

# THE NETWORK FOR PUBLIC EDUCATION

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Dear Chairman Bean and Ranking Member Bonamici:

I recently became aware of a hearing that you are holding regarding charter schools on March 6. On behalf of the Network for Public Education, I would like to share our thoughts and concerns regarding the present charter school sector.

## **The evolution of charter schools**

In the 1970s, a New England teacher, Ray Budde, first proposed the idea of a charter school. He envisioned schools founded by parents and teachers that would contract with their local school board to discover new approaches to teaching hard-to-reach students. They would then share what they learned with the school district. Charters were to be part of the school district, under the school board's authority, rooted in the community, accessible to all, and of assistance to the broad public-schooling mission. A few charter schools today remain faithful to much of that vision; most do not.

The first charter school opened in Minnesota in 1992. In 1995, the same year the federal Charter School Programs began, J.C. Huizenga, whose extended family made their fortune in the waste management business, founded the for-profit National Heritage Academies to open, control, and house charter schools in buildings he owned or leased. The following year, the for-profit Leona Group began in Michigan and expanded into Arizona, where most of its schools are located today. One year later, and shortly after Florida's charter school law was passed, Jon Hage, a former researcher with the Heritage Foundation, started the third-largest for-profit chain, Charter Schools, USA. All three corporations then and today run their schools on a profit-making basis, which includes all real estate transactions connected with the schools. The largest for-profit charter management company, Academica, also began opening schools in 1997, starting a for-profit management company to control them two years later<sup>i</sup>.

The first for-profit online charter school emerged in 2000 when former banker Ron Packard founded K12 Inc. K12's rival, online Connections Academy, began a year later in 2001. For-profit charter management corporations, some controlling hundreds of schools and others controlling only one or two, by 2022, educated twenty percent of all charter school students.<sup>ii</sup> An even greater number of students are enrolled in large state or national nonprofit charter chains whose CEOs make salaries approaching one million dollars, far beyond the pay for the superintendents of the nation's largest public school districts.

Ray Budde's original idea of the innovative school, opened by a democratically elected school board, which alone has the power to determine the school's mission and continuation, now exists in only two states—Virginia and Kansas. Today, most charter schools are taxpayer-funded businesses. Congress acknowledged this by allowing charters to receive Paycheck Protection Plan (PPP) funding during the pandemic.

As chartering became a business, a powerful lobby emerged to advocate for more independence and funding and less accountability and transparency. Lax laws have regularly resulted in charter churn (schools quickly opening and then closing), fraud, and abuse of taxpayer funds. And lobbying has resulted in the expansion of the Federal Charter School Programs (CSP), now funded at nearly a half-billion dollars a year. According to the U.S. Department of Education, CSP has given millions of dollars to schools that never opened or that closed even before their grant ended—14.5% of all grantees<sup>iii</sup>. These numbers do not include charter schools that closed after the grant dispersal period of three to five years.

### **What we know about charter schools and charter school laws**

Forty-six states and the District of Columbia have charter school laws, although Kentucky's charter law was recently found to violate that state's constitution. States' various charter laws range from allowing charter schools to only be district schools (e.g., Virginia) to allowing charter schools to themselves be for-profit entities (Arizona). Thirty-five states allow for-profit corporations to manage nonprofit charter schools, including via "sweeps" contracts that allow tax dollars and control to be funneled to the for-profit that runs the day-to-day operation of the school. In six states (Arizona, Florida, Michigan, Nevada, Ohio, and West Virginia), for-profits manage over 30 percent of the charter schools in the state.<sup>iv</sup> For-profits are allowed to run virtual, low-performing online schools in 32 states. The resulting profit-taking – as well as the exorbitant CEO salaries at non-profit management companies – reflects the stark shift away from a community mission.

Concerns regarding charter schools, however, go well beyond their management.

**Charter churn:** Unlike district public schools, charter schools are entrepreneurial—a private, non-elected board starts the school, governs and runs the school, and decides (or is forced) to close the school. The opening and shutting of charter schools regularly results in disruption in the lives of families and instability in communities and districts.

In 2021, Dr. Ryan Pflieger, an independent researcher, examined charter closure rates for the Network for Public Education. He used then-available data from the Common Core of Data for 1999 to 2017 to determine closure rates based on the year the school opened. During those years, 25% of charter schools closed within five years. By year 10, the closure rate was 40%. Dr. Pflieger estimated that charter closures had displaced one million children by 2019.<sup>v</sup>

Similarly, the National Center for Research on Education on Access to Educational Choice (REACH) found the annual charter closure rate alone to be 5.4%, with an additional rate of "restructuring" at 1.6%.<sup>vi</sup> These numbers did not include charter schools that had to return to district schools due to poor performance, scandal, or mismanagement.

In 2022-23, according to the recently released National Center for Education Statistics (NCES) database, 240 new schools opened—30 of which had 25 or fewer students.<sup>vii</sup> That same year, 135 charter schools closed, became public schools, or were "inactive" and had no students. According to Bloomberg News, the number of financially distressed charter schools is "at a record high."<sup>viii</sup>

The number of school-age children in the U.S. has been dropping, and according to NCES projections, that number will continue to decline through 2030.<sup>ix</sup> In the past, school boards could look at these numbers and plan ahead with hiring and with school openings and closings. This planning is crucial; when enrollment drops, fixed costs, often referred to as stranded costs, remain the same while per-pupil costs to provide equivalent services increase. That means that local taxpayers are on the hook to

maintain the same level of service in their public schools even as they are funding an additional system. Economies of scale are lost.

For obvious reasons, charter school churn greatly complicates this decision-making and the burden on taxpayers. Yet, only five states have meaningful cap controls on the number of charter schools that can open. This results in charter schools competing for students not only with district public schools but even with other charter schools (as well as private schools), resulting in school closures and further loss of economies of scale.

**Charter school mismanagement and fraud:** Corruption and mismanagement in the sector is an ongoing concern. Each state has its own charter laws regarding transparency and accountability. The majority have insufficient protections. According to the National Alliance of Public Charter Schools database, thirty-three states allow owners or employees of the management corporation (for-profit EMO or non-profit CMO) that operates the school to serve on the school’s nonprofit and supposedly independent board. Forty-two states allow potential conflicts of interest between the charter school and its service providers. In nineteen states, those related-party transactions are not even required to be disclosed.<sup>x</sup>

After a ten-year investigation, the owners of Epic Youth Services (EYS) and the financial officer for both Epic Charter and EYS were arrested in June of 2022 for cheating Oklahoma taxpayers out of tens of millions of dollars. The trio had regularly enrolled “ghost students,” including students in home and private schools, created fake invoices, used school credit cards for personal items, and dipped deep into the school’s “learning funds” account to make political contributions to stall and obstruct an audit.<sup>xi</sup>

In 2022, Torchlight Academy in North Carolina was closed due to comparable impropriety. A for-profit charter corporation of the same name was owned by a local businessman who managed the school and owned the building, thus setting the contract lease terms. His wife was the principal. Their daughter, the director of special education, altered student records. Her husband was on the payroll for \$20,000 a month to clean the small schools’ classrooms.<sup>xii</sup>

A Texas charter school named East Austin College Prep made national news in 2019 when the *New York Times* reported complaints of raccoons and rats invading classrooms, rain pouring in through a leaky roof, and furniture occasionally falling through rickety floors. Yet, according to the story, the charter high school paid almost \$900,000 in annual rent to its landlord, Southwest Key Program.<sup>xiii</sup>

These are three examples of the hundreds of documented cases that result from a lack of regulation and insufficient oversight of the sector. It is often years before fraudulent and irresponsible practices are exposed if they are exposed at all.

The NPE website includes more than 1,000 press articles on fraud, mismanagement, profiteering, closures, and discrimination in the charter sector since 2017.<sup>xiv</sup>

District-run public schools are subject to sunshine laws, regulations, bidding laws, public audits, and detailed public records to prevent – or at least significantly reduce – such instances of fraud and abuse. We ask, “Why is a lack of transparency necessary for charter school innovation?”

**Academic achievement of students in charter schools:** Notwithstanding the loudly trumpeted claims of charter-school advocates about the relative success of charter schools in improving the measured outcomes of students, the majority of studies show that students in charter schools do about the same as

students in public schools, thus providing no meaningful academic advantage. Moreover, because of access barriers that shape who enrolls in – and stays in – charter schools, studies cannot adequately control for differences between the two groups of students.

The National Center for Education Statistics (NCES) report entitled *School Choice in America*, issued when Betsy DeVos was Secretary of Education, compared charter school students' scores on the NAEP with public school scores while controlling for parents' educational attainment. According to that study, “no measurable differences in average 8th-grade reading and mathematics scores on the National Assessment of Educational Progress (NAEP) were observed between students in traditional public and public charter schools.”<sup>xv</sup>

A recent CREDO report, which has received considerable attention, showed some minor advantages for charter schools overall. We note here that, while often referred to as “Stanford’s CREDO,” that is a misnomer. CREDO is housed in the pro-school choice, conservative Hoover Institution located on the campus of Stanford University. It is *not* a research department of Stanford University. Moreover, CREDO reports have been critiqued by scholars, not only on methodology but also for its contrived measure known as Days of Learning, which exaggerates outcomes. In fact, when the gold standard of research, effect sizes, is used, the lack of any notable differences in achievement becomes apparent – even from this recent study.<sup>xvi</sup>

One of the difficulties in comparing the two sectors is controlling for selection effects—students are not generally assigned to charter schools by their residence, commonly referred to as catchment area. Instead, the students enrolled in almost all charter schools are, by definition, those who have parents who are actively engaged in choosing a school for their child — a strong sign that these children are also likely benefiting from parental engagement overall. Yet researchers have no way to control for this in panel data (regression) studies like CREDO’s (and studies using over-enrolled charter schools that use lotteries have limited generalizability).

However, a recent report sheds light on comparative student outcomes when charter schools don’t shape their own enrollment – when students are assigned without applying to a charter school. The city of Philadelphia engaged in school reform called the Renaissance Initiative beginning in 2010. The district took some of its struggling public schools and made them charter schools. They kept the same catchment areas so that there would be no lotteries, enrollment privileges, or even the obligation to apply—students would be assigned to a neighborhood school, but it would be a charter school not managed by the district. Fourteen years later, the students in those charter schools, on the whole, have lower achievement than those in the Philadelphia public schools. Nearly one-fourth of those charter takeovers have closed or were doing so poorly that the district had to resume control.<sup>xvii</sup>

**How charter schools shape enrollment:** In 2021, researchers Wagma Mommandi and Kevin Welner of the University of Colorado Boulder co-authored *School’s Choice: How Charter Schools Control Access and Shape Enrollment*. The authors identified a wide variety of charter school practices and decisions that shape their enrollment, and they placed these practices into 13 different categories. Three of these categories are pre-enrollment, such as decisions about where to locate and how (and to whom) to market the school. Five categories contain practices during the enrollment process, such as letting prospective families of students with disabilities know that they have limited or no services for those students and steering them away from the school. And five more categories cover practices used by charter schools after students are enrolled, such as repeated suspensions and counseling students out (e.g., telling parents that their children will be retained in grade if they remain at the charter).<sup>xviii</sup>

Beyond those practices described above, there are state-sanctioned enrollment privileges. Our review of laws, based on information contained in the National Alliance for Public Charter Schools database and the Education Commission of the States, revealed that although charters claim they are open to everyone via a lottery, 39 states give enrollment preferences to students beyond siblings and disadvantaged students. Four states allow charter schools to shape enrollment using academic and talent screening. North Carolina now offers enrollment privileges to tuition-paying foreign exchange students and the students of selected private preschools. Florida law gives exclusive enrollment privileges to the employees of businesses that service a retirement community, The Villages, whose developer started a charter school. If the parent quits, the child is dismissed from the school. Employment is checked monthly.<sup>xix</sup>

The ability of charters to shape enrollment was one of the reasons that Judge Phillip J. Shepherd of Kentucky's Franklin County Circuit Court struck down the state's charter school funding law. Judge Shepherd explained why charter schools were not public schools according to the constitution of the Commonwealth of Kentucky.<sup>xx</sup> In rendering his decision, he noted that charter school enrollment caps would result in the "rejection of children who through no fault of their own lack the resources, parental involvement, language skills, or other means to succeed in school or the charter school admissions process."

Systemic enrollment bias should also be at the forefront of any discussion of the very small differences that show up in some studies (e.g., the recent CREDO study) that compare charter schools to nearby district-run schools. As Mommandi and Welner explain in their book, those differences can easily be attributed to variables that are not (and realistically cannot be) included as controls in the researchers' models.

## **Summary**

In that recent decision, Judge Shepherd called charter schools a "separate and unequal system of education." He based his decision on the following features: exemption from traditional oversight and regulation; enrollment caps, thus shutting out some children; for-profit management of the schools, therefore providing no "guardrails that ensure these tax dollars are used for a public purpose;" and governance by a board not elected by the public.

We agree with Judge Shepherd. Charter schools have wildly veered from their original purpose—to develop models to meet the needs of students unsuccessful in traditional schools under the supervision of democratically elected school boards. They have become an industry with a powerful, well-funded lobby that seeks to loosen rules and regulations while advocating for additional taxpayer funding and sector expansion.

While much of the blame for waste, fraud, and abuse in the sector results from insufficient state laws and regulations, Congressional action can make a difference. The Network for Public Education recommends the following.

- Move funding from the Federal Charter School Programs to Title I and the Community Schools Program. Both of these latter programs are underfunded and benefit all schools—public and charter alike. The CSP has expanded well beyond its original modest mission and has become a cash cow for real estate developers and even charter advocacy and lobbying organizations, including the National Alliance of Public Charter Schools.

- Prohibit federal funding from going to charter schools run by for-profit corporations. The running of schools by for-profits is a clever workaround of a 2006 Ninth Circuit ruling that allowed the U.S. Department of Education to withhold federal funding from charters owned by for-profits (based on the Elementary and Secondary Education Act of 1965).<sup>xxi</sup>

We thank you for your attention and commitment to our nation’s children. In addition to our extensive footnotes, we are happy to provide additional resources upon request.

Respectfully submitted on behalf of the Network for Public Education,

*Carol Burris*

Carol Corbett Burris, Ed. D.

Executive Director

*The Network for Public Education is a national advocacy group whose mission is to preserve, promote, improve, and strengthen public schools for current and future generations of students.*

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<sup>i</sup> The development of the for-profit sector is documented in the Network for Public Education. (2021). *Chartered for Profit: The Hidden World of Charter Schools Operated for Financial Gain*. <https://networkforpubliceducation.org/chartered-for-profit/>

<sup>ii</sup> Network for Public Education. (February, 2023). *Chartered for Profit II: Pandemic Profiteering*. <https://networkforpubliceducation.org/chartered-for-profit-ii-pandemic-profiteering/>

<sup>iii</sup> U.S. Department of Education. (2022). *Charter School Programs Final Rulemaking Fact Sheet*. [https://oese.ed.gov/files/2022/07/CSP-Fact-Sheet\\_v3\\_07.06.22.pdf](https://oese.ed.gov/files/2022/07/CSP-Fact-Sheet_v3_07.06.22.pdf)

<sup>iv</sup> See National Alliance for Public Charter Schools. (2023). *Charter Law Database States*. <https://web.archive.org/web/20230201015532/https://www.publiccharters.org/our-work/charter-law-database/states>; Education Commission of the States. (2020, January). *Charter School Policies*. <https://reports.ecs.org/comparisons/charter-school-policies-03> and Network for Public Education. (2023, February). *Chartered for Profit II: Pandemic Profiteering*. <https://networkforpubliceducation.org/chartered-for-profit-ii-pandemic-profiteering/>

<sup>v</sup> Network for Public Education. (2020). *Broken Promises: An Analysis of Charter School Closures from 1999-2007*. <https://networkforpubliceducation.org/brokenpromises/>

<sup>vi</sup> Douglas N. Harris, Valentina Martinez-Pabon. (2024). *Extreme Measures: A National Descriptive Analysis of Closure and Restructuring of Traditional Public, Charter, and Private Schools*. *Education Finance and Policy* 2024; 19 (1): 32–60. [https://doi.org/10.1162/edfp\\_a\\_00386](https://doi.org/10.1162/edfp_a_00386)

<sup>vii</sup> Data from this analysis can be found by using the National Center for Education Statistics Common Core of Data table generator which can be found at <https://nces.ed.gov/ccd/pubschuniv.asp>.

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<sup>viii</sup> Melina Chalkia and Nic Querolo (February, 2024). Charter-School Stress Breaks Record With Pandemic Aid Ending. Bloomberg News. <https://finance.yahoo.com/news/charter-school-stress-breaks-record-181238315.html>

<sup>ix</sup> National Center for Education Statistics. Digest of Education Statistics. [https://nces.ed.gov/programs/digest/d21/tables/dt21\\_105.30.asp](https://nces.ed.gov/programs/digest/d21/tables/dt21_105.30.asp)

<sup>x</sup> See National Alliance for Public Charter Schools. (2023). Charter Law Database States. <https://web.archive.org/web/20230201015532/https://www.publiccharters.org/our-work/charter-law-database/states>

<sup>xi</sup> Prather, Megan. (2021, May 27). “Epic Charter Schools cuts ties with Epic Youth Services, co-founders Ben Harris and David Chaney.” Nondoc.com. <https://nondoc.com/2021/05/27/epic-char-ter-schools-cuts-ties-with-epic-youth-services-co-founders-ben-harris-and-david-chaney/>

<sup>xii</sup> Walkenhorst, Emily. (2022, April 27). “NC education officials reject Torchlight Academy’s appeal to stay open.” WRAL News. <https://www.wral.com/nc-education-officials-reject-torchlight-academys-appeal-to-stay-open/20255272/>

<sup>12</sup> Kim Barker. (March, 2019). Southwest Key, Known for Migrant Shelters, Cashes In on Charter Schools. The New York Times. <https://www.nytimes.com/2019/03/15/us/southwest-key-schools.html>

<sup>xiv</sup> For our complete listing, see <https://networkforpubliceducation.org/charter-scandals/>.

<sup>xv</sup> See National Center for Education Statistics. (2019). School Choice in the United States: 2019. Indicator 6: Reading and Mathematics Performance. [https://nces.ed.gov/programs/schoolchoice/ind\\_06.asp](https://nces.ed.gov/programs/schoolchoice/ind_06.asp)

<sup>xvi</sup> Valerie Strauss. (October, 2023). Why What Looked Like Good News for Charter Schools Actually Isn’t. Washington Post. <https://www.washingtonpost.com/education/2023/10/12/charter-schools-good-news-that-isnt/>

<sup>xvii</sup> Dale Mezzacappa. (March, 2024) Philadelphia’s ‘Renaissance’ Charter Schools Did Not Produce What Was Promised. Chalkbeat Philadelphia. <https://www.chalkbeat.org/philadelphia/2024/02/28/philadelphia-renaissance-charter-schools-didnt-better-student-performance/>

<sup>xviii</sup> Mommandi, Wagma and Kevin Welner. (2021). School’s Choice: How Charter Schools Control Access and Shape Enrollment. Teachers College Press.

<sup>xix</sup> For documentation, see Network for Public Education. (March, 2024). Public Schooling in America: Measuring Each State’s Commitment to Democratically Governed Schools. <https://networkforpubliceducation.org/public-schooling-in-america-2024/>

<sup>xx</sup> Council for Better Education, Inc. v Jason Glass. <https://www.documentcloud.org/documents/24214199-hb-9-circuit-court-ruling?responsive=1&title=1>

<sup>xxi</sup> Arizona State Board for Charter Schools, et. al. vs U.S. Department of Education. 464 F.3d 1003 (9th Cir. 2006). Retrieved from <https://caselaw.findlaw.com/us-9th-circuit/1467197.html>