²⁰⁶ and therefore are eligible for this alternative accreditation status. An at-risk student is a “student at risk of dropping out of school,” and can be defined by a number of different variables, including problems in academic advancement, low grades or low State test scores, pregnancy or parenthood, disciplinary problems, limited English proficiency, or being in the custody or care of the State.²⁰⁷ Since there are so many variables that can define an at-risk student, charter schools have the ability to escape the traditional accreditation rating process to which traditional public schools are subject. Charter schools can also be exempted from administering assessment instruments to stu-

198. Compare HOUSE COMM. ON EDUC., BILL ANALYSIS, INTRODUCED, TEX. H.B. 6, 77th Leg., R.S. (2001) and HOUSE COMM. ON EDUC., BILL ANALYSIS, COMMITTEE REPORT, TEX. H.B. 6, 77th Leg., R.S. (2001) with TEX. H.B. 6, 77th Leg., R.S. (2001).

199. Compare HOUSE COMM. ON EDUC., BILL ANALYSIS, INTRODUCED, TEX. H.B. 6, 77th Leg., R.S. (2001) and HOUSE COMM. ON EDUC., BILL ANALYSIS, COMMITTEE REPORT, TEX. H.B. 6, 77th Leg., R.S. (2001) with TEX. H.B. 6, 77th Leg., R.S. (2001).

200. TEX. EDUC. CODE ANN. § 39.051 (Vernon Supp. 2003).

201. *Id.*

202. *Id.* § 39.073.

203. *Id.* § 39.051.

204. *Id.* § 39.0731.

205. *Id.*

206. CHARTER SCHOOLS FIFTH-YEAR EVALUATION, *supra* note 25, at 4.

207. TEX. EDUC. CODE ANN. § 29.081(d) (Vernon Supp. 2003).

dents who qualify as needing special education, having limited English proficiency, or as having dyslexia.²⁰⁸

C. *Increase the Choice of Learning Opportunities Within the Public School System*

The Texas Education Code provides that a charter school must publish a notice of the opportunity to apply for admission to its school in a newspaper of general circulation in the community and must state the deadline to apply.²⁰⁹ If more acceptable applications are received than there are available spots, the charter school has the option of filling the vacancies on a first come first serve basis or by a lottery system.²¹⁰ There is no provision in this section of the Texas Education Code directing the supervision of such a “lottery” system; therefore it appears that it is up to the charter school administration to ensure the system is fair and unbiased. Section 12.111 of the Texas Education Code specifically prohibits charter schools from discriminating against students based on disability.²¹¹ However, as the Texas Open-Enrollment Charter Schools Fifth-Year Evaluation reported, only 8% of the charter school population is comprised of special education students.²¹² Special education students can be more expensive to educate because of the requirement of certain state²¹³ and federal laws including the Americans with Disabilities Act (ADA).²¹⁴ House Bill 6 contained no provisions to ensure that students with disabilities are receiving the same school choice opportunities as the rest of the charter school applicants.²¹⁵

208. *Id.* § 39.027 (addressing the State’s system of accountability for public schools, such as competency and skill assessments).

209. *Id.* § 12.117(b)(2).

210. *Id.* § 12.117(a)(2).

211. *Id.* § 12.111(6).

212. CHARTER SCHOOLS FIFTH-YEAR EVALUATION, *supra* note 25, at 5.

213. TEX. EDUC. CODE ANN. § 37.004 (Vernon Supp. 2003) (discussing the “Placement of Students with Disabilities”).

214. Americans with Disabilities Act (ADA), Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified at 42 U.S.C. §12101 et seq. (1994)); Individuals with Disabilities Education Act (IDEA), Pub. L. No. 101-476, 104 Stat. 1103 (1990) (codified at 20 U.S.C. § 1400 et seq. (1994)); see Julie F. Mead, *Determining Charter Schools’ Responsibilities for Children with Disabilities: A Guide through the Legal Labyrinth*, 11 B.U. PUB. INT. L.J. 167, 175 (2002).

215. Act of May 28, 2001, 77th Leg., R.S., ch.1504, 2001 Tex. Gen. Laws 5344.

D. *Create Professional Opportunities That Will Attract New Teachers to the Public School System*

House Bill 6's original proposal was that charter school teachers have a minimum of a bachelor's degree.²¹⁶ The revised version of the proposal only called for teachers who taught core curriculum courses to hold a minimum of a bachelor's degree but permits the commissioner to waive even that requirement.²¹⁷ Neither version of the amendment succeeded into becoming law.²¹⁸ Charter school teachers are still only required to have a high school diploma regardless of what subjects they teach.²¹⁹ Therefore, charter schools in Texas are free to recruit anyone with a high school diploma to teach in their schools.

E. *Establish a New Form of Accountability for Public Schools*

One of the biggest problems faced by charter schools prior to the passage of House Bill 6 was their lack of accountability and oversight. House Bill 6 was introduced with a strong amendment that subjected charter schools to the same federal and state regulations as the public school districts.²²⁰ The revised version of the proposal was weakened by adding the language that charter schools were subjected "to the federal and state laws governing public school districts unless the commissioner determines it would be impractical or inefficient to apply a law or rule to charter schools."²²¹ Again, House Bill 6 passed without including either provision and instead provided that charter schools were subjected only to certain state and federal laws.²²²

F. *Encourage different and innovative learning methods.*

The introduced version of House Bill 6 required TEA "to study the use of and effectiveness of innovative instructional methods by charter schools and the procedures TEA uses to obtain information regarding the

216. HOUSE COMM. ON EDUCATION, BILL ANALYSIS, INTRODUCED, Tex. H.B. 6, 77th Leg., R.S. (2001).

217. HOUSE COMM. ON EDUCATION, BILL ANALYSIS, COMMITTEE REPORT, Tex. H.B. 6, Committee Report, 77th Leg., R.S. (2001).

218. *Compare* HOUSE COMM. ON EDUCATION, BILL ANALYSIS, INTRODUCED, Tex. H.B. 6, 77th Leg., R.S. (2001) *with* HOUSE COMM. ON EDUCATION, BILL ANALYSIS, COMMITTEE REPORT, Tex. H.B. 6, Committee Report, 77th Leg., R.S. (2001).

219. Act of May 28, 2001, 77th Leg., R.S., ch.1504, 2001 Tex. Gen. Laws 5344.

220. HOUSE COMM. ON EDUC., BILL ANALYSIS, INTRODUCED, Tex. H.B. 6, 77th Leg., R.S. (2001).

221. HOUSE COMM. ON EDUC., BILL ANALYSIS, COMMITTEE REPORT, Tex. H.B. 6, Committee Report, 77th Leg., R.S. (2001).

222. Tex. H.B. 6, 77th Leg. R.S., § 12.103 (2001).

performance of charter schools.”²²³ The bill required TEA “to report its assessment and recommendations” in a comprehensive biennial report.²²⁴ House Bill 6 passed with no reminisces regarding the proposed amendment.²²⁵

VII. CONCLUSION AND PROPOSAL

It would be easy to say that the cure for the bad business of charter schools in Texas is simply to eliminate them, and put the education dollar back into the traditional public schools. Unfortunately, that does not really solve any of our state’s education problems; it only puts them on hold. The biggest and probably most convincing arguments in support of charter schools lie in two areas. First, supporters emphasize the need to break free from an institutionalized system that has become bogged down and filled with an abundance of rules and bureaucracy.²²⁶ Teachers in the traditional public school system are constantly complaining that they are no longer allowed to just teach. They must deal with the school’s regulations on spending, instructional learning, TAAS preparations, and so on.

The second-most convincing argument comes from the charter schools that have enrolled at-risk students and succeeded in producing results above the average. These are the charter schools that have been rated “Exemplary,” not on an alternative accreditation program, but on the traditional public education scale. Take for example the Houston KIPP Academy which “has been recognized as an Exemplary School” since its opening.²²⁷ The KIPP Academy is “a college preparatory, public school for at-risk students.”²²⁸ Its student population is 76% Hispanic, 20% African-American, 3% Asian-American, 1% Caucasian.²²⁹ The KIPP Academy has been praised for its rigorous academics practices; such as having parents and students sign contracts that the students will attend school six days a week and do two hours of homework each night.²³⁰ The

223. HOUSE COMM. ON EDUC., BILL ANALYSIS, INTRODUCED, Tex. H.B. 6, 77th Leg., R.S. (2001).

224. *Id.*

225. *Compare id. with* Tex. H.B. 6, 77th Leg., R.S. (2001).

226. *See* Carolyn Hanahan, *Education Law*, 55 SMU L. REV. 891, (2002) (relating that each year “school districts are faced with an increasingly complex variety of laws with which to comply”).

227. KIPP ACADEMY, RESULTS: WHAT CAN A SCHOOL CONSIDER AS ITS RESULTS?, at http://www.kipp-houston.org/aboutus_results.htm (last visited Apr. 15, 2003) [hereinafter WHAT CAN A SCHOOL CONSIDER AS ITS RESULTS].

228. KIPP ACADEMY, HOME PAGE, at <http://www.kipp-houston.org/> (last visited Apr. 15, 2003) [hereinafter HOME PAGE].

229. KIPP ACADEMY, STUDENT GENERAL INFORMATION, at http://www.kipp-houston.org/aboutus_students.htm (last visited Apr. 16, 2003).

230. HOME PAGE, *supra* note 228; *see* Elliott & Markley, *supra* note 31.

KIPP Academy has dispelled the myth that the high enrollment of minority students negatively affects a school's TAAS passage rate.²³¹ The KIPP Academy has a passage rate of 99%, well above the state's average, without claiming any exemptions.²³² Furthermore, everyone in its 2002 class has been accepted to at least one college or university.²³³ Another Houston charter school, which serves inner-city students, has also received "Exemplary" recognition. The YES College Preparatory (YCP) has made receiving a college acceptance letter not only a goal, but also a mandated graduation requirement.²³⁴ Similar to the KIPP Academy, YCP has students, teachers, faculty, and parents sign a "Commitment to Excellence" contract and students must attend Saturday school twice a month and an additional month in the summertime.²³⁵ The school day is also longer for YCP students; beginning at 7:50 am and ending at 5:00 pm.²³⁶ Once again the high enrollment of minority students has not had a negative impact on this charter school's TAAS passing rates. In fact, each grade that was administered the TAAS test had a 97% or above passage rate for all three tested subjects. The Houston KIPP Academy and the YES College Preparatory school gives some convincing evidence that with the right formula, charter schools in Texas, even with a high enrollment of minority students and at-risk students, can be a success. How can more charter schools in Texas produce such high results?

A. *Restructuring the Charter School System and Pooling Our Resources*

One of the biggest advantages to the charter school system is that it is still developing and therefore can be changed and restructured. Texas has the fourth largest charter school system with over 200 campuses spread throughout the state.²³⁷ House Bill 6 capped the number of charter schools at 215,²³⁸ which is still relatively high compared to other

231. Compare GRONBERG & JANSEN, *supra* note 136, at 1 (contending that a disproportionately large percentage of at-risk, minority, and economically disadvantaged students attend charter schools which is a factor that must be taken into account in order to make an evaluation of the charter school's performance) with KIPP ACADEMY, ABOUT US: RESULTS, at <http://www.kipp-houston.org/taasresults.htm> (showing the TAAS passage rate to be 99% at a school that has a minority student population of 99%).

232. WHAT CAN A SCHOOL CONSIDER AS ITS RESULTS, *supra* note 227.

233. *Id.*

234. YES COLLEGE PREPARATORY SCHOOL, ABOUT YCP, at <http://www.yesprep.org> (last visited Apr. 16, 2003). The school's charter mandates that each student must receive a college acceptance letter in order to graduate from high school.

235. *Id.*

236. *Id.*

237. TEX. EDUC. AGENCY, *supra* note 72.

238. Tex. H.B. 6, 77th Leg. R.S., § 12.101(b) (2001).

states.²³⁹ Currently, charter schools can be established in any geographic area and are only subject to municipal zoning ordinances if the charter school is located within a municipality with a population over 20,000.²⁴⁰ Instead of having several charter schools in one area and no charter schools in other areas, if charter schools were restructured so that the ratio of charter schools corresponded to the population of students who were zoned to a particular traditional public school district the true availability of “school choice” could be present for all parents.²⁴¹ For example, San Antonio has several school districts within the city limits that are divided by geographical regions. Based on the size of each district, charter schools could be established to meet the population needs of that particular district. Funds for charter schools could then be concentrated into one or more charter schools for each district or zoning area. This would alleviate some of the financial burdens that charter schools now face. These funds could ensure that the charter schools have the appropriate facilities and equipment needed to be successful.

B. *Transforming Minimum Standards Into Excellence*

The original idea behind the charter school movement was to provide exceptional learning environments for students to succeed. Instead, Texas has ended up with a lot of “good-enough” schools and very few exceptional schools.²⁴² The reason for the good-enough school phenomenon stems from the lack of high standards the legislature has placed on charter schools. What’s wrong with requiring that the educators of our youth, themselves be educated? Having low minimum qualifications for teachers and alternative accreditation programs simply sets the stage for “good-enough” schools to develop. The Houston KIPP Academy and the YES College Preparatory school both employ teachers with a minimum of bachelor’s degrees and many of the KIPP Academy teachers have concentrated areas of study in child development and education.²⁴³ As of now, there is no state law requiring the KIPP Academy or YCP to employ such standards but the results of their academic success have proven to be worth the effort.

239. CTR. FOR EDUC. REFORM, CHARTER SCHOOL LAWS: SCORECARD AND RANKING, at http://edreform.com/charter_schools/laws/ranking_chart.pdf (last visited Apr. 16, 2003).

240. TEX. EDUC. CODE ANN. § 12.001 (Vernon 1996); *Id.* . § 12.103 (Vernon Supp. 2003).

241. See generally Kane & Lauricella, *supra* note 11.

242. See BROKEN PROMISES II, *supra* note 128, at 11 (reporting that out of 98 charter schools rated, only five received the highest possible rating of “Exemplary”).

243. KIPP ACADEMY, ABOUT US: KIPP TEACHER AND STAFF BIOGRAPHIES, at http://www.kipp-houston.org/aboutus_teachers.htm (last visited Apr. 20, 2003).

Minnesota pioneered the idea of charter schools in the United States, yet ironically, that state has fewer charter schools operating than does Texas.²⁴⁴ As of 2001, Minnesota has only seventy-five charter schools in operation.²⁴⁵ Minnesota's charter school legislation is expansive enough to provide growth in the area of charter school development. The statutes allow for an unlimited amount of charter schools to be established.²⁴⁶ They permit charter schools to be created by converting public and private schools to charter schools, or by allowing non-profit organizations to start new schools and allocate portions of federal and state funds.²⁴⁷

However, the differences in Minnesota's legislation that have the strongest impact in their success are the more professional qualifications required of their teachers and administrators, the assurance of racial and ethnic balance in their schools, and their compliance with state and federal laws affecting students with disabilities.²⁴⁸

Minnesota law requires that charter school teachers hold valid licenses, which are the functional equivalent to Texas' teacher certifications, to perform their particular teaching duties.²⁴⁹ Similar to Texas legislation, an educational institution or a charitable organization can start a charter school.²⁵⁰ However in Minnesota only licensed teachers can apply to operate a charter school.²⁵¹ A board of directors comprised of at least five members must be established prior to the establishment of a charter school and can be comprised of staff members of the charter school, including teachers, and parents whose children are enrolled in the charter school.²⁵² Before the school completes its third year of operation the board *must* be comprised of a majority of licensed teachers who are employed at the charter school.²⁵³

244. CTR. FOR EDUC. REFORM, CHARTER SCHOOL LEGISLATION: PROFILE OF MINNESOTA'S CHARTER SCHOOL LAW, at http://www.edreform.com/charter_schools/laws/Minnesota.htm (last visited Apr. 20, 2003) [hereinafter PROFILE OF MINNESOTA'S CHARTER SCHOOL LAW]; CTR. FOR EDUC. REFORM, CHARTER SCHOOL LEGISLATION: PROFILE OF TEXAS CHARTER SCHOOL LAW at http://www.edreform.com/charter_schools/laws/Texas.htm (last visited Apr. 20, 2003).

245. PROFILE OF MINNESOTA'S CHARTER SCHOOL LAW, *supra* note 244.

246. *Id.*

247. *Id.* (stating that non-profit organizations can also lease with the approval of the Department of Education).

248. *Id.*; MINN. STAT. ANN. § 124D.10(12) (West 2002).

249. MINN. STAT. ANN. § 124D.10(11) (West 2002).

250. *Id.* § 124D.10(4).

251. *Id.* § 124D.10(4)(c).

252. *Id.*

253. *Id.*

These requirements in the Minnesota charter school legislation ensure that charter schools are being established and maintained by qualified individuals in the field of education. Texas charter school legislation would greatly benefit from such amendments by raising the quality of education in charter schools.

Admission requirements for charter schools in Minnesota are also similar to those of Texas in that they allow admission to all students in the state.²⁵⁴ However, Minnesota has specific provisions designed to eliminate the phenomenon of one-race schools. The racial balance of the charter school cannot differ from the enrollment area if the charter school is located in a high-concentrated minority area.²⁵⁵ Minnesota also further allows charter school to be reimbursed by the state if they elect to provide bus transportation for the students in the charter school district.²⁵⁶ The charter school may also reimburse parents outside the district for transportation cost of the student if the family is below federal poverty level.²⁵⁷

The Minnesota charter school legislation specifically states that charter schools must comply with the same rules as the traditional public schools when it comes to the education of students with disabilities.²⁵⁸

Ensuring that charter schools are comprised of students from different backgrounds and that students with disabilities are receiving an equal opportunity to attend school are important aspects that Texas charter school laws would greatly benefit from. Overall Minnesota's charter school legislation has been progressive enough to allow change in the public education arena, but it has held the basic elements of professional high standards and fairness in education as one of its top priorities.

With the help of the Texas legislature, charter schools have great potential to produce more success stories like the KIPP Academy and the Yes College Preparatory school. The Texas legislature can improve charter school programs by mandating higher professional qualifications for charter school teachers and administrators; by requiring schools to provide a minimum seven-hour learning day; eliminating an "alternative accreditation status" program, and requiring that charter schools are subject to the state and federal laws governing traditional public school districts.

At the end of the school year I submitted a report to TEA detailing the fraudulent attendance practices at the school. I also submitted photo-

254. *Id.* § 124D.10(9).

255. *Id.* § 124D.10(9)(3).

256. *Id.* § 124D.10(16).

257. *Id.*

258. *Id.*

copies of original attendance records that had been altered and video documentation of the condition of the schoolhouse. TEA eventually did an investigation of the school and I received notification from them that they had found the attendance discrepancies I had reported. The school however, was not shut down, and to this day it remains a charter school in Houston, serving a minority student population, with an "Acceptable" rating.