

# THE CHARTER SCHOOL PROMISE: ACHIEVING THE NCLB ACT GOALS THROUGH STRONGER CHARTER SCHOOL LEGISLATION

By: Sarah Leilani W. Sutherland

## I. INTRODUCTION

Public education advocates face a crisis in education policy.<sup>1</sup> Public schools, especially those in poor, urban districts, continue to deteriorate and access to a quality public education continues to decrease, especially for those children in urban areas.<sup>2</sup> Arguably, this crisis in access and quality of education puts the entire nation at risk.<sup>3</sup> Not only are children being left behind, but also teachers, administrators, and entire school districts.<sup>4</sup> The federal government has taken an unprecedented, revolutionary role in education reform through the passage of the No Child Left Behind Act of 2001 (“NCLB”).<sup>5</sup> The NCLB Act received rarely achieved bipartisan support and passed quickly with near total unanimity.<sup>6</sup> One of the mechanisms through which the NCLB Act addresses to achieve these goals are charter schools. For many, charter schools are seen as a solution to the many social issues that will be highlighted in the following section. After illustrating the state of public education at the time the NCLB Act was passed, as well as a brief history of public education in this country, this paper will focus on charter

---

<sup>1</sup> Julie Zwibelman, Broadening the Scope of School Finance and Resource Comparability Litigation, 36 HARV. C.R.-C.L. L. REV. 527, 527 (2001).

<sup>2</sup> See generally Jonathon Kozol, Savage Inequalities: Children in America’s Schools (1992)

<sup>3</sup> The risk comes from the fact that various competitors throughout the world are overtaking our once unchallenged preeminence in the global economy. Some argue that this is caused by the fact that our educational foundations are being eroded by mediocrity, *de facto* segregation, and increasing childhood poverty. See e.g. A Nation at Risk, National Commission on Excellence in Education, April 1983 <http://www.ed.gov/pubs/NatAtRisk/risk.html>, viewed last 2/27/04

<sup>4</sup> John Charles Boger, Willful Colorblindness: The new Racial Piety and the Resegregation of Public Schools, 78 N.C.L. REV. 1719, 1726-27 (2000). (Arguing that it the NCLB act imposes unconstitutional conditions on states through the spending power).

<sup>5</sup> 20 U.S.C 6301; P.L 107-110

<sup>6</sup> See Department of Education, Executive Summary of the No Child Left Behind Act, <http://www.nclb.gov> last viewed April 26, 2004

schools as a response to these issues. In order to do so, this paper will analyze the charter laws of three states, including Hawaii, and conclude by making recommendations as to how Hawaii can improve its charter law.

## II. CURRENT STATE OF PUBLIC EDUCATION IN THE U.S.

Racism, both conscious and unconscious, has pervaded our nation's major institutions, including education. As recently as the middle of the 20<sup>th</sup> century, politicians and policy makers gave passionate floor speeches against school integration and spoke of the ineducability of certain races. The most telling aspect of these speeches is that they were well received and actually supported by some "academic" research.<sup>7</sup> The pre-1960 racial climate in the U.S. is one of the prime reasons education is at risk of failure today.<sup>8</sup> Although schools no longer face *de jure* segregation, *de facto* segregation is increasingly apparent, particularly in urban and suburban areas.<sup>9</sup> Currently, the nation's public schools offer little hope for upward mobility for poor and minority children. This is particularly true, as public support for their education has continued to dwindle.<sup>10</sup>

Some researchers argue that minorities are steadily narrowing the gap on their own with the limited, yet important educational opportunities currently available. Even if

---

<sup>7</sup> Department of Education, Education Reforms and Students at Risk: Historical Overview-Separate But Equal, <http://www.ed.gov/pubs/EdReformStudies/EdReforms/chap1b.html>, last viewed 2/15/04

<sup>8</sup> Department of Education, Education Reforms and Students at Risk: Executive Summary <http://www.ed.gov/pubs/EdReformStudies/EdReforms/summ.html>, last viewed 2/15/04

<sup>9</sup> Dan Goldhaber, What Might Go Wrong with the Accountability Measures of the "No Child Left Behind Act" ?, Paper presented at the Conference on "Will No Child Truly Be Left Behind? The Challenges of Making this Law Work," at <http://www.edexcellence.net/NCLBconference/Goldhaber.doc> (Feb. 13, 2002) (on file with the North Carolina Law Review)

<sup>10</sup> Maurice R. Dyson, Leave No Child Behind: Normative Proposals to Link Educational Adequacy Claims and High States Assessments Due Process Challenges, 7 TEX. F. ON C.L. & C.R. 1, 13, Spring 2002

this is accurate, however, job requirements have also dramatically increased.<sup>11</sup> This, in turn, increases the demand for a better education.<sup>12</sup> As a matter of fact, some researchers still argue against putting poor children on the same education track as their college-bound counterparts claiming that schools should simply teach them trades so as to improve their employability.<sup>13</sup> Yet, as argued by the National Commission on Excellence in Education in a 1983 report on the state of public education to the Secretary of the Department of Education, “our concern, however, goes well beyond matters of such as industry and commerce. It also includes the intellectual, moral, and spiritual strengths of our people which knit together the very fabric of our society.”<sup>14</sup> The Commission recognized that “a high level of shared education is essential to a free, democratic society and to the fostering of a common culture, especially in a country that prides itself on pluralism and individual freedom.”<sup>15</sup> Consequently, providing job training only, without an academic educational component, will not solve the public education crisis. Although many citizens know this, education reform remains a contentious issue partly because it involves the redistribution of resources to attain fairness.<sup>16</sup> The inherent problem with fairness is that fair to one is not necessarily fair to another.<sup>17</sup>

---

<sup>11</sup> Department of Education, Education Reforms and Students at Risk: A Review of the Current State of the Art-1994. Where Do We Go From Here? Chapter 1e  
<http://www.ed.gov/pubs/EdReformStudies/EdReforms/chap1e.html>, last viewed 2/15/04

<sup>12</sup> See id.

<sup>13</sup> Department of Education, supra note 26

<sup>14</sup> National Commission on Excellence in Education, supra note 3 at p.2

<sup>15</sup> Id. at p.3

<sup>16</sup> See James C. McKinley, Jr., Officials are Forced to Grab the Third Rail of Politics, N.Y. Times, Jan. 11, 2001, at B4

<sup>17</sup> A person arguing from a group based perspective would argue that providing equal resources to all schools is fair, however, a wealthy parent would at the same time argue that taking money out of their school district to give it to another less fortunate is unfair.

The future of public education in this country should be of grave concern to every citizen.<sup>18</sup> There are vast economic costs associated with academic underachievement, not just in the political and social arena, but in the economic arena as well.<sup>19</sup> One third of U.S. corporations provide basic skill training for its employees; U.S. industry spends \$25 billion a year collectively in remedial education programs.<sup>20</sup> Ironically, businesses in the U.S. spend as much on remedial math as all public schools spend combined (including public colleges).<sup>21</sup> Although these workforce statistics may seem inconsequential since the people are educated either way, it is terribly inefficient to pay both publicly and privately for the same individuals' basic education, especially since the later is solely remedial.

The political costs are also quite alarming. Education is the very cornerstone of a democracy and perhaps one of the most important functions of state and local governments.<sup>22</sup> Thus, society has a vested interest in ensuring each citizen receives at least minimally adequate education that includes a promise of equity in opportunity as well.<sup>23</sup> This fact should be independent of parents' interest in rearing their children for if public education was brought to an acceptable state, parents would likely leave their children in public schools and save the money they would be spending on a private elementary and high school education to pay for the ever increasing cost of post-secondary education.

---

<sup>18</sup> John Charles Boger, *supra* note 4 at page 1719-1720

<sup>19</sup> U.S. Department of Labor, *Labor's Workforce 2000 report* (1987).

<sup>20</sup> Reich (1990) p.204

<sup>21</sup> National Research Council (1989) p.13

<sup>22</sup> Brown, *supra* note 5 at 493.

<sup>23</sup> National Commission on Excellence in Education, *supra* note 3 at pages 2-3.

Socially, the swelling prison population and growth in welfare recipients demonstrate one the costs of uneducated youth.<sup>24</sup> Granted that many of the people in prison are there for drug offenses, this too is a possible consequence of unequal educational opportunities. It costs \$40,000 to house one prisoner per year.<sup>25</sup> If society were to invest that amounts on prisoners when they were still children, there is a good chance that those individuals would not be in prison today. There is no reason not to take such preventative measures, especially in a democratic society reliant on its populous for governance.

Economic and demographic trends give a new urgency to public education reforms although the personal and social cost of failure has been apparent for decades.<sup>26</sup> The Bush administration is the first to enact sweeping education reform in terms of accountability and enforcement by the federal government.<sup>27</sup> The NCLB Act, the ‘cornerstone of the Bush Administration’<sup>28</sup> and embodiment of current education reform efforts, encompasses lofty goals and convincing rhetoric.<sup>29</sup> It reiterates “a promise first made on this continent: All, regardless of race or class or economic status, are entitled to a fair chance and to tools for developing their individual powers of mind and spirit to the utmost.”<sup>30</sup> The catalyst for a revolutionary change such as the NCLB act is an emerging

---

<sup>24</sup> See generally Jeffrey Reiman, The Rich Get Richer and the Poor Get Prison: Ideology, Class, & Criminal Justice 6<sup>th</sup> Ed. (2000)

<sup>25</sup> Id.

<sup>26</sup> For example through our welfare and penal systems. See e.g. Department of Education, Education Reforms and Students at Risk: Preface, <http://www.ed.gov/EdReformsStudies/EdReforms/pre.html>, last viewed 2/15/04

<sup>27</sup> David Nash, supra note 16 at page 239

<sup>28</sup> U.S. Rep. Tom Allen, “Rep. Allen Proposes to Budget Resolution Amendment to Fully Fund No Child Left Behind Act”, States News Service, 2003 WL 65180125. 3/23/03 (President Bush called the NCLB the cornerstone of his administration)

<sup>29</sup> Maurice R. Dyson, supra note 45 at page 1

<sup>30</sup> National Commission on Excellence in Education, supra note 3 at page 3

sense of national frustration with the state of public education and corresponding fear of losing this shared vision for America.<sup>31</sup>

### III. OVERVIEW OF THE NCLB ACT

The NCLB Act reinforces the Elementary and Secondary Education Act of 1965<sup>32</sup> (“ESEA”) with a new emphasis on accountability. The NCLB covers all states, school districts and schools that receive Title I federal grant money.<sup>33</sup> Title I is a provision of the ESEA, “a federal education program that aims to close the achievement gap between disadvantaged children and their peers by supporting schools in providing extra help to more than fourteen million disadvantaged children.”<sup>34</sup> The accountability provisions are to be enforced by federal government through conditioning the receipt of Title I funds on schools meeting annual yearly progress goals and following the enforcement policies set forth in the NCLB.<sup>35</sup> These enforcement mechanisms were absent in the ESEA. As a matter of fact, before the NCLB revamp, the federal government had never taken a single dollar away from public schools that violated ESEA mandates.<sup>36</sup> As mentioned, the NCLB did not just add enforcement provisions to the ESEA but revamped the structure of the entire act.<sup>37</sup>

---

<sup>31</sup> See *id.* at page 6

<sup>32</sup> 20 USCA s 6301. The main law addressing the federal government’s role in K-12 public education; primarily addresses requirements for funding, but has no real enforcement provisions.

<sup>33</sup> Charles S. Sabel, *The Resegregation of Southern Schools? A Crucial Moment in the History (and the Future) of Public Schooling in America*. 81 N.C. L. Rev 1703, 1721 May, 2003

<sup>34</sup> The “No Child Left Behind” Act: A Guide for Parents, Internet Education Exchange: Tools for Fixing Public Education. [www.idex.org](http://www.idex.org) last viewed 1/31/2004

<sup>35</sup> What is the No Child Left Behind Act? Basic Federal Regulations of Public Schools, Internet Education Exchange: Tools for Fixing Public Education. [www.idex.org](http://www.idex.org). Last viewed 1/31/2004

<sup>36</sup> David DeSchryver, *NCLB and Legal Leverage: Private Action to Enforce Federal Law*, Internet Education Exchange: Tools for Fixing Public Education [www.idex.org](http://www.idex.org) last viewed 1/31/2004

<sup>37</sup> See Department of Education Executive Summary, *supra* note 8

The NCLB will fundamentally change the federal government's role in public education.<sup>38</sup> The federal government has thus far never taken such an active, central role in setting curriculum and yearly progress goals for public schools.<sup>39</sup> A likely reason the federal government has never utilized its spending powers to make such overhauling, paternalistic reform efforts is because public education and school governance has traditionally been a function of state and local governments.<sup>40</sup> It was not until Brown v. Board of Education<sup>41</sup> that the federal government involved itself in the inner workings of public schools. The NCLB modifies the promises of Brown in two basic ways: first, it mandates not just privilege of access to public schools for minority children on formally equal terms, but also requires that the education they receive once in the schools be adequate;<sup>42</sup> second, it seeks to define what adequacy requires.<sup>43</sup> By modifying the promise of Brown, the federal government not only used its spending power to bind states, but will arguably also force the Supreme Court to examine education claims not just in terms of minimal adequacy, but also in terms of equity to ensure the act's purpose is fulfilled.

The NCLB Act's enumerated purpose is to "close the achievement gap with accountability, flexibility, and choice, so that no child is left behind."<sup>44</sup> This goal is to be achieved through accountability measures, greater flexibility in the use of federal

---

<sup>38</sup> David Nash, *Improving No Child Left Behind: Achieving Excellence and Equity in Partnership with the States*, 55 Rutgers L. Rev. 239, 240, Fall 2002

<sup>39</sup> John Charles Boger, *Education's "Perfect Storm"? Racial Resegregation, High-Stakes Testing, and School Resource Inequities: The Case of North Carolina*, 81 N.C. L. Rev. 1375, 1379, May, 2003

<sup>40</sup> Ronald D. Wenkart, *The No Child Left Behind Act and Congress' Power to Regulate Under the Spending Clause*, 174 Ed. Law Rep. 589, 589, May 2003

<sup>41</sup> 347 U.S. 483 (1954)

<sup>42</sup> Charles S. Sabel, *supra* note 11 at 1705

<sup>43</sup> *Id.* at 1705-1706

<sup>44</sup> The NCLB Statement of Purpose, *supra* note 6

education funds,<sup>45</sup> increased options for parents<sup>46</sup>, and improved teacher quality and teaching methods.<sup>47</sup> In order to attain its objectives, the NCLB Act purports to focus its primary attention on low-achieving students and schools at risk of failure in order to bring them up to federal standards, thereby narrowing the achievement gap. At a glance, it would appear that the NCLB Act targets a wide range of issues facing public schools.

#### IV. CHARTER SCHOOLS AS AN ALTERNATIVE TO CONVENTIONAL PUBLIC SCHOOLS

Charter schools are one way in which the NCLB Act addresses these issues. The NCLB Act explicitly recognizes charter schools. To reiterate, the purpose of the Act “is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments.”<sup>48</sup> The purpose statement goes further to enumerate twelve ways in which this purpose can be accomplished. Charter schools are a response to three of them:

holding schools, local educational agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education; promoting schoolwide reform and ensuring the access of children to effective, scientifically based instructional

---

<sup>45</sup> See §§ 601, 1073, *supra* note 6

<sup>46</sup> See § 601, New options are provided for parents wanting to help their children if they are enrolled in schools that are identified as “needing improvement”.

<sup>47</sup> §§ 101, 201, *supra* note 6

<sup>48</sup> 20 U.S.C.A. § 6301 Statement of purpose

strategies and challenging academic content; affording parents substantial and meaningful opportunities to participate in the education of their children.

Although the charter school movement existed long before the NCLB Act,<sup>49</sup> the passage of this initiative breathed new life into the movement, as the Act's goal of increased achievement through accountability and flexibility are also charter school goals.

The charter school movement has its foundation in a number of other education reform initiatives including alternative schools, magnet schools, public school choice, privatization, and community-parental empowerment.<sup>50</sup> Charter schools are generally characterized as part of the school choice movement and are viewed as a compromise between vouchers and magnet or other alternative schools.<sup>51</sup> School choice is a means to increase student achievement, provide more options for low-income parents and children who can not afford private schools but are unhappy with public schools, and create incentives to develop innovative curriculum so as to increase achievement.<sup>52</sup> Charter schools allow parents to choose for their children a different educational avenue while at the same time keeping their children in public institutions.<sup>53</sup> As public institutions, charter schools are publicly funded, do not charge tuition, and are nonsectarian.<sup>54</sup> Furthermore, charter schools have demonstrated an ability to close the achievement gap; with higher stakes accountability, charter schools are given greater flexibility in the use

---

<sup>49</sup> The term "charter" likely originated in the 1970s when New England educator Ray Budde suggested that local school districts grant a small group of teachers contracts or "charters" to explore new approaches to public education. In the late 1980s, charters were established as schools within schools.

<sup>50</sup> History of U.S. Charter Schools, [www.uscharterschools.org/lpt/uscs\\_docs/309](http://www.uscharterschools.org/lpt/uscs_docs/309), last viewed March 30, 2005.

<sup>51</sup> Brett Lane, *Choice Matters: Policy Alternatives and Implications for Charter Schools*, Northwest Regional Educational Laboratory.

<sup>52</sup> B. Fuller and R.F. Elmore, *Who Chooses? Who Loses? Culture, Institutions, and the unequal effects of school choice*, New York, NY: Teachers College Press (1996)

<sup>53</sup> Brett Lane, *Choice Matters: Policy Alternatives and Implications for Charter Schools*, Northwest Regional Educational Laboratory.

<sup>54</sup> Brett Lane, *Choice Matters: Policy Alternatives and Implications for Charter Schools*, Northwest Regional Educational Laboratory.

of federal education funds,<sup>55</sup> increased options for parents<sup>56</sup>, and improvement in teacher quality and the ability to employ innovative teaching methods and curriculum.<sup>57</sup> These positive attributes have led a number of states to enact charter school legislation.

In 1991, Minnesota became the first state to pass a charter school law. California soon followed, passing their charter school law in 1992. By 2003, 41 states, Puerto Rico and the District of Columbia had authorized charter schools through legislation.<sup>58</sup> This drastic increase in the number of states authorizing charter schools was spurred, in part, by President Clinton's call for 3000 new charter schools by 2002 and President Bush's promise to provide \$300 million to support charter school development.<sup>59</sup> Currently, the charter school movement is backed by substantial bipartisan and public support. Thus, it is of critical importance to understand the movement, the types of charter schools available and which type best serves the needs of children being left behind.

Charter school laws vary significantly from state to state.<sup>60</sup> The laws cover seven basic policy and legal issues: charter development;<sup>61</sup> school status;<sup>62</sup> fiscal implications; student body;<sup>63</sup> staffing and labor relations; instruction;<sup>64</sup> and accountability.<sup>65</sup> One of

---

<sup>55</sup> See §§ 601, 1073. These goals are expressly recognized in NCLB Act in these sections and also primary benefits of charter schools.

<sup>56</sup> See § 601, New options are provided for parents wanting to help their children if they are enrolled in schools that are identified as "needing improvement".

<sup>57</sup> §§ 101, 201, supra note 6. Once again, charter schools are given the increased flexibility and thus are better able to employ new techniques and be more selective in teachers and teaching methods.

<sup>58</sup> History of U.S. Charter Schools, supra note 50. The 41 states are: AK, AR, AZ, CA, CO, CT, DC, DE, FL, GA, HI, ID, IL, IN, IA, KS, LA, MA, MD, MI, MN, MO, MS, NC, NH, NJ, NM, NV, NY, OH, OK, OR, PA, PR, RI, SC, TN, TX, UT, VA, WI, WY.

<sup>59</sup> Id. President Clinton called for these schools in his 1997 State of the Union Address. Bush called for the monetary support in 2002 soon after succeeding in passing the NCLB.

<sup>60</sup> Charter Laws, [www.uscharterschools.org/lpt/uscs\\_docs/310](http://www.uscharterschools.org/lpt/uscs_docs/310), last viewed March 30, 2005

<sup>61</sup> Including to whom a charter may issue, what body grants charters, the number of charter schools allowed, etc.

<sup>62</sup> Including the school's legal status, its governance, operations and liability issues.

<sup>63</sup> Including admissions policies, non-discrimination requirements, discipline and special education.

<sup>64</sup> Including the degree of control a charter school has over its curriculum and the development of unique instructional goals and practices.

the most interesting aspects of charter schools is that they are publicly funded yet privately managed.<sup>66</sup> Because they are publicly funded, it is important to ascertain what types of private activities are resulting in better education for its students so as to hold these private parties accountable. This also allows those successful techniques to be integrated into the public school system at large.

Charter schools are expected to reach the same NCLB Act annual yearly progress (AYP) goals as all other public schools.<sup>67</sup> Charter schools are currently over-represented in studies comparing AYP levels of charter schools and public schools.<sup>68</sup> Although the percentage of charter schools meeting AYP goals is increasing, charter schools will likely remain over-represented in failing to meet AYP goals because more often than not they serve at-risk and disadvantaged populations or children dissatisfied with public schools.<sup>69</sup> This is yet another alignment between the charter schools movement and the NCLB Act: to close the achievement gap and leave no child behind.

The reasons charter schools disproportionately serve at-risk and disadvantaged populations is multifaceted. It is primarily because a majority of charter legislation focuses on serving those who are unsuccessful in traditional public schools.<sup>70</sup> Furthermore, many of the public schools that convert to charter schools are those in inner cities with a majority population of minority and/or economically disadvantaged

---

<sup>65</sup> Including whether charter is performance-based, how it will be assessed if not, and renewal and revocation issues.

<sup>66</sup> Smith, Kim and James Wilcox, *A Building Need*, Education Next, Spring 2004.

<sup>67</sup> *Strong Laws Produce Better Results: Special Report*, Charter School Laws Across the States: Ranking and Scorecard 8th Edition, The Center for Educational Reform.

<sup>68</sup> *Strong Laws Produce Better Results: Special Report*, Charter School Laws Across the States: Ranking and Scorecard 8th Edition, The Center for Educational Reform.

<sup>69</sup> *Strong Laws Produce Better Results: Special Report*, Charter School Laws Across the States: Ranking and Scorecard 8th Edition, The Center for Educational Reform.

<sup>70</sup> Brett Lane, *Choice Matters: Policy Alternatives and Implications for Charter Schools*, Northwest Regional Educational Laboratory.

students.<sup>71</sup> These schools convert because they are more often than not failing to meet AYP goals as part of the traditional public school system.<sup>72</sup>

Charter schools appear poised to address problems with meeting AYP goals. Many researchers suggest that the success of charter schools within a state is dependant on the strength of the charter school law.<sup>73</sup> On average, charter school students are 5% more likely to be proficient in reading and 3% more proficient in math than their traditional public school counterparts.<sup>74</sup> Although not dramatic, these gains are significant. Furthermore, when looking at states with “strong” charter laws, the proficiency gains are much higher. For example, in Arizona, the state with the largest proportion of charter schools, charter students are approximately 10% more likely to be proficient in reading and math.<sup>75</sup> Thus, states should strive to enact or amend charter laws that provide the greatest possibility of success, as measured by AYP goals.

## V. CHARTER SCHOOL ALTERNATIVE

Because charter schools are a statutory creation, each state has different types of charter school shaped by its own legislature. This part will describe and analyze the three states’ laws; the two that are considered the strongest by The Center for Education Reform and the State of Hawaii’s charter school law.<sup>76</sup> It will then evaluate these three

---

<sup>71</sup> Brett Lane, *Choice Matters: Policy Alternatives and Implications for Charter Schools*, Northwest Regional Educational Laboratory.

<sup>72</sup> Brett Lane, *Choice Matters: Policy Alternatives and Implications for Charter Schools*, Northwest Regional Educational Laboratory.

<sup>73</sup> *Strong Laws Produce Better Results: Special Report*, Charter School Laws Across the States: Ranking and Scorecard 8th Edition, The Center for Educational Reform.

<sup>74</sup> Caroline Hoxby, *Do Charter Schools Help Their Students?* Civic Bulletin, Center for Civic Innovation at the Manhattan Institute, No. 38 February 2005. Page 3.

<sup>75</sup> Caroline Hoxby, *Do Charter Schools Help Their Students?* Civic Bulletin, Center for Civic Innovation at the Manhattan Institute, No. 38 February 2005. Page 4.

<sup>76</sup> According to the Center for Education Reform, there are 10 criteria for a strong charter school law: 1) Number of schools: States that permit an unlimited or substantial number of autonomous charter schools encourage more activity than states that either limit the number of autonomous schools. 2) Multiple chartering authorities / binding appeals process: States that permit a number of entities in addition to or

laws based on objective criteria. Finally, it will recommend how the State of Hawaii should amend its charter school law so as to achieve the greatest possible success out of charter schools.

## **Arizona<sup>77</sup>**

### Approval Process

Currently, 491 charter schools operate in Arizona and the number of charters allowed to operate there is unlimited. The eligible chartering authorities (sponsoring boards) include local school boards, the state board of education or the state board for charter schools. Local school boards may only sponsor schools located within the geographic boundaries of the district. Any public body, private person or private organization can apply for a charter. The types of charter schools that are possible are converted public, converted private and new starts. There is no appeal process for persons who have been denied a charter and there is no requirement for the applicant to

---

instead of local school boards to authorize charter schools, or that provide applicants with a binding appeals process, encourage more activity. 3) Variety of applicants: States that permit a variety of individuals and groups both inside and outside the existing public school system to start charter schools encourage more activity than states that limit eligible applicants to public schools or public school personnel. 4) New starts: States that permit new schools to start up encourage more activity than those that permit only public school conversions. 5) Formal evidence of local support: States that permit charter schools to form without proving specified levels of local support encourage more activity than. 6) Automatic waiver from laws and regulations: States that provide automatic blanket waivers from most or all state and district education laws, regulations, and policies encourage more activity than states that provide no waivers or require charter schools to negotiate waivers on an issue-by-issue basis.

7) Legal / operational autonomy: States that allow charter schools to be independent legal entities that can own property, sue and be sued, incur debt, control budget and personnel, and contract for services, encourage more activity than states in which charter schools remain under district jurisdiction. In addition, legal autonomy refers to the ability of charter schools to control their own enrollment numbers. 8) Guaranteed full funding: States where 100 percent of per-pupil funding automatically follows students enrolled in charter schools encourage more activity than states where the amount is automatically lower or negotiated with the district. 9) Fiscal Autonomy: States that give charter schools full control over their own budgets, without the district holding the funds, encourage more activity than states that do not. 10) Exemption from collective bargaining agreements / district work rules: States that give charter schools complete control over personnel decisions encourage more activity than states where charter school teachers must remain subject to the terms of district collective bargaining agreements or work rules.

<sup>77</sup> All information on Arizona, Minnesota and Hawaii charter school law was obtained from the Education Commission of the States and The Center for Education Reform. The charter laws for each respective state are attached to the end of this document.

show evidence of local support. However, the charter applicant may submit a petition to an alternate chartering authority. The recipient of the charter is the charter school governing body and the initial charter lasts for a period of fifteen years.

### Operations

Once a charter is granted, the school is given an automatic waiver from most state and district education laws, regulations and policies. Thus, the school is given complete legal autonomy only limited by the U.S. Constitution, the state constitution, and federal/state anti-discrimination laws. To accomplish complete autonomy, each charter school is granted LEA<sup>78</sup> status. A charter school is subject to those laws agreed upon in its charter or required by the state charter law. The governing board is subject to all open meeting laws. The sponsoring board has little or nothing to do with the day-to-day operations of the school; each charter school has its own governing board that sets and develops its own policies relating to discipline, personnel, attendance, curriculum, etc. If a local school board authorized a charter school, that school board must provide transportation. If it is authorized by the state, the state provides transportation aid to the charter school, which then arranges for its own transportation needs. The state also provides assistance with facilities and technical needs. For facilities, the state must publish a list of vacant buildings owned by the state that a charter school may apply to use. All non-profit charter schools may apply for financing through the state development authority.

For technical support, charter schools are included in the technical assistance provided by the state to all school districts including use of student data, staff development, curriculum, technology, and grant compliance and maintenance. Charter

---

<sup>78</sup> Local Education Agency is a status that gives the school autonomy under the NCLB.

schools are required to prepare annual report cards as required by the NCLB Act. These report cards are given to the department of education and provided to parents. Each charter school must undergo an annual audit to keep its charter.

### Funding

The charter's funding is dependant upon its granting authority. If authorized by a local school board, funding is negotiated and specified in a charter provision. The charter school is thus able to bargain for a portion of the money given to the local school board from the state department of education through the respective county. Any portion of the state per pupil the local school board withholds must be for oversight purposes. For all other charters, funding is provided directly to the charter school by the state using the same formula used for all district schools. This amounts to approximately \$4600 per pupil. Start-up costs are usually covered by federal and state grant funds, but starts up costs are not guaranteed. After receiving funds, the charter school is fiscally autonomous.

### Teachers

Charter schoolteachers have a variety of options for structuring their employment. One option is to remain covered by the district bargaining agreement. A charter school's teachers may also, as a group, negotiate an independent agreement with the charter school governing body, or may work independently. The options available to teachers are dependant upon the charter school in which they teach, as collective bargaining arrangements or lack there of is included in each charter agreement. Nevertheless, each charter school sets its own teacher salaries. The charter law protects teachers who were previously employed at a non-charter school by mandating that they shall not loose any

rights of certification, retirement, or salary or any other benefits provided by law.

Accordingly, charter schools must participate in the state's retirement system. Teacher certification is not required and any teacher may take up to three years leave of absence from the district to teach at a charter school. This leave of absence shall not affect the teachers' pay, benefits, seniority, etc.

### Students

All students in the state are eligible to attend charter schools. A preference for enrollment is given to district residents if the local school board sponsors the charter school. If the state sponsors the charter school, the only enrollment preference is if the student has siblings already attending that charter school. Charter schools are not permitted to set requirements for enrollment and all admissions are to be decided by an equitable method such as a lottery. No operator may discriminate on the basis of race, sex, religion, nation of origin or economic status. Once admitted to a charter school, that student shall be given an enrollment preference for future years. Students in charter schools are required to participate in all state and federal accountability programs.

### **Minnesota**

#### Approval Process

There are 95 charter schools currently operating in Minnesota and there is no limit on the number of charters that may operate in the state. Chartering authorities include local school boards, public post-secondary institutions, and private colleges and cooperatives. Regardless of the chartering authority, all charters must be approved by the state education commissioner. Local school boards may authorize charter schools outside the district boundaries with the approval of the district in which the charter school will be

located. The state board of education, through the state commissioner of education, has the authority to issue a charter on appeal from denial from one of these other authorities. Anyone may apply for a charter to convert a public school, private school or a new start-up. In order for a public or private school to convert, sixty per cent of the school's teachers and administrators must support the conversion. The charter is granted to the charter school's governing board; teachers must compose a majority of the board and all charter schools must be organized as non-profit organizations or co-ops. The initial charter is granted for a term of three years.

### Operations

The charter school receives a waiver from most state and district education laws, regulations and policies but is only given limited legal autonomy as the charter law subjects the charter schools to various state laws. The charter school is its own LEA and is subject to state open meeting laws. The state board of education may waive the requirement that the charter school's governing board be majority-licensed teachers from the charter school. Although charters may only be granted to non-profit organizations, a for-profit organization may manage a charter school on behalf of the non-profit organization. Generally the school district in which the charter is located provides transportation for the students. If it does not, the charter school must provide it and may apply for transportation aid from the state. The school may reimburse parents who live outside of the district and must provide for their own transportation only if the family is below the federal poverty level. The state provides all technical assistance necessary although the charter law does not require this. The state also provides facilities funds or facilities assistance to charter schools. State grants are available for facility improvement

and the state provides lease aid to charter schools for 90% of the lease cost or \$1500 per student. Charter schools may lease space from any private or public organization with the approval of the state board of education. The charter school must submit annual reports to the chartering authority and state board of education showing that it complies with state and federal standards. At the end of the charter, the school must report to its sponsoring body prior to being granted renewal. The charter school must also submit annual financial audits to its sponsoring body and the state commissioner of education.

### Funding

The charter schools are wholly funded by the state per pupil allotment, which is approximately \$6300 per pupil. Because the charter school only receives the state portion of operating funds, it loses the portion it would have received from the district. The funds pass directly from the state to the respective charter school giving the school complete fiscal autonomy. Start-up funds are not provided but available through federal and state grants.

### Teachers

Teachers only remain covered by the district collective bargaining agreement if all interested parties agree. Accordingly, teachers may negotiate with their respective governing bodies as a unit or may work independently if all do not agree to remain covered by the district collective bargaining agreement. The charter school sets its own teacher salaries. All teachers must be state certified. Teachers may take an indefinite leave of absence from the school district; during leave, all benefits must continue to accrue to the teacher's aggregate benefits and credits in the teacher's retirement

association account as long as the teacher continues to contribute based upon their annual salary the year they left.

### Students

All students in the state are eligible to apply for a charter school. Enrollment cannot be restricted in anyway except that the racial balance of the school must be the same as the enrollment area district if located in an area that has a high-concentration of minority students. Preference may be given to pupils that are residents of the town in which the charter school is located if the charter school is the only school in that town serving that grade. If the charter school is the closest to the pupil's home by more than 3 miles, the charter school must give those students an enrollment preference. Siblings of currently enrolled students must also be given preference. Admission decisions must be made by lottery or random process.

### **Hawaii**

#### Approval Process

There are 23 charter schools currently operating in Hawaii. The numbers of charters are limited to 25 new-starts and 23 conversions. The charter school has no legal autonomy and is not an LEA. The state board of education may issue a charter upon recommendation of the charter school review board. The only types of charter schools are converted public or new starts. Only existing public schools or existing private school run by a private, secular nonprofit organization may apply for a conversion charter. Any public school, community, group of teachers, group of teachers and administrators, or any program within an existing school may apply for a new start charter. Applications denied by the state charter review board may be appealed to the

state board of education, but not vice versa. In order to be eligible for a conversion charter, the application must show that 60% of teachers, 60% of support staff, and 60% of parents at the school support the transition. The charter is granted to the individuals who write the letter of intent for a new school or the board of an existing public school. The charter may be granted for up to five years or as specified by the charter.

### Operations

The charter school is given an automatic waiver from most state and district education laws, regulations and policies except those made specifically applicable to charter schools in the charter law. The charter school board must be composed of at least one principal, teacher, support staff member, parent, student, and community member. The charter school board is not currently subject to open meetings laws. Charter schools are exempt from all applicable state laws except those regarding collective bargaining, discriminatory practices, and health and safety requirements. Charter schools in Hawaii may not be managed or operated by a for-profit organization. The state board of education provides transportation for charter schools, but no facilities assistance. There is no requirement that the board of education provide transportation. The charter school may apply for a supplemental grant, as may any other public school. The Department of Education is to provide technical assistance, but a non-governmental agency may do so upon request of the charter school. The charter school must provide a plan for comprehensive assessment and accountability systems that meet or exceed established state educational content and performance standards. This plan must be available for public viewing. The charter school is subject to annual review during the first two years

of existence, and then not again for four more years. Charter schools must also perform annual self-evaluations.

### Funding

Funding is determined annually on a per-pupil basis. The funding is not guaranteed from year to year. Each year, the charter school administrative office must submit a request for a general fund appropriation for each new charter school. The request must be based upon actual and projected enrollment figures and a per pupil amount for each regular education and special education student. This figure is to include comprehensive school support services but exclude special education services and facilities costs. The legislature is to appropriate based on the request. It is approximately \$5800 per pupil. The funds pass directly from the state board of education to the charter school administrative office, but the individual charter school lacks fiscal autonomy. The charter school administrative office is under the Department of Education and is not an independent entity. The Hawaii charter law mandates that the office provide only 40% of the charter schools funding on August 1 provided that the charter school had submitted a projected enrollment form by May 15 of the previous school year. The next 40% is given to the charter school on October 15, provided the charter school has submitted to the office a verified student enrollment form no later than September 15. The remaining 20% of the funding is released to the charter school on January 1, provided that the charter school submitted a revised student enrollment form by December 1. Only federal funds are available for start-up costs, but conversion schools are appropriated transitional resources during the first year of operation based on that school's allocation from the department before conversion.

## Teachers

Charter schoolteachers remain covered by the district collective bargaining agreement. Teachers are required to have state certification and may not take a leave of absence from the district. In other words, the teachers remain employees of the statewide district and retain their civil service status upon conversion of their school. Charter schools must participate in the state retirement system.

## Students

The students that are eligible for enrollment are only those in the attendance area of the public school prior to conversion. The charter school may have enrollment preferences, but these must be in the charter and include a plan for identifying, recruiting, and selecting students to make certain that student participation is not exclusive, elitist or segregationist. There are no enrollment requirements and no required selection method.

## **Criteria**

### Flexibility:

The underlying premise of the charter school success is flexibility so as to allow charter schools to try innovative educational techniques that are not possible in the traditional public school setting. In addition, providing a charter school with flexibility allows it to address problems it sees necessary at the school level, thereby avoiding the bureaucratic issues inherent in a unified school district. By avoiding the bureaucracy of unified school districts and boards, charter schools can implement quick, efficient, and innovative techniques. Thus, a strong charter law provides a charter school with maximum flexibility.

### Autonomy and Accountability:

Autonomy is another underlying goal of the charter movement. It is nearly impossible to be flexible if not autonomous. Autonomy allows a charter school to implement the policies it decides are appropriate without having to get approval from a central board. This avoids the bureaucratic issues that many parents complain have led to the demise of traditional public schools. However, in exchange for the increased autonomy, it is especially important that the privilege come along with strong accountability measures so as to ensure the charter school is doing what it claims to do: better educate students. Furthermore, increased parental choice, another goal of charter schools, cannot be fully realized unless the schools are truly independent of traditional public schools.

#### Funding:

Like any other program, for charter schools to succeed, they need to be funded. As mentioned above, charter schools present an interesting situation: public money spent by private parties. Thus, there should be some reservation when providing unconditional funding. However, a lack of funding can cripple the movement. One way in which this has been seen is in facilities. Although charter schools are funded generally on the same per pupil basis, they are rarely provided with facilities. Thus, a large proportion of the funding that ordinarily goes to students goes to rent. Consequently, the provision of facilities or accounting for this discrepancy in funding in the charter law is quintessential. Nonetheless, although charter schools should be funded to the same degree as regular public schools, they are not public schools and so should not be treated as such. Charter schools have can resources available to them that ordinary public schools do not including federal grants, if granted LEA status, and in some cases private investing.

Accountability provisions are also very important for funding also because a private party is spending public money. To ensure the money is spent wisely, it is important for the charter schools to demonstrate the money is being spent in such a way that improves student achievement.

Equity:

Because charter schools create another public school option, it is important that this option is available for everyone. This is especially true since public resources are involved. It would be a travesty to create another elitist form of private education using public dollars. Charter schools policies must be devised and implemented so as to avoid them from simply becoming publicly funded private schools. Furthermore, when private parties are involved, oversight must ensure that public money is not being spent in inequitable or unconstitutional manners, such as for one race or one religion. To be fair, each charter school should be available to each individual who would like to attend and there should be some degree of parity between charters and traditional public schools.

Criteria	Arizona	Minnesota	Hawaii
Flexibility	1	2	3
Autonomy/Accountability	1	2	3
Funding	2	1	3
Equity	3	1	2

**Evaluation of Charter School Laws:**

Flexibility

Arizona's charter law ranked the highest in terms of flexibility, followed by Minnesota's and then Hawaii's. The following analysis will discuss the characteristics present in the Arizona law that are not present in the other two and the characteristics present in the Minnesota law that are not present in the Hawaii law.

#### Multiple Chartering Authorities and Eligible Charter Applicants:

Laws that limit the nature and scope of a charter school by providing for only one chartering authority restrict the charter school's innovation and funding.<sup>79</sup> Arizona's charter law allows three agencies to grant charters: local school boards, the state board for charter schools, and the state department of education. Minnesota's charter law authorizes local school boards, public post-secondary institutions and private colleges and cooperatives to issue charters, but all charters are subject to the approval of the state commissioner of education. Thus, although there are multiple chartering authorities, any charter may be denied by a single body. In Hawaii, only the Board of Education has the authority, through the Charter School Review Board, to grant charters. This is problematic and one of the reasons Hawaii ranks the lowest in terms of flexibility.

Hawaii is somewhat unique because it has a single, unified school district run at the state level. Thus, the Department of Education operates as both the local education agency (LEA) and the state education agency (SEA). This is problematic because the Board has little incentive to create schools that compete with existing district schools for limited federal and state dollars. If charter schools were their own LEA, they would be eligible to apply directly to the federal government for funds. Instead, they must apply for federal funds through the Board of Education. In both Arizona and Minnesota the

---

<sup>79</sup> *Charter School Laws Across the States 2004: Ranking Scorecard and Legislative Profiles*, The Center for Education Reform at page vii.

charter school is its own LEA. Although Minnesota's law is more flexible than Hawaii's in that it has multiple charter authorities, it is still less flexible in that one agency can veto any charter grant. Nonetheless, the ability to be chartered with these various agencies provide more flexibility than if each charter is granted and managed under a single agency, as in Hawaii.

Along these same lines, allowing different types of groups and people to apply for a charter and operate the school attains greater flexibility. Most states allow for a combination of individuals, parents, non-profit groups, and other organizations to apply for a charter so as to maximize the amount of outside resources brought into the charter school and encourage activity.<sup>80</sup> Once again, Arizona provides for the most flexibility in this sense. In Arizona, any public body, private person or private organization may apply for a charter. In Minnesota, the law appears to be more flexible in that it allows any licensed teacher to apply for a charter. This is limited, however, for conversion schools because they must have a 60% approval from licensed teachers and administrators at the school before a conversion charter will be granted. Hawaii is even more limited in that it only allows a group of teachers, a public school, nonprofit organization or a program within an existing school to apply for a charter. This is even further limited in Hawaii by a requirement that 60% of teachers, 60% of staff, and 60% of the parents at the school must be in support of the charter. The law does not define group of teachers.

#### Number of Charters Allowed

Both Arizona and Minnesota allow for an unlimited number of charters to operate. In order to fulfill its goal of greater school choice, charter schools should be

---

<sup>80</sup> *Charter School Laws Across the States 2004: Ranking Scorecard and Legislative Profiles*, The Center for Education Reform at page viii.

allowed to respond to any amount of demand that exists within a state. Permitting an unlimited amount of charters, or a substantial number of them, encourages more charter schools thereby increasing their ability to respond to demand and be innovative in creating new educational techniques.<sup>81</sup> This can be demonstrated by the fact that Arizona currently has 491 charter schools operating and Minnesota has 95. Hawaii limits the number of charter schools to 25 new starts and 23 conversions. The inhibition this has caused is demonstrated by the fact that there are only 26 charter schools operating within the state.

### Autonomy/Accountability

Charter schools have more freedom than traditional public schools, but bear more burdens as well.<sup>82</sup> Their most important burden is the need to demonstrate that the instruction, curriculum and resources it provides actually benefits students, as shown through student achievement.<sup>83</sup> Charter schools are held directly accountable for the achievement of their students or lack thereof. Unlike a traditional public school, if a charter school's students do not meet achievement goals, the charter will be taken away and the school shutdown. Also different is that traditional public schools have funding, teachers, space and students assigned to them and will seldom, if ever, be shut down for poor performance. Thus, charter schools need the autonomy to make decisions since their existence is contingent upon their performance.<sup>84</sup> In addition, charter schools must attract students who come there by choice, rather than compulsion as in traditional public

---

<sup>81</sup> *Charter School Laws Across the States 2004: Ranking Scorecard and Legislative Profiles*, The Center for Education Reform at page viii

<sup>82</sup> *A Study of Charter School Accountability*, Office of Educational Research and Improvement, U.S. Department of Education at page vii.

<sup>83</sup> *A Study of Charter School Accountability*, Office of Educational Research and Improvement, U.S. Department of Education at page vii.

<sup>84</sup> *A Study of Charter School Accountability*, Office of Educational Research and Improvement, U.S. Department of Education at page vii.

schools.<sup>85</sup> In exchange for this drastically increased degree of accountability, charter schools need drastically increased autonomy so as to be able to reach achievement levels. This increased autonomy also allows charter schools to respond to those it is accountable to. Unlike a traditional public school, that are accountable only to the superintendent or local school board, charter schools are accountable to authorizers, unions, families, teachers, and donors.<sup>86</sup> For a charter school to be autonomous, it must be allowed to operate outside of the burdensome regulations most school districts face. Given a charter school true autonomy actually promotes accountability because the charter operators know that if they do not produce results they will cease to operate.

#### Exemption from Laws and Legal Autonomy

To be truly autonomous, charter schools need to be exempt from generally applicable laws. In Arizona and Minnesota, charter schools are exempt from all laws except those that are non-waivable; this includes the U.S. Constitution, the state constitution, and various state and federal civil rights and safety laws. Charters in Hawaii are exempt from these laws, but are not exempt from collective bargaining requirements. In addition, in Arizona and Minnesota, a charter school is a legal entity, meaning it can sue and be sued, own property, enter into contracts, etc. In Hawaii, charter schools lack legal autonomy as they remain covered under the Board of Education. This lack of legal autonomy prevents a charter school from employing new techniques and expanding/moving in directions it sees fit.

#### Teacher Relations

---

<sup>85</sup> *A Study of Charter School Accountability*, Office of Educational Research and Improvement, U.S. Department of Education at page 1.

<sup>86</sup> *A Study of Charter School Accountability*, Office of Educational Research and Improvement, U.S. Department of Education at page 4-7.

Part of charter schools autonomy is to be able to structure its relationship with its teachers. Important here also is retaining flexibility. Arizona's charter law is most flexible in that it allows teachers to remain covered by the districts bargaining agreement, it allows teachers at a charter school to negotiate directly with the charter school as a group, or allows a teacher to work and negotiate independently. Minnesota's charter law is nearly as flexible except it requires all teachers to agree in order to remain a part of the district collective bargaining unit. Hawaii's is most restrictive in that it requires charter schools teachers to remain covered by the district collective bargaining agreements. As will be discussed further below, part of autonomy is deciding how to spend money. Accordingly, to be truly autonomous, a charter school should have to ability to negotiate with its teaching staff for salaries and other benefits. If a charter school wants to spend a majority of its dollars to pay a few highly qualified teachers, it should be able to do so.

### Funding

Although arguably a part of autonomy, funding considerations warrant their own consideration. The most important freedom charter schools have is to use public money to buy the things, such as teachers' time and instructional material, in ways the charter school leaders think will be most effective.<sup>87</sup> Without complete access to and discretion over how their funds are spent, charter schools will not be successful in achieving autonomy or results because their ability to employ innovative techniques and respond quickly at the school level to developing issues is severely hampered. For example, if a charter school needs additional teachers, support staff or infrastructure; they should be able to allocate funds in this manner without having to seek additional funds from the

---

<sup>87</sup>*A Study of Charter School Accountability*, Office of Educational Research and Improvement, U.S. Department of Education at page vii.

local school district or board of education. Unlike traditional public schools, charter schools have real-dollar budgets allowing them to decide how the funds are allocated.<sup>88</sup>

Minnesota has the most flexible, autonomous funding mechanisms. In Minnesota, charter schools are wholly funded by the state through a per pupil allotment. The monies flow directly from the state to the respective charter school giving that school the maximum amount of flexibility in spending those dollars. Although the charter school loses the portion of funding it would receive from the local school board, the autonomy and lack of bureaucratic costs associated with membership in a school district free up dollars thereby allowing the charter school to function autonomously and efficiently. In Arizona, the charter school's funding is dependant on its chartering authority. If chartered by the local school board it is allowed to negotiate for a portion of its funding from them and receive state funds. Although this sounds ideal because the charter school loses no monies, as it does in Minnesota, some researchers suggest that leaving anything to be negotiated in the charter prevents the school from attaining full legal autonomy because the granting authority has carte blanche and little incentive to give away its dollars to a charter school seen as its competitor.<sup>89</sup> As demonstrated above, charter schools in Hawaii have extremely limited fiscal autonomy and the Department, through the charter school administrative office, withholds its funds until the charter school demonstrates compliance with enrollment deadlines.

### Equity

---

<sup>88</sup> *A Study of Charter School Accountability*, Office of Educational Research and Improvement, U.S. Department of Education at page 1.

<sup>89</sup> *Charter School Laws Across the States 2004: Ranking Scorecard and Legislative Profiles*, The Center for Education Reform at page vii.

Equitable concerns come with the granting full legal and fiscal autonomy and expansive flexibility to a private person or organization even though the funding is wholly public. No charter school is allowed to charge tuition and is thus wholly dependant on public monies and private grants for its operations. Equitable considerations arise in three specific areas: access and admissions policies, who is authorized to receive a charter, and parity between charter schools and traditional public schools.

#### Access and Admissions Policies

Access and admission policies are important to consider so as to prevent charter schools from becoming publicly funded private institutions. In both Arizona and Minnesota, admissions are determined through lottery. In Arizona, preference is only given by geography (if the local school district was the granting authority), to siblings of currently admitted charter students, and to those students who have already been admitted when they apply in subsequent years. In Minnesota, all students are eligible and the selection process must be by lottery or random process, but enrollment can be restricted so as to ensure the racial balance of the school matches the racial balance of the community. In addition, preference is given based on geography and when a sibling attends the charter school. In Hawaii, attendance is restricted by geography for conversion schools and charter schools may have enrollment preferences as long as they are specified in the charter and are not exclusive, elitist or segregationist. Other than these guidelines, there are no other enrollment or selection requirements.

At first glance, it would seem that the most equitable would be Arizona's completely randomized process. However, this could result in a one hundred percent

white school in the middle of a town that is primarily composed of ethnic minorities. This would hardly be equitable. Thus, Minnesota's policy is much more equitable because it accounts for this possibility. Accounting for this is especially important considering the NCLB Act goals referenced above. Although some may challenge the policy as a race-based preference, the state interest is compelling and will thus likely survive judicial review. Hawaii's version is also more equitable in this sense, although it would seem too restrictive in the geographical sense and too vague in the enrollment and preference sense. Ascertaining if an admissions policy is exclusive, elitist or segregationist necessarily depends on whom you ask and how you define those terms. The law is silent on those issues. Furthermore, in removing the random or lottery requirement, it paves the way for more inequitable admissions decisions. Nonetheless, it is more equitable than Arizona because it accounts for potential inequities in admissions.

#### Authorized Charter School Operators

Allowing any one to receive a charter, as in Arizona and Minnesota, seems to broad to be equitable. The reason being is that public money is involved and there is little oversight other than financial audits and performance examinations. Although Minnesota does not allow any religious organization to obtain a charter, the text of Arizona's law would seem to allow this as long as they do not discriminate in admissions and follow the other mandates. This would seem to implicate the First Amendment Establishment Clause since public money would be spent on religious education. Unlike vouchers, with charter schools, the money is not funneled through the parents first. Thus, it is essential to ensure public money is not being spent to directly promote religion. In

Hawaii, those who can receive a charter are quite limited so these concerns are not significantly implicated.

### Parity

Charter schools are seen as “better” than public schools in many cases. This is clearly inequitable. If all are public, there should be parity among and between charter schools and traditional public schools. It is clear that there is not enough room in charter schools for every parent/child who would like to attend. The primary way in which open access for every child (or parent who would like their child to attend a charter school) would be available is to allow for as many charter schools as the market demands, as in Arizona and Minnesota. Further, parity can be more easily achieved by allowing multiple types of organizations and individuals to receive charters. This of course must be checked with the above concern about religious affiliation. Of utmost importance is ensuring enough accountability to ensure these equitable considerations are addressed. Although Hawaii’s law would seem to guarantee the most parity because it keeps charter schools closer related to traditional public schools, and restricts enrollment by geography, a balance must be struck between this concern and all the concerns cited above that suggest otherwise.

## VI. CONCLUSION

Hawaii’s charter law needs to be amended so as to achieve the flexibility, autonomy and funding necessary for a stronger charter law. In addition, although Hawaii scored higher in equity considerations, the law can be amended so as to clarify the provisions that leave its equitable promises vague and ambiguous. Of utmost importance

is for the charter law to be amended so as to increase flexibility of the charter schools. The law should not limit the number of charter schools that are authorized to operate, it should create multiple chartering authorities or at least have a chartering authority that is completely autonomous from the Board of Education and the Department of Education, and the law should grant charter schools LEA status so as to allow them access to much needed federal money without having to compete through the BOE. Of equal importance, the Hawaii charter law should be amended so as to allow a charter school to be completely autonomous. This requires that they be independent at least from the DOE, if not the BOE also. Greater autonomy would also be achieved by exempting charter schools from the collective bargaining laws and allowing charter schoolteachers to choose to remain covered by the state law or bargain with the charter school independently or collectively. In amending the law to achieve these objectives, charter schools should also be granted complete fiscal autonomy, as opposed to the scheduled payout that currently exists. Charter schools have demonstrated their ability to better student performance in other areas of the country. Charter schools in Hawaii can do the same if given the flexibility, autonomy and necessary control over their funding.