

WHAT ARE CHARTER SCHOOLS?: AN INTRODUCTION TO THE CONCEPT AND THE STATUTES

MARC DEAN MILLOT

[Mr. Millot is a social scientist in the RAND Corporation's Washington, D.C. office, an attorney, and a member of the Virginia Bar. He is the author of *Autonomy, Accountability, and the Values of Public Education: A Comparative Assessment of Charter School Statutes Leading to Model Legislation*, a RAND report now being circulated for comment.]

Since 1991 twelve states have passed statutes permitting a form of public education popularly known as "charter schools."¹ In 1995 another fourteen states will consider similar legislation. A recent GAO report notes that as of the first of this year 134 charter schools have been established across the country.² But considerable uncertainty exists as to what charter schools are. Advocates consider them an exciting innovation promoting local control of public schools; opponents contend that charter schools are actually private schools that will destroy our system of public education. Reporting on a national meeting of charter school advocates held in January of 1994, *Education Week* correspondent Lynn Olson entitled her article, "Varied Laws Raise a Question: What is a Charter School?"³

This piece is an effort to answer that question. Based on ongoing RAND research of recent legislation, this article describes the charter school concept. First, the concept's relationship to other well-known proposals for school reform is explained. Next, the essential characteristics of a charter school are described. Then the various approaches taken by the states to implement the charter concept are discussed. Finally, the basic types of charter schools available to states considering legislation are outlined.

¹The statutes covered here include Arizona, 1994 Ariz. ALS 2 (Ariz. Rev. Stat. Ann. §§ 15-101, 15-181 - 189) (hereinafter referred to as AZ § 15-xxx), California, Cal. Educ. Code §§ 47601-47616 (Deering 1993) (hereinafter referred to as CA § xxxxx), Colorado, Colo. Rev. Stat. §§ 22-30.5-101 - 114 (1993) (CO § 22-30.5-xxx), Georgia, Ga. Code Ann. §§ 20-2-255 (1993) (GA § 20-2-255), Hawaii, Haw. Rev. Stat. § 296 (199X) (HA § 296), Kansas, 1994 Kan. SB 803 (KS § x), Massachusetts, Mass. Ann. Laws ch. 71, § 89 (Law. Coop. 1993) (MA ch.71, § 89), Michigan, 1976 Mich. Pub. Acts 451 (amended by 1993 Mich Pub. Acts 362, adding §§ 501-507) (MI § xxx), Minnesota, Minn. Stat. § 120.064 (1993) (MN § 120.064), Missouri, 1993 Mo. S.B. 380, § 18 (MO § 18), New Mexico, N.M. Stat. Ann. §§22-8A-1 - 22-8-15 (Michie 1993) (NM § 22-x-xx), and Wisconsin 1993 Wis. Laws 16 (creating Wis. Stat. § 118.40) (WI § 118.40).

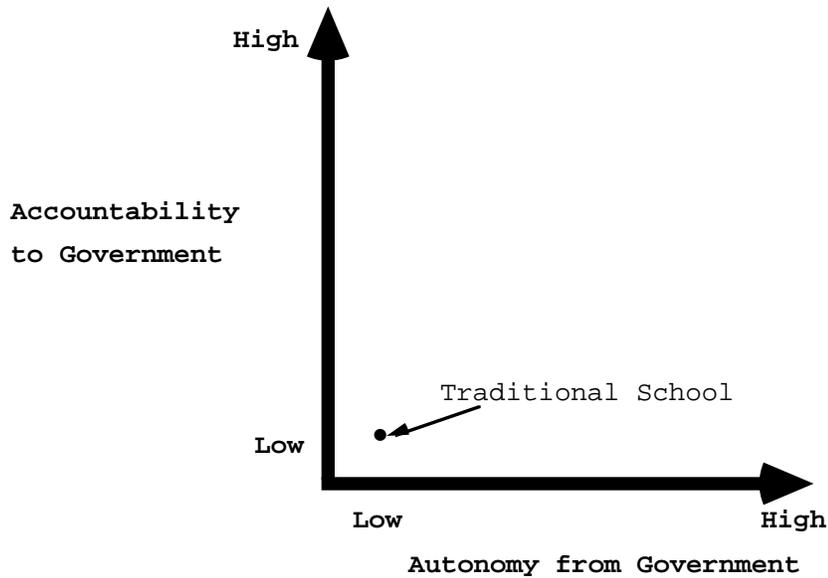
² United States General Accounting Office, *Charter Schools: New Model for Public Schools Provides Opportunities and Challenges*, GAO/HEHS-95-42, January 1995.

³ January 19, 1994.

WHERE DO CHARTER SCHOOLS FIT WITH OTHER REFORM PROPOSALS?

Proposals for school reform are motivated by dissatisfaction with student achievement and a sense that the current system of public education is failing. Recent critiques of the public school system lay much of the blame for inadequate performance on the inflexibility of the traditional school district. As a rule, individual public schools have no independent legal status. They are merely administrative elements of the school district. Traditional public schools are operated under the direction of the local school board, the district superintendent and administrators in the school district's central office. Parents, teachers and even the principal have virtually no power to decide matters critical to their school's success. They carry out an educational program established by the district, they do not control the resources allocated to their school, they have no authority to contract for goods and services, they have no control over the school's personnel, nor are they guaranteed any particular level of funding.

Fig. 1. Traditional Public Schools lack Autonomy from Government Control and Accountability to It



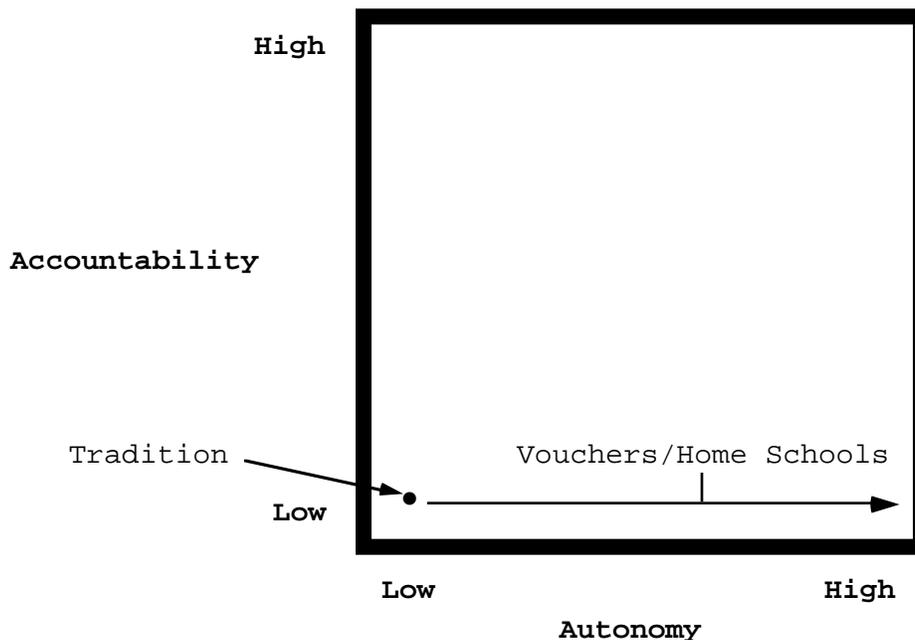
Laboring under the centralized policy direction of state and district education agencies and subject to the constraints of state civil service regulations and district-wide collective bargaining agreements, individual schools are unable to meet the particular needs of students in their communities. Parents generally have few options as to the type of public school they may choose to send their children. With no competition for the tax dollars raised to educate the vast majority of children, traditional public schools lack a powerful incentive to improve. And

because individual public schools lack autonomy, it is arguably unreasonable to hold them accountable for educational performance.

Proposals to Increase School Autonomy

Some of the proposals for reform of the school system that follow from this critique emphasize a vast increase in school autonomy, and would create a competition for the tax dollars devoted to public education. A voucher system would allow private schools to compete with school districts for a state's public school budget. A proposed initiative in Washington State would enable the voters in a school district to privatize the public school system and place complete control over public education with certified teachers. Home schooling places the responsibility for public education directly in the hands of parents. These proposals substitute direct government control with market mechanisms (i.e., parental choice) to assure that individual schools are accountable for educational performance.

Fig. 2. One Trend in Education Reform Promotes Accountability by Emphasizing the Market

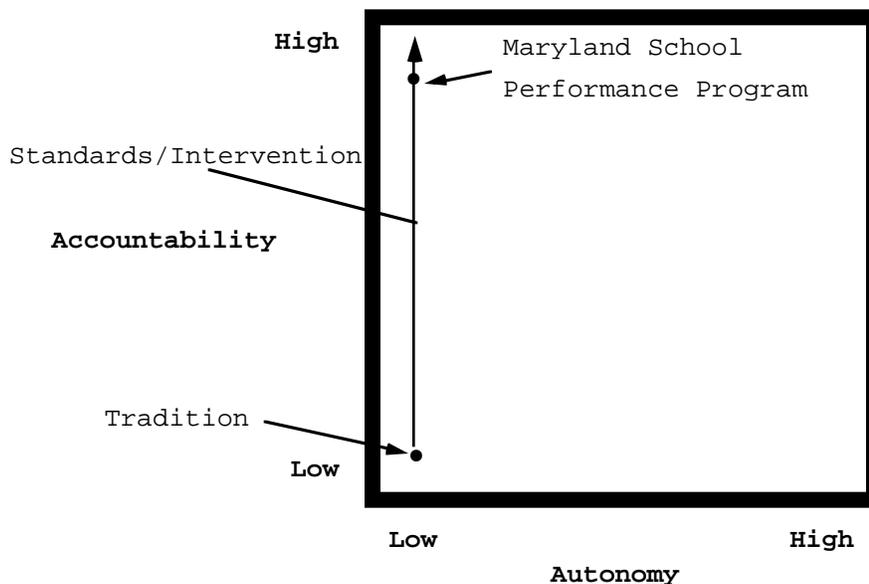


But markets are not a perfect means of providing for public education needs. Parents do not have the same incentives to seek cost-effective services as typical consumers. They are spending other peoples' money to procure public schooling for their children. The payments come from taxes raised by the general public, and the public has a real interest in the success of

public schooling and some right to trust that its funds will be well spent. Moreover, in most jurisdictions children have a right to public education guaranteed by the state constitution, and are required to attend school until they reach ages 16, 17, or 18. The state therefore has a responsibility to see that children receive an education adequate to the future demands of society and work.

Proposals to Increase School Accountability

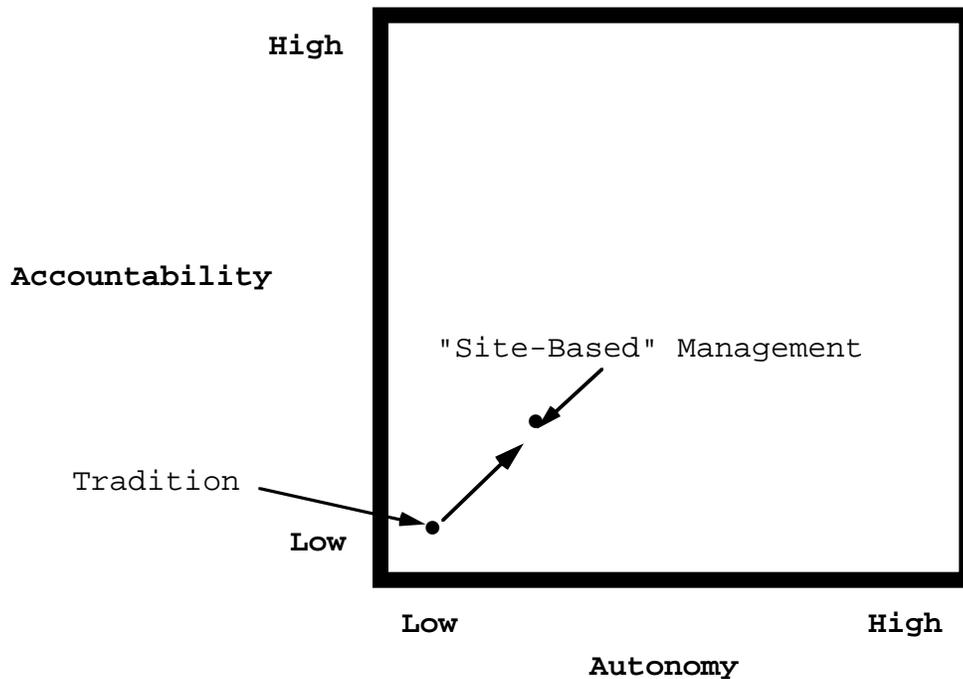
Fig. 3. A Second Trend in Public School Reform Promotes Accountability through State Standards and Assessments



A second set of systemic reform proposals focus on increasing accountability for educational performance at every level of the public school system. More stringent requirements for teacher certification, performance-based superintendent contracts, state standards for student performance in key subjects, the development of more authentic student assessments, comparative reports of overall student performance in district schools are some of the features of this approach. The state of Maryland has enacted legislation under which the state could take over a school failing to meet minimal performance standards. These proposals set criteria for evaluation and penalties for failure, but do not necessarily improve the ability of individual schools to take actions to assure a successful educational program. The schools remain subject to district and state regulations, civil service rules and union contracts. Most important, the district remains the key decisionmaker.

Proposals for Site-Based Management

Fig. 4. A Third Trend is to Increase the Authority and Responsibility of Individual Schools for Decisionmaking

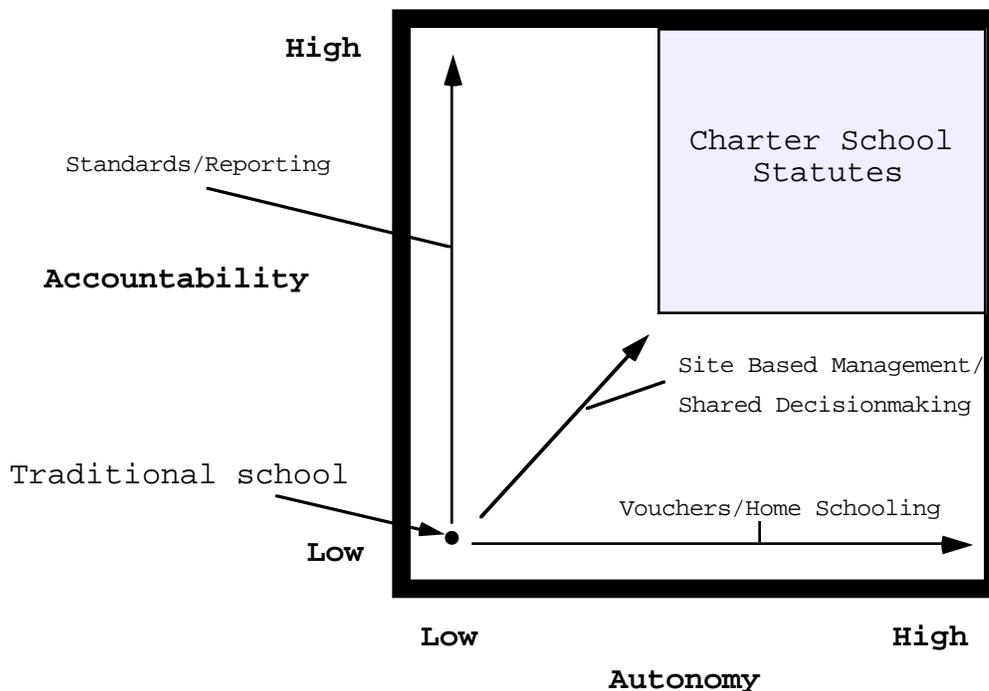


A third strand of systemic reform moves more of the responsibility and authority for education policy from the state and district to the individual school. Statutes permitting site-based management and shared decision-making, such as Washington state's six-year legislative experiment with 21st Century Schools, allow parents, teachers, and other school workers to participate with the principal in the development of a proposed school improvement plan. The school site team is given a measure of freedom from the district's direct control and must satisfy the local school board with its subsequent performance. The improvement plan generally covers a relatively narrow range of education policy, typically the development of an instructional program consistent with the district's curriculum. The school board must approve the plan, may subsequently decide against it, and is under no legal obligation to carry it out. The site team may or may not oversee implementation of the plan, but in any case the team does not control the school. Its authority is constrained by the principal, the district's central office, and the school board's responsibility to approve the team's actions. Moreover, the team must act within the confines of state laws and regulations, district policy, or union contracts, absent specific waivers from the state, district or union.

The Charter School Concept

The charter school concept combines proposals to increase school autonomy with efforts to create high levels of public school accountability, and can be seen as an extension of site-based management. Charter school statutes offer private persons the power to control decisions essential to the success of an individual public school's educational program, embodied in a formal agreement approved by an education agency of the state and made effective for some number of years. In return, charter school operators accept an obligation to improve student performance and to remain accountable to state government as a public institution carrying out a public trust and a state constitutional responsibility. The legally binding agreement between the school and the education agency establishing this relationship is widely termed a "charter."

Fig. 5. The Charter School Concept Balances the Autonomy and Accountability of Individual Schools



As under the voucher and home school proposals, autonomous charter schools offer alternatives to traditional public schools that increase choice and introduce competition for tax revenues into the public school system. But charter schools are not private schools receiving tax dollars. They are public schools, directly responsible to agencies of state government to meet

certain student performance requirements and to carry out the educational responsibilities of state government. Consistent with efforts to improve accountability for performance, charter schools must meet educational standards established in the statute or the charter, and charter school applicants must justify their proposed educational program to education agencies of the state before receiving their charter. But charter schools are also given some measure of control over the decisions necessary to assure the success of their program. As under site-based management and shared decisionmaking, decisions at charter schools are made by people with a stake in the success of their particular school. But charter school statutes may permit individuals and organizations to establish entirely new schools. And absent gross negligence, charter school operators have an enforceable right to manage their school relatively free of district intervention for some number of years.

WHAT ARE THE ESSENTIAL FEATURES OF CHARTER SCHOOLS?

The "basic bargain" embodied in charter school legislation is "autonomy for accountability." On the autonomy side of the bargain, the defining features of charter schools are the right to control decisions essential to the success of the schools educational program, and the guarantee of that right for some number of years. On the accountability side are the responsibilities to achieve some level of student performance and meet a public trust in public education.

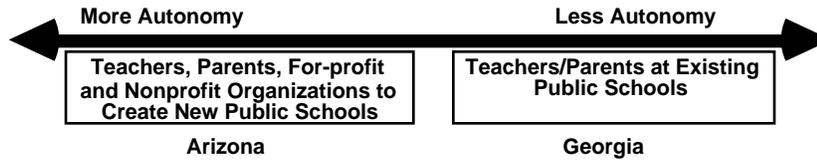
Like the other strands of systemic reform discussed above, the charter school concept is motivated by a desire to improve student outcomes, to make our students better citizens and more productive workers. And as with the other strands of reform, neither education policymakers nor the general public can be certain that the charter school concept will work. In particular, no one knows the mix of autonomy and accountability necessary to improve student performance. Nevertheless at least 12 states have passed legislation permitting the establishment of charter-like relationships between individual schools and education agencies of the state (Arizona, California, Colorado, Georgia, Hawaii, Kansas, Massachusetts, Michigan, Minnesota, Missouri, New Mexico, and Wisconsin). Each has created a unique balance of autonomy and accountability.

HOW HAVE STATES IMPLEMENTED THE CHARTER SCHOOL CONCEPT? - AUTONOMY

A key aspect of charter school autonomy is the power to decide matters essential to the success of the school. All charter schools have this power to some extent but, as the following discussion of some of the more important policy areas demonstrates, the nature of their overall autonomy varies by state.

Charter School Operators

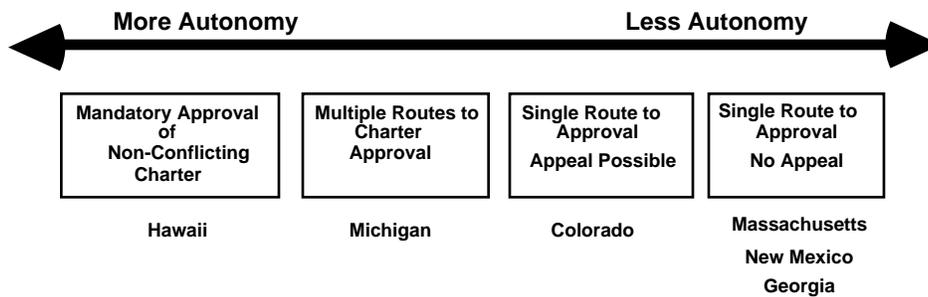
Figure 6. Charter School Operators



Charter schools are proposed and operated by private persons who are not part of the school district's management. The range of persons permitted to apply for a charter varies by statute. Some states, like Georgia, only permit a super majority of both teachers and parents to propose to convert their public school to charter status. Others, such as Arizona, allow any public body, private person or private nonsectarian organization to establish a new public school. The size of the pool of potential charter school operators affects autonomy to the extent that a larger pool increases the chances of innovative programs.

Approving Authorities

Figure 7. Approving Authorities

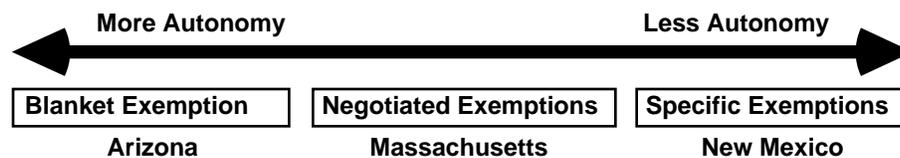


Charter school statutes also vary in the designation of state agencies permitted to grant charters, and in the right of applicants to appeal the decisions of these "approving authorities." Only Hawaii gives applicants whose charter meets statutory criteria the right to a charter. Every other statute provides approving authorities with enormous discretion in their decisions to grant one. In most cases one education agency of the state, usually the local school board, is responsible for the charter process. In Massachusetts, charters are granted by the Secretary of Education, part

of the executive office of the Governor. However, some states, such as Colorado, allow an applicant to appeal the approving authority's decision to the state board of education. Other states have given several state agencies with education responsibilities the right to grant charters. Arizona allows a state board for charter schools and the state board of education to issue charters, as well as local school boards. The right of appeal and the possibility of multiple approving authorities enhances the autonomy of charter schools by increasing an applicant's bargaining leverage during the approval process.

Waivers from the Education Code

Fig. 8. Waivers

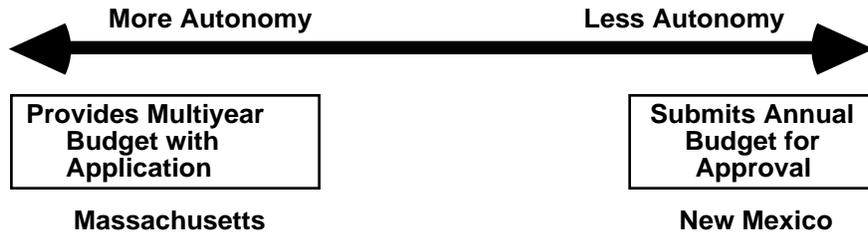


Charter schools have their own education program; one specifically designed around the needs of the community to be served by the school and the capabilities of the applicants. The programs often depart substantially from traditional practices reinforced or required by the state's education code. Some might require multi-age classes, others team teaching, others a curriculum different from that normally used in the district. To permit these innovative educational programs, the statutes allow state boards of education to grant the charter schools waivers from the code.

The scope of this waiver provision is of great importance to school autonomy. New Mexico only permits waivers "for the purpose of providing class size and structure flexibility, alternative curriculum opportunities and alternative budget opportunities." Other statutes, such as Colorado's, have few if any limits on potential waivers, but require the charter school applicant to negotiate every waiver necessary to the proposed education program with the state or local education agency approving the charter. Several statutes provide for a "blanket" waiver. For example, with the exception of the provisions contained in its charter and the requirement to assure that its teachers will remain within the state retirement system, a California charter school "is otherwise exempt from the laws governing school districts." Under this approach the approving authority has the burden of showing why a school should adhere to provisions of the code.

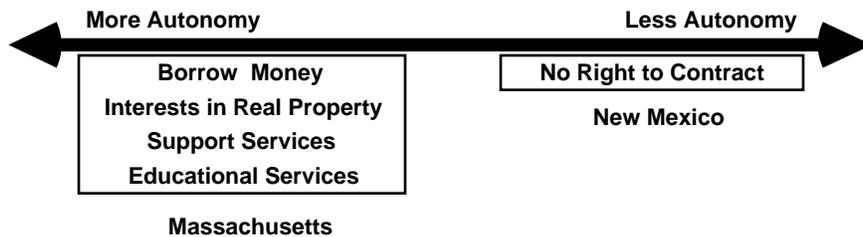
Budgeting and Contracting

Fig. 9. Budgeting



Charter schools have greater control over their own budget than traditional public schools, but the nature and extent of this control varies. Massachusetts charter schools have complete control over the school's finances. Charter school applications must include a multi-year budget plan, but once approved, a charter school determines its own budget. By contrast, a New Mexico charter school must submit its budget to the local school board for approval or amendment.

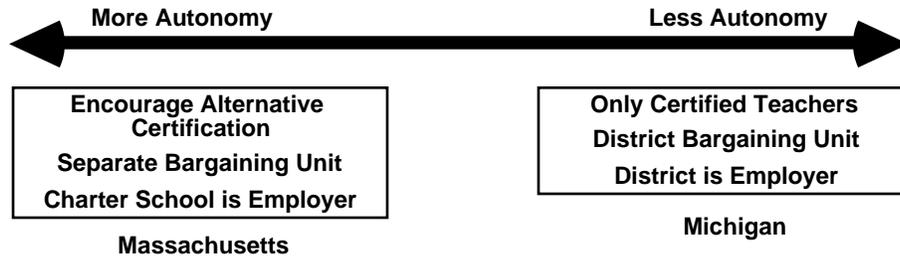
Fig. 10. Contracting



Similarly, Massachusetts charter schools have the legal authority to contract for goods, services and real property. Indeed, a Massachusetts charter school may contract out the entire educational program to a private firm, as several have done. Minnesota charter schools may contract the education program with a teacher cooperative. In New Mexico and Georgia, charter schools are not granted any right to contract.

Labor Relations

Fig. 11. Personnel

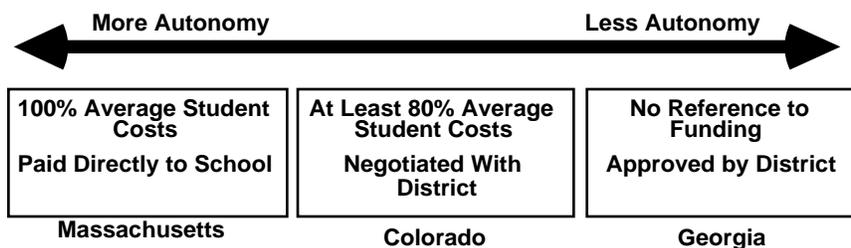


The charter school concept is in part motivated by a desire to empower teachers, and most charter school legislation permits or requires some form of shared decisionmaking involving school employees at the site. But the statutes do not uniformly move all matters of labor relations and personnel policy from the district to the individual charter school. Under the two Michigan statutes, the first of which is now being tested in the state courts, charter schools approved by local school boards remain subject to district collective bargaining agreements. Teachers in those schools may not form bargaining units independent of the district union, and the school district - not the charter school operator - is the public employer for the purposes of negotiations over teachers' wages, hours and working conditions.

On the other hand, Massachusetts charter schools are independent of school districts. School employees may form their own bargaining unit, and the charter school's board of directors is the public employer in collective bargaining. Given that salaries constitute the overwhelming majority of an individual school's real budget, moving the locus of collective bargaining and other aspects of personnel policy from the district to the charter school is a vital ingredient of autonomy.

School Finance

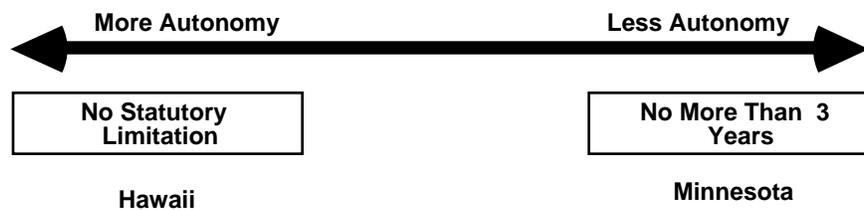
Fig. 12. Finance



The autonomy provided in a charter is meaningless if a charter school does not have a reasonable assurance of adequate funding. The arrangement most supportive of autonomy is to finance charter schools on the basis of average student costs in the jurisdiction where the school is located. In Massachusetts and Hawaii, charter schools receive 100 percent of the average cost of every student enrolled in the school from the district where the student resides. Colorado schools must receive no less than 80 percent of the districts per pupil operating revenues, which suggests they are not likely to receive more. The Georgia statute contains no reference to funding. Presumably charter schools in that state continue to be funded as part of the school district they belong to, with budget controls in the hands of the local board.

Charter Duration

Fig. 13. Charter Duration



Perhaps the single most important guarantee of a charter school's autonomy is the fact that the charter is a binding agreement assuring the school's status for some number of years. So long as the school meets its performance requirements and such other contractual terms as adherence to health, safety and civil rights rules and regulations, charter school managers can expect to remain in control of their school. The contractual nature of a charter is what distinguishes the charter school concept from site-based management legislation. Nevertheless, the term of the charter affects the school's practical autonomy.

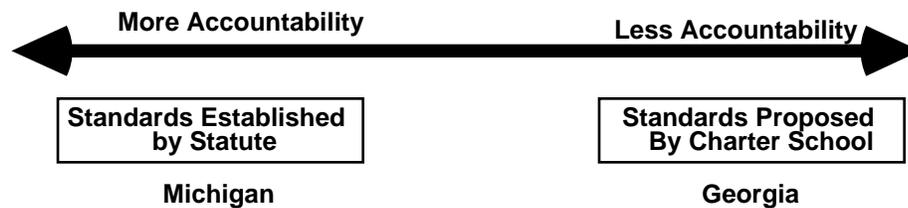
Hawaii's charter school statute provides for a contract of indefinite duration subject to termination only for failure to meet statewide student performance standards. Michigan's first charter school statute set no limit on a charter's duration. Most states establish relatively brief contractual periods, with the possibility of renewal. □ Arizona establishes a five year period for the initial charter. California, Colorado, Massachusetts, New Mexico, and Wisconsin establish a five year maximum for the initial contract. Kansas establishes a charter period of three years. Georgia and Minnesota provide for a duration of not more than three years.

HOW HAVE STATES IMPLEMENTED THE CHARTER SCHOOL CONCEPT? - ACCOUNTABILITY

Autonomy is only half the story of charter schools. Accountability is equally important to the concept. The accountability side of the basic bargain embodied in charter school legislation comes in two parts. The first part is accountability for performance. A desire to improve student learning is perhaps the strongest motivation for all education reform proposals, and advocates of charter schooling justify the high degree of autonomy granted to individual schools as the best means of producing effective schools. The second part is accountability to state government. Charter schools are public schools, meeting a state constitutional responsibility and using taxpayer money to carry out a public trust.

Educational Performance

Fig. 14. Educational Performance



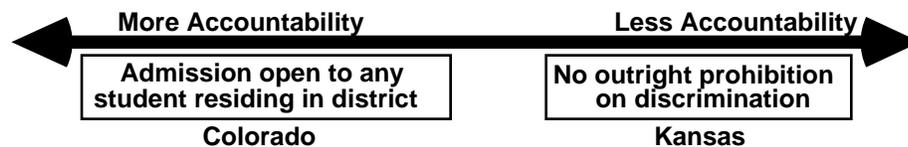
Improving educational outcomes is the principal rationale for charter schools, and the statutes focus on matters of school performance. Most statutes require charter schools to at least meet the same performance standards, testing and portfolio requirements set by the state for students in other public schools. For example, Arizona requires that a school charter contains a method to measure progress toward the pupil outcomes adopted by the State Board of Education, including participation in the states' essential skills tests and a nationally norm-referenced achievement test designated by the State Board. Both of Michigan's statutes require that the charter include the methods of assessment to be used by the charter school. Assessment methods the school may adopt include tests developed or sanctioned by the state, or one or more of such nationally normed tests as the California achievement test, the Stanford achievement test, and the Iowa test of basic skills. Michigan also requires evaluation of the school itself; charters must specify the method to be used to monitor the schools performance in meeting its targeted educational outcomes. At the other end of the spectrum lies Georgia, which allows charter school applicants to propose performance standards and effectively makes them a matter of negotiation between the applicant and the approving authority.

Performance of a Public Trust

Charter schools are accountable to agencies of state government for student performance and a sound educational program. Charter schools are also responsible to government authorities as public schools meeting a constitutional responsibility and a public trust. Their governance structures are specified in the statute or the school's charter from the state. In several cases, for example Michigan, a charter school's decisionmaking bodies are subject to state "open meeting" and "freedom of information" statutes. And while schools converted to charter status draw their students from the same community as before conversion, new charter schools are schools of choice where admission is generally subject to lottery.

Virtually every charter statute requires charter school applicants to explain their proposed educational program, admissions, personnel, administrative and financial policies; their liability and insurance coverage; their management and financial reporting systems; their financial plan and the qualifications of key personnel. Charter schools must maintain: an open and accessible decisionmaking processes; admissions policies consistent with prohibitions against discrimination on the basis of race, ethnicity or religion, sound financial management, fair treatment of students and public employees, and the safety of their facilities. Under the statutes, approving authorities must pass judgment on all these matters before granting a charter, a process no private school is subjected to.

Fig. 15. Admissions



Charter school statutes do vary in their expression of permissible admissions policies. Most statutes are like that of Colorado, which prohibits a charter school from discriminating against the admission of any student. If the number of applicants exceeds the schools capacity, charter school operators are required to institute a lottery. At the other end of the spectrum is the Kansas statute, which contains no specific provision against discrimination. In between lies the Massachusetts charter school law, which prohibits discrimination on the basis of a host of factors, including academic performance, but allows charter school operators to use reasonable academic standards in determining a students eligibility. From the standpoint of accountability, clear rules

like those of Colorado are preferable to the ambiguous standards implied by Kansas and Massachusetts.

After the school is in operation, legislation generally requires that the charter school provide annual reports on its educational progress and financial condition to the approving authority and the public. A charter school must open its books - and the school itself - to state authorities on demand. Should a charter school fail to meet any of the terms of its charter, statutes generally allow the approving authority to revoke the schools charter. Should the school satisfy the terms, but not the spirit of its charter, the approving authority is under no obligation to renew the charter when it expires. The continued existence of most charter schools is dependent on regular reauthorization by education agencies of the state.

WHAT ARE THE BASIC CHARTER SCHOOL OPTIONS?

Table 1. A Charter School Template

- Autonomy

- **A charter school controls decisions critical to the success of its educational program**
 - **1. Is proposed/managed by private "persons"**
 - **2. Has its own educational program**
 - **3. Controls its own budget**
 - **4. Can contract for goods, services, real property**
 - **5. Controls its personnel policies**
 - **6. Is financed on the basis of average student costs in the district**
- **A charter school's status is protected by a binding agreement**
 - **7. Has a contract for years**
 - **8. Negotiates its status with an agency of state government**

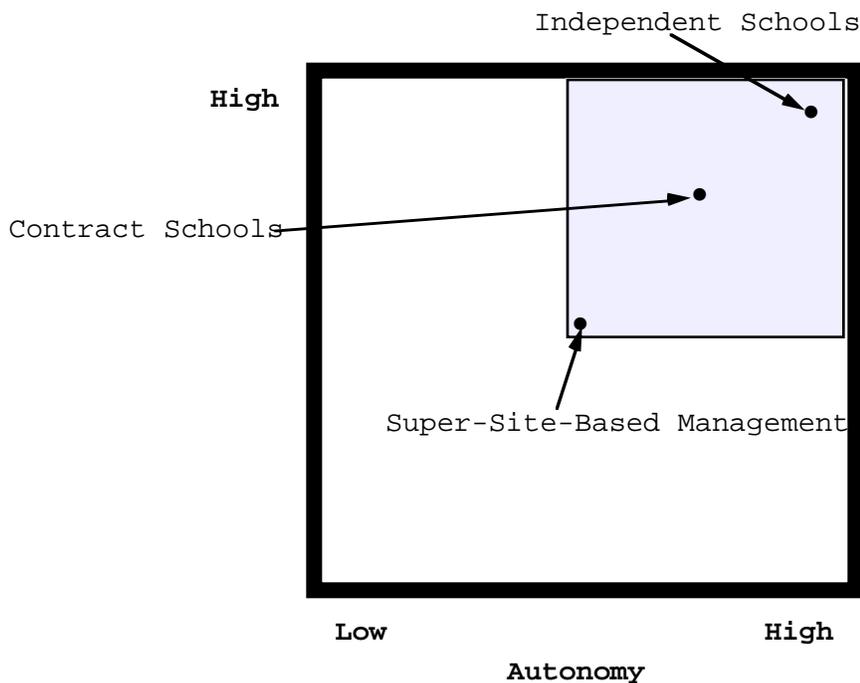
- Accountability

- **A charter school is responsible for educational outcomes**
 - **9. Is accountable for student performance**
- **A charter school is responsible for operation consistent with the values of public education**
 - **10. Is a public school**
 - **11. Is responsible to an agency of state government**

No one knows the balance of autonomy and accountability most likely to create public schools that improve student outcomes. Charter school legislation is based on the proposition

that at a minimum, individual schools must have a right to control some decisions important to the success of the educational program for some number of years, and must be responsible to government authorities for educational performance and for carrying out a constitutional trust financed with tax dollars. Each state has elaborated on this theme in its own way; no two charter school statutes are exactly alike. Table 1 provides a template for assessing the extent to which any statute implements the charter school concept.

Fig. 16. State Statutes Create Three Types of Charter Schools



A review of the statutes suggests the states have developed three basic charter school options: "super site-based management", "contract schools", and "independent public schools."

Super Site-Based Management

The simplest arrangement is the modest extension of site-based management offered by such states as New Mexico and Georgia. This approach allows teachers and parents to propose and implement an educational program for an existing school - to convert their school to charter status - with district and perhaps state approval. The scope of autonomy offered by this approach is generally confined to decisions regarding curriculum and instructional strategies. Although they have the right to carry on with their educational program relatively free from district

intervention after the approval of their charter, charter schools operated under the "super site-based management" option have no legal significance independent of the school district. The school remains an administrative unit of the district, subject to school board decisions on such critical matters as personnel, budgeting, and collective bargaining.

Contract Schools

Under the "contract" option, a broad range of individuals are eligible to propose the establishment of entirely new charter schools within the district. In addition to curriculum and instruction, the operators of these schools control more decisions regarding budget and personnel. Nevertheless, these schools remain part of the school district. Operators apply to the local school boards for their charter and are held accountable to the board to meet the charter's terms. And because the local board is granted substantial discretion in its decision to grant charters, the nature and extent of alternative schooling in the district will be a matter of board policy. This approach describes most state's charter school legislation.

Independent Public Schools

The first two options assume that school boards will exercise the initiative and permit, perhaps even solicit, the creation of new autonomous schools to compete with traditional schools directly managed by the district. The "independent" charter school option does not rely on school boards to promote the charter school concept. It places the initiative for charter school formation with members of the community. Like the contract school, the independent public school can be operated by a wide variety of individuals and controls a broad range of important decisions. But independent charter schools are chartered at the state level, perhaps by the secretary of education as in Massachusetts, or a state board for charter schools as in Arizona. These independent public schools are intended to compete with traditional schools managed by the school districts, and this competition is intended to pressure districts to improve the quality of their educational services.

CHARTER SCHOOLS

Charter schools combine trends in education reform to improve school autonomy, increase school accountability and place more of the responsibility for important decisions with the stakeholders at the individual school. State charter school legislation implements the basic bargain of autonomy for accountability in a multitude of ways. Those interested in pursuing the concept can look to the statutes for three models: super site-based management, contract schools or independent public schools. The option states choose and the timing of their legislation depends on judgments as to the mix of autonomy and accountability likely to improve student performance.