

PUBLIC SERVICES REDESIGN PROJECT

June 1992

THE CHARTER SCHOOLS IDEA

Minnesota's policy has been to develop choice as public school choice: Gov. Perpich's proposal in 1985 was to let kids choose the public district they want to attend, and as it later broadened the range of choices available the state remained within the framework of public education.

Some of this broadening of choices was useful but not radical; like the 1987 law encouraging districts to create alternative schools for "kids not doing well". Some of it has been radical; like the 1985 law permitting 11th- and 12th-graders to finish high school in college and the 1991 law that introduced the idea of charter schools. In both of the latter the state affirms that some other organization may offer public education within the boundaries of a school district.

This idea of an alternate public sponsor may be helpful in the national discussion about improving K-12 education. That discussion is considering ways to expand choices. But it remains polarized around traditional concepts of public education and private education. So it remains trapped in a practical and political dilemma. New schools can be created by districts, and could be financed, but probably would not be autonomous enough and different enough really to challenge the district's existing schools. New schools created outside public authority would be autonomous and different and challenging, but would depend for their financing on private fees, private grants -- or vouchers.

Here is where the charter schools idea comes in.

The 'charter' idea is to offer change-oriented educators or others the opportunity to go either to the local school district or to some other public body for a contract under which they would set up an autonomous (and therefore outcome-based) public school which kids could choose to attend without charge.

The idea of new schools within the framework of public education . . . of a contract system rather than a voucher system . . . offers a way out of the dilemma. That may explain why the charter idea has appeared this year in Detroit, Chicago, Philadelphia, Baltimore and Milwaukee and in the legislatures of Michigan, Pennsylvania, Colorado, Tennessee, Connecticut, New Jersey, Massachusetts and, most importantly, California.

It's easy to see why the charter idea sets up dynamics.

* It offers governors and legislators a way out of the dead end in which they have been trapped by the conventional policy discussion; told they can choose only between sending checks to superintendents and sending vouchers to parents.

* It promises to accomplish what the 're-structuring' idea could not: autonomy for schools, policy roles for boards, professional opportunities for teachers and accountability -- to the public through outcomes and to parents through choice.

* It challenges the conventional wisdom that improvement requires more money. The charter schools in Minnesota will not get more money. What they get is freedom. This will give governors and legislators an interesting opportunity to test a new and different strategy.

Pretty clearly it is the appeal of this middle way that accounts for the interest in California. For the chairs of the education committees in both the Senate and the Assembly the charter idea is an alternative to the private-school-voucher plan which it now appears will be on the ballot in November.

What follows will (1) list the major questions that have to be answered in designing a charter-schools bill; (2) explain the legislative history of the idea in Minnesota; (3) describe the experience in Minnesota with proposals under the 1991 law; (4) summarize what we know about the spread of the idea to the policy discussion in other states and (5) try to explain where the idea fits in the discussion about a strategy for improving education.

What a charter school would be

The questions are pretty much the same everywhere. The answers that follow are mainly Minnesota's answers (though not in all respects Minnesota's present law). They include some different ideas appearing in other states.

Who can run a charter school? Minnesota law limits the opportunity to "one or more licensed teachers". Other states feel (as did the authors in Minnesota; see below) that it should be open also to an individual, to a group of parents or to an organization (a museum, a social-service non-profit, a hospital, a university, a zoo, for example).

The school may be either a new school or an existing school converted to charter status. Minnesota law provides no separate process for the second case: The level of support among teachers and/or parents would be a consideration for the potential sponsor in deciding whether or not to approve. In some other states the bills provide for a vote and specify the level of support required for an application to be considered.

No state is going to let just anybody set up a school and teach kids with public funds. But how does it control who can and who can't? One approach is to develop criteria that will automatically rule out the 'wrong' people. That's easy to say. It is not so easy to agree who exactly is 'wrong', or to anticipate all the 'wrong' types that might some day apply.

In Minnesota the task force convened in 1990 by Commissioner Tom Nelson decided against the 'criteria' approach. It settled instead on a control-system that trusts public bodies to make commonsense decisions where they will be visible and accountable. To the question: "Who can form a school?" Minnesota's answer is: "An applicant who can persuade a school board and the State Board to vote it a charter". Anyone is free to apply.

What public bodies can grant a charter? The responsible public body could be a district board of education, the state board, some intermediate body in the education system; perhaps the board of a public college or university system. It could be a new agency created by the Legislature for just that purpose. It could conceivably be a unit of general local government; a city council or county board. In California there was some thought of letting organizers put their proposal to a vote of the people; a 'yes' vote requiring the state to grant a charter.

It's essential that the organizers be able to approach some body other than the local board: Only then are real dynamics created. In Minnesota the first approval required is that of "a school board", but this need not be the board of the district in which the teachers work or of the district in which their school would be located. The Senate bill in California would require proponents to go first to a local board but would give them a right of appeal to the state board. In Tennessee, Colorado and Massachusetts the 'charter' idea is simply of the state board creating a new class of public schools.

What will the school be legally? It's a central feature of the charter idea for the school to be a discrete entity. It is the school's legal existence that establishes its autonomy, confirms the public board in a policy role and as a result makes student and fiscal performance the test of accountability.

Minnesota law provides for the organizers to set up as a Chapter 317 non-profit or as a Chapter 308 co-operative; a producer co-op of teachers or (if this were permitted) a consumer co-op of parents. Minnesota did not think about two other forms commonly provided in state law -- the limited partnership and the professional corporation. Other states might.

The statutes will provide the school with its internal governance and prescribe its powers and duties. Between school and sponsor there will be a written agreement that will set forth the program, the outcomes to be achieved, the admission policies, the requirements to be complied-with and the term of the contract (usually three or five years).

What rules will the school have to follow? A choice program will be what its design provides. Minnesota requires a charter school to observe health and safety codes and to meet the requirements that essentially define public education:

- * Admit everyone or give everyone an equal chance of being admitted. No picking and choosing 'nice kids'.
- * Obey the laws against discrimination as they apply in public education.
- * No religious instruction, or religious character to the school.
- * The school is free. No charging tuition.
- * No elite academies, academic or athletic.
- * Follow the pupil-fair-dismissal act.

A charter school, as a school of choice and accountable for results (see below) is exempt in Minnesota from the laws and regulations provided for schools to which kids are assigned. The Legislature in effect gives the school the power to grant itself the waivers the school believes it needs to change the way time, people, facilities and resources are used for learning.

How will the school be accountable? First, to its sponsor. In return for the freedom to decide how things are done the school agrees to a test of performance: A charter can be revoked during its term if the school fails to meet the student performance objectives, if it mis-manages its finances or if it in any way violates the law; or for "other good cause". The school's existence depends on its meeting the student-performance objectives it agreed with its sponsor it would meet, and state outcome requirements if they exist. At the end of the term the sponsor could not-renew, without having to show cause.

Second, the school will be accountable to . . . will have to satisfy . . . its student/parent community, which it will have to attract and to hold. (The school would be a school of choice, on the theory that we do not assign people to innovations.)

What would the school offer? A charter school could (but need not) specialize: in kids of a particular age or grade; in a particular learning method; in a certain subject field, in students of a particular sort (in at-risk kids, for example, or special populations). The Minnesota law allows a school to serve a neighborhood in which the proportion of "non-caucasian" is higher than the proportion in the congressional district in which the school is located: in plain words, to serve communities of color not well served by regular school.

Who would the teachers work for? The charter school could look very much like an existing school, with teachers employed by the board of the organization that owns the school. The teachers would have the rights available in the state to organize and to bargain collectively; with the board of the school, of course, rather than with the board of the sponsoring organization.

Alternatively a school could be formed by teachers who chose not to be employees but to be the members of the non-profit, cooperative or partnership. They might well continue as members of the union but the union would not bargain for them: The teachers not being employees and there being no employer the question of bargaining simply would not arise. This quite unconventional arrangement might appeal to some teachers and might not be a problem for the union: "We represented a lot of teachers when we didn't bargain for any of them", one union leader points out.

The teacher-professional model is possible even where a parent group or a social-service non-profit forms the school. The teachers would form a limited partnership through which they would contract to run the instructional program of the school for a defined sum for a defined period. Within their partnership the teachers would design the curriculum, select the learning methods and materials, make the work assignments, prescribe the training, measure student performance, evaluate teacher performance and decide their own compensation in the manner of other professional organizations. The board of the non-profit would handle the non-instructional affairs of the school.

How does the school get financed? The money-arrangements will vary with the school-finance system in each state. The general idea is for the average per-pupil amount spent in the state, previously paid by the state to the district, now to be paid to the school. This puzzles people, who know education finance is a combination of local (property) revenue and state (non-property) revenue. The common assumption is that only the state money can move. How then does the school end up with the average amount-spent, if total spending is not to increase?

The key is not to think of an individual student as some combination of local dollars and state dollars. Rather, think of a district as a box partly filled with kids who are entirely locally-financed; topped-off by kids who are entirely state-financed. Then assume the student enrolling in the charter school is a student off the top, fully state-financed. This is a fair way to describe a foundation program. States with different financing may need another approach. It is a complex system.

The school would be eligible for other categorical aids and for state and federal grants, and could solicit contributions (as districts do). The extra cost of special education would lie with the district of residence, as it normally does now. Not being a government the charter school could not of course issue public debt or levy taxes.

Where would the school get space and other services? The law should make clear it is OK for the district to lease space and to sell services to the charter school. It should also be clear the school is free to get its space and services elsewhere in the community. If it can reduce these costs it can put more money into instruction.

What about transportation? Inter-district programs of public-school choice require the student to travel, since the other teaching-organization is of course in some other place. Minnesota's policy is for the 'serving' district to bus non-resident kids to school as if they were its resident students. A district will sometimes send its buses across the border to pick up students, but in law it is the student's responsibility to get to the district s/he wishes to attend. (Aid is available for needy students.)

When the other school the student wishes to attend is not in some other place the 'travel' problem is much reduced. This is the case with Minnesota's post-secondary option: The University of Minnesota is smack in the middle of the Minneapolis district. This will also be the case with some charter schools. In practice administrators will simply work it out. One idea is for students to ride the regular buses to a central point (say, the high school) and then take a shuttle to their charter school.

Liability: Accidents happen; people sue. The school will have to buy insurance. The law exempts the sponsor, its board and its employees from liability for acts involving the school.

How the law got enacted in Minnesota

Minnesota's legislation rose out of several different streams of thinking that flowed together about 1988.

Contract schools had appeared in Minneapolis in the late 1960s. Social-service non-profits (the Urban League and others) set up educational programs for drop-out youth. The school district initially provided about half their funding, on a simple contract. Gradually these developed into real schools, became accredited and grew in size and in number. By 1988 there were about a dozen such schools enrolling not only high-school but also middle-school and even at-risk elementary students; some of them also in Saint Paul. The districts must now pass through to these schools 88% of average statewide operating cost.

As early as 1971 the Minnesota Department of Education had begun to talk about **school-site management**. In 1981 the Northwest Area Foundation underwrote a major demonstration. Ruth Randall promoted the idea after becoming commissioner in 1983. Districts were quick to adopt at least the rhetoric: By the late '80s the idea of increasing school autonomy was 'in'.

In the '80s the idea of **teacher professionalism** came into the discussion; part of the "restructuring" agenda for which Albert Shanker, the president of the American Federation of Teachers, became a leading spokesman. A local non-profit explored the idea of giving teachers the option to establish within public education the independent arrangement it believed characterizes professional work.

Some of this was picked up by leaders of AFT locals; among them the head of the Minneapolis local, Louise Sundin. In 1987 she helped get the site-management and teacher-professionalism ideas into a report on the Minneapolis schools, and later into the design for Chiron, an innovative middle school planned by a private group for ownership and operation by Minneapolis.

Shanker had talked to the National Press Club in March 1988 about teachers being able to start schools-within-schools on a 'charter' from the board. He talked about it again that October at a retreat sponsored by the Minneapolis Foundation, at which Seymour Fliegel described the innovative schools in East Harlem. Sandra Peterson, the president of the Minnesota Federation of Teachers (MFT), was there, as were Sundin and two legislators later to play key roles: Ken Nelson, in his eighth term and chair of the Finance Division of the House Education Committee, and Ember Reichgott, a lawyer then in her second term in the Senate who had played a key role in expanding the public-school choice program in the 1988 legislative session.

Reichgott drafted a charter-schools provision and got it into the Senate's omnibus education bill that year and again in 1990. Both times it was rejected by the House in conference, despite support from Ken Nelson.

In the summer of 1990 the then-commissioner of education, Tom Nelson, formed a working group of public educators and others to think through the idea with some care. A bill was drafted, and endorsed by the State Board of Education. The election that fall brought in a new governor and a new commissioner. Reichgott re-worked the bill and introduced it in the 1991 session. Rep. Becky Kelso introduced it in the House.

In hearings in both houses there was strong testimony from individuals: from a teacher who had worked to set up a chemical-free school on contract to Minneapolis, for example, and from a teacher and a principal interested in 'going charter' in North Branch, a farm trade center (and a residential community for commuters to the Twin Cities) about 40 miles north of Saint Paul.

The idea had no organizational support beyond the State Board and the Citizens League, a policy-studies group previously interested in choice and in site-management which had recommended charter schools in December 1988. The bill was opposed by the MFT and the Minnesota Education Association. The Minnesota School Boards Association disliked the idea of anyone other than a school board creating schools. The new commissioner of education was not actively opposed but was not supportive.

Kelso had decided not to press for a vote in the House, given the opposition there. A charter provision was in the Senate's omnibus bill. The key vote would be in conference.

The Senate conferees were united in support. The House conferees were divided, with Ken Nelson the key vote; under

pressure from proponents to support the Senate position and from opponents to block charter schools entirely. He decided on a compromise. He would support everything else in the Senate provision if senators would agree to let the schools be created only by teachers, to narrow the sponsorship to school boards (with approval by the state board) and to set up the program as a pilot by limiting the total number of schools to eight. Reluctantly the senators agreed. There was also some further protection against use of the law by religious organizations.

When the omnibus bill came back from conference opponents mounted an intense effort in the House to reject it, largely though not entirely over the charter schools provision. They lost 60-64 in a vote that crossed both party and urban/rural lines. Two days later the Senate approved the conference report easily. June 4 Gov. Carlson signed the bill.

The first year of implementation in Minnesota

There have been more proposals than supporters had expected given the difficult process created. There was no time for fall '91 starts: All proposals are for starts in fall '92 or later.

There have been proposals to create new schools and to charter existing schools; proposals for at-risk kids and for mainstream kids; for elementary schools and for secondary schools; from teachers and from parents through teachers; from Minneapolis and Saint Paul, from the suburbs, from cities outside the metropolitan area and from small towns. Superintendents have sometimes approved; more often not. Their recommendations, for and against, have sometimes been supported by boards; sometimes not. The State Board of Education has approved some proposals that have reached it, but not all. Efforts to use the charter law can be grouped this way:

* To try different approaches to learning. A group in Northfield proposed a new middle school that would expect students to be more active and to take more responsibility for their learning, in a community setting. Their proposal was rejected. Joan Riedl, a teacher who lives in St. Cloud, wanted to set up there the elementary program -- cooperative, small-group, self-directed learning using video, computer and other technologies -- which she now runs in Princeton. Her proposal was rejected by the St. Cloud board. The Princeton board did not want to give her a charter to operate in St. Cloud. St. Cloud offered to set her up as a district program but on an arrangement that offered no security and required a big cut in pay, and she rejected that.

Proposals continue to appear: One from a teacher for a set of new 'cottage schools' has yet to be voted-on in Stillwater. But districts seem to resist new charter schools for mainstream kids regardless of the innovation proposed. The fact that the money and the jobs remain in the community, essentially reallocated, makes no difference: What matters is the loss of

revenue and jobs to the district. The feeling is that the state dollars (implicitly, also, the kids) belong to the district.

* To create a Montessori option, either by bringing an existing school into the public system on charter status (Winona, Rochester) or creating one of these schools new. In Forest Lake parents had been seeking an elementary Montessori. The district had been resisting: Can't find space, can't find teachers, can't work out the transportation, administrators said. Proponents said: Give us a charter and we'll solve those problems. The board was receptive. Quickly the administration decided it could do a district school after all. The proponents accepted. The new Montessori leveraged by the charter proposal will open in Forest Lake in fall '92.

* To serve at-risk students. There is a significant interest in using the charter law for kids who have not done well in regular school. Saint Paul has signed a letter of intent with the City Academy to take some of the students from a district-operated alternative school that failed and is now to be closed. That charter proposal was approved by the state board June 8.

The most interesting effort involves the Area Learning Center set up by Mounds View (a suburban district north of Saint Paul) in 1988. That ALC had been growing rapidly under an aggressive director. Most of the students are over 16 and do not have to go to school. To attract them back the school (like other alternative schools) believed it had to be different. But several proposals were rejected by district administrators. Late in 1991 the superintendent decided to remove the director. The school then asked for charter status: As a separate entity its decisions would not create complicating precedents for the district and the ALC could of course choose its own director.

When the proposal came to the board it seemed to present no significant negative impact on finances or on jobs. The president of the Mounds View Education Association reported the local had taken no position: Teachers in the ALC had voted 32-2 for charter status. The superintendent opposed the proposal, however, and the board voted 4-3 to deny it. Two months later the chairman (a 'no' vote) was defeated for re-election. The proposal will probably be re-submitted.

* To preserve small-community schools. Several proposals have involved an effort to charter a small school in rural Minnesota which the school's own district had proposed to close.

The St. Louis County district had proposed to close the K-12 school at Toivola/Meadowlands. The school asked for charter status. The superintendent and board agreed to give it a try and the state board approved. Other, similar proposals have had a harder time: A school has sometimes had to look for another board to be its sponsor, and boards elsewhere have been reluctant to offend their neighbors. Rapidan elementary, which did find a sponsor some distance away, was turned down by the state board.

This reluctance has stemmed from an early sense that chartering small schools would threaten the state's consolidation program. Gradually, however, the discussion stimulated by the proposals has helped Minnesota think more clearly about the difference between district size and school size; between the consolidation of schools and the reorganization of districts.

In Minnesota the case for enlarging districts (bigger tax base, higher salaries) has been made mainly by arguing against small schools (too few course-offerings, high cost). So the state came to think of a single process ('consolidation') closing both small districts and small schools. This has been counter-productive: The desire in small communities to preserve local schools has blocked, politically, the effort to create larger districts. The charter legislation might break this impasse. By providing a way to continue a small school it might actually make it easier to reorganize small rural districts, and in the process help Minnesota affirm the value of small schools.

* To serve special populations. In Minneapolis a proposal for a school to serve brain-damaged children, recommended by the superintendent, was turned down 4-3 by the board. In Forest Lake the board approved, 7-0, a proposal not recommended by the superintendent to set up a day school for deaf children using American sign language. (Currently the only choices for deaf children in Minnesota are to go to the state residential school for the deaf or to be mainstreamed.) If approved by the state board in August the new school will set up somewhere in the Twin Cities area, and is likely therefore to be the first charter school to operate outside the district by which it is sponsored.

Supporters had hoped that if they did not propose to expand the law during the 1992 session opponents would not try to cut it back. When the education bill came to the floor the chairman of the House Education Committee did, however, move to repeal the charter school provision. The effect was to put members on record on this issue just ahead of their meetings with labor groups about their campaign endorsement. The motion lost 60-69.

The charter schools idea in other states

Legislators seem to be more interested than governors. Almost everywhere it is introduced the charter idea seems to attract a bipartisan coalition. No bill passes on the first try. (It passed in Minnesota the third year it was introduced.)

Michigan's Gov. Engler proposed a charter-schools bill late in '91. Sen. DeGrow put it into the K-12 appropriations bill but opponents got it taken out this year on the floor. Contact: Mike Addonizio (517/335-7839) or Sen. DeGrow (517/373-7708). The reform school board in Detroit uses the term 'charter' to describe the 'empowered' status it is trying to develop with certain of its schools. The overall document is just now being drafted. Contact the board chair, David Olmstead: 313/496-7510.

The chairs of the education committees in **California**, Sen. Gary Hart and Assembly Member Delaine Eastin, held a joint press conference Feb. 1 to announce their (somewhat different) bills. Hart: 916/445-2522. Eastin: 916/445-9431. Hart's bill, with the stronger provisions, has now passed the Senate.

In **Tennessee** an initiative late in the session by a citizen group headed by Bill DeLoache (615/352-2080) got caught in the aftermath of a struggle between governor and Legislature. The bill will be discussed in the interim and reintroduced in '93.

In **Colorado** the alternative-school movement took the lead in a bill which would let a school, by vote, leave its district and join an independent public school district sponsored by the state. Opposed by every major education group it passed the House 38-23 before dying in the Senate. Contact: Barbara O'Brien at the Colorado Children's Campaign: 303/839-1580.

The near-passage of a voucher bill in the **Pennsylvania** Legislature late in '91 led the Pennsylvania League of Urban Schools to propose (May '92) a program of public-school choice that includes the charter idea. Legislation is yet to be drafted. Contact: Bill Boyd, Pennsylvania State University (814/863-3779). The superintendent in Easton, William Moloney, is a leading advocate of the charter idea.

In **Massachusetts** a charter-schools provision was a part of a major reform bill put together by legislators, Gov. William Weld and the Massachusetts Business Alliance for Education. Problems with the money provisions may hold up any education legislation until after the fall election. The leading advocate of the charter idea is the chairman of the House Education Committee, Rep. Mark Roosevelt: 617/722-2070.

In **Minnesota** contact Sen. Reichgott (612/296-2889) or Peggy Hunter in the Department of Education (297-2241).

The education committees in **Congress** substituted for President Bush's America 2000 initiative a program of block grants to states and districts, largely for new programs in existing public schools. In the Senate Dave Durenberger (R-Minn) proposed that states be allowed to use a part of their funding to help start new charter schools. With the support of some Democrats, including Sen. Edward Kennedy, the bill's author, the amendment was adopted on the floor. A similar amendment is being considered in the House. Contact Jon Schroeder: 612/370-3382.

Strategy: We have got to get the reward-system right

It is important for this country to improve its elementary and secondary education. Existing strategies are not going well. We need to find something that will work. The country is running out of time.

Public education is a big system, not easy to change under the best of circumstances. It is not helpful, while we are trying to get it to change, to be telling the districts that they really do not have to change.

This is, amazingly, what we do. Mandatory attendance, districting, pupil-driven financing and the exclusive franchise (the assurance that in any area only one organization may offer public education) together guarantee a district its success -- its students, its revenues, its jobs and its existence -- whether or not it changes and improves and whether or not the students learn.

This is crazy. When the district knows it is not at risk . . . knows it has an exclusive; knows it can take its students for granted . . . the deck is stacked against the good folks inside who do try to change; who push to put kids first. Change is hard. Change upsets people. Good teachers will say, "We have to". But the organization knows that this is not true in any direct sense: It does not have to.

We are working against ourselves . . . we are not serious about improvement . . . if we leave the system-incentives in backward. The reward-system should support the effort at improvement. Good things should happen to organizations that change and improve; the risk should fall on organizations that stand pat and that put adults first. How to do this?

One idea is for the state to threaten to 'declare bankrupt' and take over a district that does not improve. This is not practical: It would challenge the weakest districts but exempt the rest. All districts should feel pressure to improve.

It is better if the state creates the pressure indirectly, with incentives. No district would have to do anything. The state would simply make it possible for new public schools to appear, which students could choose to attend. A district would be free to change, or not. But it would have to consider the consequences of not-improving. Thinking about it, a district might decide in its own interest to do the hard things that change requires.

The major organizations in public education are bound to resist this. They cannot admit the strategy implied in choice: cannot accept that letting kids move to new schools will cause existing schools to improve; cannot accept that existing resources can be reallocated; cannot abandon the argument for more resources; cannot agree that anyone but the district should be able to offer public education.

If the incentives are to be got right the states will simply have to do it. Time is short. Some basic decisions about the strategy for improvement must be made, very soon.

TK: 6/19/92