

Considering Nontraditional Alternatives: Charters, Private Contracts, and Vouchers

Julia E. Koppich

Julia E. Koppich, Ph.D., is a San Francisco-based education consultant, and a visiting professor at the Claremont Graduate School.

Abstract

Charter schools, vouchers, and contracts with private agencies providing educational services all reflect the belief that a substantial part of educational budgeting, decision making, and accountability should be based at the level of individual schools, rather than at the school district level. Though states are moving quickly to set up charter schools, and some states and districts are debating the merits of vouchers or experimenting with private contracts, in fact there is little information about the educational effectiveness of these innovations.

Charter schools face substantial challenges in financing and business operations; many state charter school laws provide no start-up or capital funds and only limited operational funds. In addition, many charter school laws are vague on key questions of authority and school-district relations. Contracting with private agencies presents a wide range of options, many of which have been tried in only a few locations. The most publicized contracts with private agencies to run multiple schools have included some highly visible disappointments and no clear successes as yet, though experience is too limited to draw conclusions about contracting in general.

Vouchers that may be used at private schools are extremely controversial for several reasons. Because private schools can decide which students they will accept, opponents are concerned that extensive use of vouchers may dramatically change the composition of the public school student body. It is also unclear whether vouchers to religious schools (which comprise 82% of all private schools in the United States) violate the constitutional requirement for separation of church and state.

The 1983 release of *A Nation at Risk*, the report of the National Commission on Excellence in Education, shifted the debate about education in America from a focus on equity (defined as a legal obligation to provide substantially equal educational resources for all students), which had occupied reformers in the 1960s and 1970s, to a focus on excellence (that is, ensuring that ever larger proportions of the school-age

population reach higher levels of achievement). Despite more than a decade of national, state, and local educational reform efforts, the American public continues to express deep concern about the public school system as a whole.

A clear expression of that concern is the increasing level of support for publicly funded alternatives to existing schools. This article will describe three of these emerging alternatives—charter schools, contracts under which outside agencies provide educational services, and voucher programs. Each of these alternatives represents a fundamental shift from the norm. Moreover, each is rooted in a simple yet profound idea: individual schools, rather than aggregations of schools called districts, should be the locus of most educational budgeting, decision making, and accountability.

This article first addresses the historic shift from individual school site control to control by school districts. The article then summarizes, to the extent available, evaluative data on charters, contracts, and vouchers. In this regard, it is important as well to raise an issue that is, at least, reason for caution. Much, indeed most, of the research on charters, contract schools, and vouchers has been conducted and reported on by partisans, groups or individuals who are known to hold particular perspectives and whose research results corroborate their views. The findings themselves may be valid, but rarely are they arrived at by means of dispassionate (that is, agenda-neutral) research and evaluation.

The Common School and the Development of Districts

The American system of public education has its roots in the common school. The descriptor was not meant to imply that the school was for commoners; rather, that it would be common to all people. The common school was, moreover, to be available at no cost, provide students from diverse backgrounds with a common educational experience, be totally supported and controlled by the common effort of the entire community, and contribute to rendering social and economic class boundaries permeable.¹

The framers of the American education system did not anticipate the development

of the large public bureaucracies many school systems have become. Currently, nearly 45 million students in the United States attend grades K–12 in almost 80,000 public schools, organized into nearly 15,000 school districts.² The 100 largest of these districts, including New York City with more than one million enrollees and the Los Angeles Unified School District with upwards of 600,000, are responsible for educating 23% of all public school students.³ The reasons for this consolidation into increasingly large districts are numerous and historic: Larger districts were believed to benefit from economies of scale; collecting and distributing tax revenue over a larger area would sometimes solve problems of school-to-school funding inequities. In Florida and Nevada, for example, school

district boundaries are aligned with county boundaries, resulting in several very large districts.

The early framers of the public education system also did not anticipate the twentieth century's increasing expectation that all children be educated for an increasing number of years and to a much higher degree of academic competency. As educational expectations rise, so does the obligation to deal in a specialized way with a widening range of student needs. In the nineteenth century, common schools provided their students with rudimentary literacy and numeracy skills, after which many students left school without serious negative consequences. Today, many families

making. Contracts apply a districtwide template to teachers' employment conditions, implicitly assuming that all teachers and all school settings are identical. In addition, industrial-style collective bargaining assumes a lack of commonality between the needs and responsibilities of labor and those of management, an assumption that further impedes flexibility and innovation. While a few districts and their teachers' unions have begun to alter collective bargaining to decentralize and customize decision making (for example, through joint union-district committees or contract waiver provisions), examples of these efforts are limited.⁴

Proponents of the schooling options explored in this article assert that these plans offer the freedom and flexibility which allow schools to tailor their programs to the needs of individual students and will result in higher levels of achievement. Opponents contend that implementation of charter schools, contract schools, and vouchers will produce elitist schools which will enroll the best students from conventional public schools, leave conventional schools with diminished budgets, create an education system segregated by race, income, and philosophy, and abandon the goal of a common American schooling experience.

Charter Schools

Charter schools are *public* schools which are freed from many local and state regulations in exchange for increased accountability for student achievement results.⁵ As of November 1, 1996, there were 481 charter schools in operation nationally, enrolling 105,000 students. California and Arizona together account for 57% of charter schools and 59% of charter school students.⁶ Charter schools include elementary, middle, junior high, senior high, and comprehensive K-12 schools.

As public schools, charter schools are required to be nonsectarian and are precluded from charging tuition. They may be organized by individuals or by groups, such as teachers, parents, and colleges and universities, who are granted a charter by the designated public agency specified in state law (generally a state board of education or local school board) to operate the school. The charter delineates what resources the school will receive, how the school will be

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demand specialized services such as vocational education, advanced college placement, foreign language competency, accommodations for unusual learning styles or behavioral or emotional challenges, child care on the school site, and education reflecting multicultural or specific ethnic history. Many feel that common schools cannot respond to all of these demands in sufficient depth and that more specialized public schools are needed. Much of the current demand for school site control reflects local desire for these kinds of schools committed to addressing individualized preferences.

Owing in part to size, many school districts have developed as tightly controlled centralized bureaucracies. Observers have frequently noted that the principal job of district headquarters staff is to ensure that schools hew faithfully to local, state, and federal rules, regulations, statutes, and procedures. This bureaucratic structure, claim its critics, is inherently antagonistic toward innovation, efficiency, and entrepreneurship.

Collective bargaining agreements between teachers' unions and school district management also serve often to reinforce the bureaucratic nature of educational decision

Box 1

States with Charter School Legislation, by Year of First Enactment, as of June 1997

1991	Minnesota
1992	California
1993	Colorado, Georgia, Massachusetts, Michigan, New Mexico, Wisconsin
1994	Arizona, Hawaii, Kansas
1995	Alaska, Arkansas, Delaware, Louisiana, New Hampshire, Rhode Island, Wyoming
1996	Connecticut, District of Columbia, Florida, Illinois, New Jersey, North Carolina, South Carolina, Texas
1997	Mississippi, Pennsylvania

Sources: For years 1991 to 1996: Office of Educational Research and Improvement. *A study of charter schools: First year report 1997*. Washington, DC: U.S. Department of Education, 1997; for 1997: Schnaiberg, L. State charter laws get new round of attention. *Education Week*. June 25, 1997, p. 10.

managed and governed, what the curriculum will be, how achievement will be measured, and what student outcomes are anticipated. Charter schools operate as schools of choice; that is, enrollment in them is voluntary.

The charter school movement is still quite new. Minnesota enacted the first charter school law in the nation in 1991. Since then, 26 other states and the District of Columbia have enacted similar laws, as shown in Box 1. State statutes vary widely regarding matters such as the number of schools that are allowed to become charter schools, the agencies that approve charters,⁷ who is eligible to seek a charter, and the amount of operating autonomy granted a charter school.⁸ As illustrated in Table 1, some state laws allow wide autonomy to charter schools, while others have been said to create “charters in name only,” under strict control by the school district. For example, if teachers in a charter school remain employees of the district, rather than of the school, district control of the school’s program may be largely maintained.

Most of the nation’s charter schools have been in operation less than three years; almost half began in 1996–97. Preliminary data are just beginning to emerge regarding

the kinds of programs charter schools offer and the students they serve. Most charter schools emphasize a particular academic philosophy, some concentrating on “back to basics,” while others pursue newer pedagogical approaches such as “integrated interdisciplinary curriculum.”^{8,9} Many report they make considerable use of educational technology.⁸ Some charter schools have affiliated with nationally known programs and organizations, such as Accelerated Schools, the International Baccalaureate, the Coalition of Essential Schools, and the New American Schools Development Corporation. Private and for-profit organizations have established charter schools as well. The Renaissance School in Boston is a cooperative effort of the for-profit Edison Project and the Horace Mann Foundation. Some charter schools focus on particular segments of the student population. Options for Youth is a dropout recovery charter school in San Bernardino, California. Jingletown is a charter middle school for limited- and non-English-speaking students in Oakland, California.

A 1995–96 in-depth survey of 35 charter schools in seven states conducted by the Hudson Institute found that nearly two-thirds (63%) of the charter schools’ students were members of minority groups, a “large number” of whom were economically

Table 1

Charter School Laws as of August 1996													
	Stronger Laws (likely to yield larger numbers of autonomous schools)												
	AZ (94)	DE (95)	NC (96)	FL (96)	NH (95)	SC (96)	MA (93)	MI (94)	TX ^a (95)	IL (96)	CA (92)	DC (96)	NJ (96)
Nonlocal board sponsor available or appeal process exists ^d	X	X	X X	X	X	X	X	X	X		X	X	X X
Individuals or groups from outside the public school system can organize a charter proposal	X	X	X	X	X	X	X	X	a	X	X	X	e
Automatic exemptions from most state laws/rules and local policies	X	X	X	X	X	X	X		X	X	X	X	
Fiscal autonomy: School has complete control over funds generated by student count (including salaries)	X	X	X	X	X	X	X	X	X	X	f	X	e
Legal autonomy (for example, teachers are employees of school, not local district) or the charter (not the law) determines the level of legal autonomy	X	X	X	X	X	X	X	X	X	X	X	X	e
No (or very high) limits on the number of charter schools that can be formed (compared with total population)	X	X	X	X	X	X		X		X			X
Some percentage of noncertified individuals can teach at charter school (without having to seek a waiver or alternative certification)	X	h	X	X	X	X	X	i	X	X ^l	X	X	
Total "Stronger" Components	7	7	7	7	7	7	6	6	6	6	6	6	5

disadvantaged.¹⁰ The charter schools, not surprisingly, attracted primarily students who were not satisfied with their own public schools. The majority (81%) of these students transferred to the charter school from their existing public schools, and the remainder came from private schools, had previously been home schooled, or had dropped out. The survey authors described many of the students as "square pegs" who were not comfortable in the "round holes" available in conventional schools. Indeed, they found that charter schools also tended to attract unconventional teachers, many of whom relished the challenge of meeting special needs.

It is too early for reliable student achievement data, and conceptual problems with assessment make it unlikely that

clear data will be available soon.¹¹ A compelling argument on behalf of charter schools is that they will be responsible for demonstrating results. But accountability systems in charter schools, thus far, are little better than those in other public schools. Many charters do not have in place measurable performance expectations, and charter-granting agencies have not yet insisted on rigorous accountability systems.¹² Available student data are largely self-reported and related more to inputs (numbers of students, types of courses, availability of technology) than to outcomes. Additionally, many charter schools assess student outcomes in nonstandardized form, such as through samples of student work collected in portfolios, thus making comparisons between charter schools and other public schools difficult.

Table 1 (continued)

			Weaker Laws										
	MN (91)	CO (93)	LA (95)	CT ^b (96)	WI ^c (93)	HI (94)	WY (95)	NM (93)	RI (95)	GA (93)	KS (94)	AR (95)	AK (95)
Nonlocal board sponsor available or appeal process exists ^d	X X	X		X				X	X				
Individuals or groups from outside the public school system can organize a charter proposal	X	X	X	X	X		X				X		X
Automatic exemptions from most state laws/rules and local policies	X		X		c	X							
Fiscal autonomy: School has complete control over funds generated by student count (including salaries)	X	g	X	X		X							
Legal autonomy (for example, teachers are employees of school, not local district) or the charter (not the law) determines the level of legal autonomy	X	g	X	X									
No (or very high) limits on the number of charter schools that can be formed (compared with total population)		X			X	X	X			X		X	
Some percentage of noncertified individuals can teach at charter school (without having to seek a waiver or alternative certification)			X										
Total "Stronger" Components	5	5	5	4	3	3	2	1	1	1	1	1	1
Notes: Highlighted columns are the six most recently passed charter school laws. The general strength of these laws reflects a trend toward stronger legislation. Since August 1996, Mississippi and Pennsylvania have passed charter school laws.													
^a Based upon "open enrollment" charter school portion of Texas' charter school bill. Eligible organizers are limited to public or private higher education institutions, a nonprofit, or a governmental entity. ^b Connecticut's legislation has a state-sponsored charter school component that reflects the analysis included in this chart. The state also has district-sponsored charter schools that are considerably less autonomous and not included in this analysis. Existing private schools are not allowed to apply for a charter. For-profit organizations may not apply for a charter but are free to contract with successful charter applicants. Parents or groups of parents who home school their children may not apply for a charter to continue such activities. The fiscal independence of the school depends on the terms of its charter. ^c In Wisconsin, charter schools are automatically exempt from most state laws and rules, not local board policies. Also, recently enacted provisions strengthen the law for potential charter schools within the Milwaukee district only in that such schools can become legally and financially autonomous and have access to an appeal process involving the new state secretary of education. In Wisconsin, the district gets to determine whether to accept any applications at all. Once a district decides to accept applications, a group of parents or community members may apply. ^d "Stronger" charter school law components are those that are most true to the charter school concept, challenge the status quo aspects of the system, and theoretically may lead to broader student impacts and ripple effects. Component #1 (availability of nonlocal board sponsorship or appeal) is considered a vital component to get an adequate number of charter schools started. The strength of appeals processes varies from state to state. Some analysts argue that the recent bills in Florida and South Carolina include appeals processes that will allow local districts to veto charter applications. Legislation in many states allows a wide variety of individuals and organizations to apply for charters, but no states allow religious schools to apply. ^e In New Jersey, any teacher or parent within a district may themselves, or in conjunction with any in-state higher education institution or private entity, establish a charter school; such schools are eligible for at least 90% of the local levy budget per pupil; and district collective bargaining provisions automatically apply to converted public schools, while salaries within new charter schools must fall within the range established by the district in which the school is located. ^f California's charter schools are allowed by law to be legally and fiscally autonomous, but this depends upon the provisions of a given school's charter. ^g Legally, Colorado's charter schools are to remain a part of the local school district and to receive at least 80% of their funds from it; in practice, however, many are operating quite autonomously. ^h In Delaware, up to 35% noncertified teachers may be utilized if no qualified alternative certification program exists (and presently there is no such program in the state). ⁱ In Michigan, the issue of automatic law exemptions is still unclear, and certification is required except in university-sponsored schools wherein higher education faculty can teach. ^j Noncertified individuals need not apply for an alternative certification, but the Illinois legislation spells out conditions for employment of noncertified individuals which are similar to requirements of formal alternative certification in other states. The state's cap on charter schools is 45, and the legislation includes regional subcaps as well. These two qualifications suggest that the Illinois legislation may be "weaker" than it appears.													

At this time, the impact of charter schools on student outcomes is largely unknown. In any event, given the diversity of educational approaches and student needs encompassed by charter schools, it is highly likely that outcome data will provide mixed results, with charter schools being shown to have both positive and negative attributes and results. At this point, what is clear is that those who seek to establish charter schools face a number of financial, legal, and technical challenges.

Financial Challenges

Charter schools are funded through their “home” school districts. Some state laws require that all operating dollars be disbursed directly to the charter schools; others do not. For example, charter schools in Wisconsin receive from their districts what

in Massachusetts, only a handful of currently operating charter schools receive 100% of the combined state and local operations funds.”¹² In the majority of states, districts are empowered to withhold from charter schools part or all of the district’s local tax revenues for day-to-day operations. Similarly, access to categorical funds is often limited for charter schools. Because most federal funding and a significant share of state funding for schools is categorical (that is, restricted to specific purposes such as special education or bilingual education), this can constitute a substantial share of the school’s funding.

■ *No capital funds.* Charter schools have no access to local funds for capital improvement and no authority to issue bonds. They must thus use operating funds for capital expenditures. Recognizing this problem, Arizona in 1997 approved state aid for capital/facilities expenditures for charter schools.¹⁴

■ *“Seat time” funding.* Virtually all school districts receive money from their states on the basis of average daily attendance. States make few adjustments for schools that configure instruction in nonconventional ways. For example, a charter school that does not require daily attendance might receive less funding for a comparable number of students.

Emerging anecdotal evidence suggests that resourceful charter schools can overcome some fiscal barriers. The executive director of Fenton Avenue Charter School in Los Angeles, for example, points to the opportunity to “make fast, economical decisions,” such as hiring a local contractor to install and repair light fixtures for \$1,475, rejecting the district’s offer to do the job for \$5,000.¹⁰

Regulatory, Governance, and Management Challenges

State laws governing charter schools remove some, but not all, regulatory requirements. A certain minimum of laws and regulations regarding health, safety, and nondiscrimination is clearly needed and is required by charter statute. However, some state statutes retain many additional limitations, only some of which are described in Table 1. For example, in Arizona, charter schools must conform to the state’s detailed Uniform

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ever funds they can negotiate. California charter schools are entitled to the district-determined average for the type of school (elementary, middle, or high school) and then must negotiate for a share of categorical funds.

No definitive data about the cost of charter schools have yet been compiled. However, the most complete assessment of the fiscal issues confronting charter schools is contained in a 1996 report prepared by the Education Commission of the States.¹³ The researchers found that charter schools are challenged by:

■ *No start-up funds.* Most charter schools must begin operation, including leasing space, hiring staff, buying materials and equipment, and securing appropriate kinds of insurance, with only the start-up capital school operators can scrape together from donations or out of their own pockets.

■ *Limited (or no) access to local operational and categorical funds.* As of May 1996, the Education Commission of the States found that “with the exception of charter schools



System of Financial Records, though amendments in 1996 eased this requirement somewhat.¹⁰

State laws often fail to specify the legal status of charter schools. It may be unclear whether a charter school has independent legal standing, allowing that school to sue and be sued, or to enter into contracts with vendors without district approval.

In the Hudson Institute survey, coordinators in two of the eight states indicated that governance problems posed the greatest immediate threat to charter schools. Typically, governance problems involve conflicts between the school's board and its staff. In other instances, charter parents or staff split into warring factions. Such disputes can sink a fledgling school.

Management challenges in a new charter school are similar to those in a new small business—for example, obtaining suitable facilities and insurance, and hiring and managing staff. Establishing and maintaining a charter school require both business and education expertise, and the typically small staff of a start-up charter school may lack critical technical skills. Most states do not provide technical assistance for start-up charter schools even though they do make such assistance available for new small businesses.¹³ A limited amount of

technical assistance is provided by the U.S. Department of Education through its charter school Web site.¹⁵

The Impact of Charter Schools on School Districts

From a policy perspective, charter schools must be judged not solely on the basis of client satisfaction or even student outcomes, but by the totality of their impact on the public school system. This impact, however, is largely speculative at this point. Critical issues to consider are whether charter schools lead to changes in enrollment patterns in public schools and their fiscal impact on public schools.

The small size of the charter school population relative to the total public school population (105,000 versus 45,000,000 students, in 481 versus 80,000 schools) does not allow firm projections of enrollment patterns. The Hudson survey found anecdotal evidence that, contrary to projections, some charter schools tended to attract the most “difficult” students. It would be premature, however, to conclude that this will always be true.

A more immediate concern is that charter schools will drain operating funds—particularly discretionary funds—from regular public schools. Virtually all schools and districts have substantial fixed costs, irrespective

of student enrollment. If students move to charter schools, causing enrollment at regular schools to drop, the district may be unable or unwilling to decrease those fixed costs (at least in the short run) and, consequently, may be forced to cut back drastically in the “discretionary” areas where much of the district’s more creative and innovative efforts occur, such as training to improve pedagogy or grants to individual teachers for innovative projects.

Are charter schools the wave of the future or a passing fad? It is too early to tell. Ultimately, the success of charter schools will rest on the degree to which they are able to resolve the many fiscal, governance, and management issues described here, as well as to construct reasonable accountability systems and demonstrate improved student achievement.

Contract Schools

Contracting in education (sometimes referred to as “privatization”) involves the use of government funds to purchase services from either for-profit or not-for-profit organizations in the private sector. Contracting can take many forms. Districts (or schools) may contract with outside firms for particular services, such as maintenance or transportation, or even for specific courses

of Alternative Public Schools operating out of Nashville, Tennessee, currently are managing 20 schools, serving 14,900 students, in 7 states.¹⁸ The impulse for contract schools is much the same as that for charter schools: In exchange for accountability for results, schools are freed from some of the rules and regulations that are said to hamstring innovation.

Baltimore’s Experience

The most widely studied contracting experiment involves EAI in Baltimore, an urban district with classic urban district problems—low achievement, high dropout rates, and poorly maintained facilities. The Baltimore school board contracted with EAI in 1992 to operate nine of the city’s public schools. EAI was paid \$26.7 million and reported gross profits of \$1.9 million in the first contract year.¹⁹ The contract was canceled after three and one-half years of its expected five-year run. The EAI Baltimore experience provides an opportunity to examine the challenges of contracting entire school operations.

EAI is a public corporation which sells stock to finance its business. The company’s ability to make a profit—and return some of that profit to its investors—is directly tied to EAI’s success in cutting costs in the schools it is contracted to run. Baltimore awarded the contract to EAI on a noncompetitive basis. The company promised to remedy many of the schools’ problems, including substandard facilities and inefficient management practices, and guaranteed that students would post test score gains in the first year. School personnel would remain school district employees but under EAI’s direction.²⁰ EAI brings to the schools its own patented educational program, called Tesseract. The program stresses parental involvement, personalized education plans for each student, cross-disciplinary instruction, and the inclusion of “real life experiences” as part of the curriculum.

After the first year of the program, reading and mathematics scores of EAI students (as compared with those of a control group of students in non-EAI schools) declined.²¹ Scores for EAI students declined again in the second year; control group scores rose. By the third year, test scores for EAI students had caught up with those of their control

Some private firms are currently managing 20 schools, serving 14,900 students, in 7 states.

es of study. Two elementary schools in Miami, Florida, for example, contracted with Berlitz to provide foreign language instruction for their students.¹⁶ Other districts have long contracted for compensatory education, special education, or remedial instruction services. A few districts have begun to contract for the services of their chief executive officer.

The form of education contracting that has been the subject of the greatest controversy involves hiring for-profit firms to manage entire public schools.¹⁷ Private firms, such as Minnesota-based Education Alternatives Incorporated (EAI), the New York City-based Edison Project, and

group counterparts. A University of Maryland Baltimore County (UMBC) evaluation of the EAI experience found that “the management expertise that the private sector should be able to bring to bear on a public enterprise has not been sufficient for the expected level of transformation of the [EAI] schools in Baltimore City.”²²

The researchers praised the Baltimore school board for risk taking (hiring an outside firm to manage some troubled schools), said they observed some modest change in teachers’ instructional practices in EAI schools, and lauded the program for reducing the number of pull-out programs which removed students from regular classes during the course of the school day. But in comparing EAI-run and district-run schools, the researchers also found that EAI schools cost 11% more per pupil, parent involvement levels did not differ, class sizes were the same, schools were comparably clean and maintained, and the overall effectiveness of teaching was the same. The UMBC study concluded that “the promise that EAI could improve instruction without spending more than Baltimore City was spending on schools has been discredited.”

Finally, EAI’s refusal to produce a public budget aroused skepticism about the company’s reported profit and loss levels.²³ EAI’s founder and president, John Golle, has since announced that the firm no longer will attempt to work in urban school systems but, instead, will confine its efforts to the suburbs.²⁴

The Edison Project

Another national for-profit firm in the contract education business, the Edison Project, has contracts to manage schools in Colorado, Florida, Kansas, Massachusetts, Michigan, and Texas.²⁵ Edison’s curricular program includes extended instruction in mathematics and reading; instruction in music, art, physical education, and Spanish (often considered “frills” in financially strapped public school districts); and heavy emphasis on technology (the program aims to provide each student with a personal computer), all packaged into an extended school day. The Edison Project schools, some of which operate as charter schools, have been functioning a year or less, not long enough to be able to report student achievement results.

Lessons Learned

The General Accounting Office (GAO) recently completed a study of some of the for-profit education arrangements, including Public Strategies Group, Inc., and its supervision of Minneapolis schools, and EAI’s Baltimore, Dade County, and Hartford experiences.¹⁹ The GAO study concluded that “contract services [have] yielded some benefits for students. . . . Private management companies have served as catalysts for districts’ rethinking of the status quo.” However, the study also found that, while management firms have sometimes achieved cleaner buildings, greater access to computers, and more individualized instruction, they have not yet shown academic improvement.

Contracting the management of entire schools is quite a new phenomenon. Yet experience points to at least three issues that must be carefully considered as districts

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entertain this form of educational reform. First, school boards must develop means by which to ensure that private firms maintain public accountability for educational goals and financial management.

Second, appropriate balances need to be struck between the business and educational expertise required to operate a school successfully. Building on these different kinds of expertise in a collaborative and professional manner is critical.

Third, the locus of decision-making authority must be explicitly spelled out. It is difficult to hold contractors accountable for performance if they do not have authority over such critical matters as personnel management, budget, and curriculum.²⁶

Voucher Plans

Vouchers are government payments to households, redeemable only for tuition payments at authorized private schools.²⁷ Parents choose which school their child will attend, subject to any admission

requirements or selection procedure the school may have established. Vouchers are controversial for several reasons, two of which are especially central to the debate. First, because private schools can select which students they will accept, opponents are concerned that vouchers may serve primarily those least in need, leaving public schools the province of only the most economically and educationally disadvantaged. Second, it is unclear whether vouchers to religious schools violate the constitutional requirement of separation of church and state.²⁸

On the other hand, voucher proponents charge that public schools operate as monopolies, holding captive students who,

The Lemon decision and other key federal cases indicate that the Supreme Court is moving in the direction of being more accommodating of government funding that affects religiously affiliated schools.

though not receiving adequate educations, have few educational options because private schools are beyond their financial means.²⁹ Finally, this section discusses the limited evidence concerning the outcomes of the nation's first publicly supported voucher program, in Milwaukee, Wisconsin.

Who Will Be Served by Vouchers?

Voucher proposals run along a continuum. Pure free marketers, such as economist Milton Friedman, would provide every family with school-age children a voucher redeemable at any private or public school.³⁰ Those who champion this approach assert that supply would take care of demand, in other words, that voucher-redeeming schools would exist in appropriate locations and with appropriate educational approaches to meet a wide range of students' educational needs.

The other end of the voucher continuum is anchored by proposals such as those advanced by UC Berkeley law professors Jack Coons and Steven Sugarman. While

they accept much of the market argument (such as that supply and demand would be in equilibrium), they advocate that voucher plans be targeted to students most disadvantaged by the current public education system, particularly those in inner cities.^{31,32}

A critical variable in different voucher plans is whether voucher-accepting schools can charge tuition which exceeds the voucher amount. Critics charge that "partial vouchers" will disproportionately benefit middle- and upper-income families, who often can afford to pay the remainder of the tuition bill.

The Constitutionality of Vouchers

The first amendment to the Constitution states that "Congress shall make no law respecting an establishment of religion, nor prohibiting the free exercise thereof." The first half of this sentence, commonly referred to as the establishment clause, creates a prohibition against the establishment of religions or religious organizations by the federal government, and, through the Fourteenth Amendment, by state governments as well. The second half of the sentence, or free exercise clause, guarantees the right of individuals to practice their religions freely.

It is the tension between these two clauses that frames much of the discussion regarding the constitutionality of vouchers. Is, for example, the use of tax dollars to support church-affiliated schools through a voucher program a violation of the establishment clause? When does ensuring against the "establishment" of a government-sanctioned religious organization infringe on citizens' rights to practice their religion freely? The issue is a critical concern in the voucher debate because 82% of private schools are religiously affiliated.³³

Both federal and state courts have grappled with these issues in school-related cases for decades.³⁴ In 1925, the U.S. Supreme Court upheld the right of parents to send their children to private—including church-affiliated—schools.³⁵ In 1947, the Court held that it is not a violation of the Constitution for local governments to fund public transportation of students to religious schools if they are also funding transportation of students attending public schools.³⁶ However,

in 1971 the Court decided in *Lemon v. Kurtzman*³⁷ that state aid to parochial schools was a violation of the establishment clause. (The *Lemon* case dealt with Rhode Island and Pennsylvania statutes that provided for direct payment of salary supplements by the state to teachers of secular subjects in religiously affiliated schools.) The court devised a three-pronged test for determining whether financial subsidies to private schools are constitutional. Financial contributions from the state must (1) have a secular purpose, (2) not have the principal effect of advancing or inhibiting religion, and (3) not result in excessive government entanglement with religion.

The *Lemon* decision has been used by courts in subsequent cases to decide the constitutionality of financial assistance plans involving private schools. However, the application of the *Lemon* test has resulted in very different court decisions for similar cases. For example, in 1973 the Supreme Court considered a New York statute that provided tax deductions and some tuition reimbursements to low-income parents who enrolled their children in private, including religious, schools.³⁸ In this case, the Court held that the New York law violated the second prong of the *Lemon* test because it, in effect, advanced religion. However, in 1983, the Court ruled that a Minnesota statute which created a tax deduction program for private, religiously affiliated education did not violate the *Lemon* test because the program included both public and private school families.³⁹ In two more recent cases, the Court held that (1) a state could provide funds for vocational rehabilitation services for a blind student to attend a Christian college⁴⁰ and (2) a school district can provide a sign language interpreter to a deaf student attending a Catholic high school.⁴¹ Most recently, the Court made it easier for federal Title I programs to be conducted on site in religious schools.⁴²

The *Lemon* decision and other key federal cases seem to indicate that the Supreme Court is moving in the direction of being more accommodating of government funding that affects religiously affiliated schools, particularly when that funding goes to the student or student's parents and does not directly benefit the religious school itself.³⁴

However, how the Court will decide future cases remains unclear.

The Milwaukee Experiment

Much of the debate regarding the pros and cons of vouchers is academic as only two voucher plans are operational.⁴³ Milwaukee is the home of the first publicly financed voucher program, which initially included only nonsectarian private schools. Its intended expansion to religious schools has sparked a round of court battles.

The Milwaukee Plan was promoted principally by African-American legislators, community activists, the city's mayor, and Wisconsin's governor, who believed the public school system was educationally short-changing minority students in particular.

Overall, it is not yet clear whether Milwaukee's voucher-redeeming schools offer a significant improvement over public schools.

When the legislature authorized the plan, it was quickly challenged and then upheld on a 1992 five-to-four decision by the state supreme court.

Under the Milwaukee Plan, public school students may attend private (currently nonsectarian) schools. Each participating school receives an amount per pupil equal to the average paid by the state to public schools. The program, geared specifically to disadvantaged students, was originally limited to 1% of the public school population (fewer than 1,000 students); in 1996, it was expanded to 3,500 students. It imposes little government oversight on participating schools. In 1995, the Wisconsin legislature amended the authorizing statute for the Milwaukee Plan to include religious schools.⁴⁴ A new suit challenging the program's constitutionality was filed, and proponents and opponents await the court's decision.

A study of the Milwaukee program by University of Wisconsin–Madison Professor John Witte found that achievement gains (as measured by scores on standardized tests) are spotty, at best, proving neither

proponents' assertions that performance gains would be readily apparent nor opponents' claims that the program is a failure. Moreover, stated Witte, definitive achievement results are complicated by the fact that students need several sustained years in a school to test the program effects, and the participating voucher schools have experienced a high rate of attrition.⁴⁵

However, a new study of the same achievement data by researchers from Harvard and the University of Houston declares Witte's study "methodologically flawed." This analysis, say the researchers, shows that vouchers make a significant achievement difference, that after three or four years in the Milwaukee program, reading scores of low-income minority children in voucher schools were 3 to 5 percentile points higher than reading scores of comparable public school students and mathematics scores were 5 to 12 points higher.⁴⁶

Overall, it is not yet clear whether Milwaukee's voucher-redeeming schools offer a significant improvement over public schools. The related question of whether Catholic schools (which enroll more than

When the program was announced, 6,000 families applied; 2,000 children, more than a quarter of whom (27%) were already attending private schools, were selected by lottery to receive the vouchers.⁴⁷ Of the 48 participating voucher schools, 37 are religiously affiliated, prompting an immediate court challenge.

In the initial trial, the Ohio court ruled that the voucher program does not violate either the state or federal constitution: "This court is persuaded that the nonpublic sectarian schools put in the scholarship [voucher] program are benefited only indirectly and purely as the result of the genuinely independent and private choices of aid recipients."⁴⁸ However, on May 1, 1997, a three-judge panel of the Ohio 10th District Court of Appeals unanimously struck down Cleveland's voucher program. The court ruled that the state's experiment with school vouchers is unconstitutional because it "provides direct and substantial non-neutral government aid to sectarian schools." The case is now on appeal to the Ohio Supreme Court.⁴⁹

Vouchers remain controversial. Continuing court challenges are virtually assured. The U.S. Supreme Court is likely at some point to hear another voucher case, and even constitutional lawyers are hard pressed to predict the outcome. Achievement data remain indeterminate.

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half of all private school students nationally) offer a significant educational advantage to economically disadvantaged students is addressed in Appendix C in this journal issue.

Cleveland's Voucher Program

Cleveland's voucher program, which took effect at the start of the 1996–97 school year, was enacted into law by the Ohio legislature in 1995. Overseen by the state board of education (the district was put in receivership in March 1995), the program provides vouchers worth \$2,500 for low-income parents to send children in grades K–3 to private sectarian and nonsectarian schools. Money to fund the voucher program comes from the state education budget.

Conclusions

The reforms reviewed in this article—charter schools, contract schools, and vouchers—focus on schools as the central "units of production." Each, implicitly or explicitly, conveys in its method of organization the understanding that school- or classroom-based diagnosis of and adaptability to individual students' learning needs are a critical component of a successful education program. Having said that, it is important to note that scant empirical data are yet available on which to make sound judgments regarding the efficacy of any of these reforms.

Half the states have ventured into experiments with charter laws, though some allow only limited delegation of authority to the charter operators. Those who open charter schools face major

challenges of finance, governance, and management.

Contracting with private agencies to run entire schools may be an important innovation. No clear successes have yet been demonstrated, and some highly visible contracts have been cancelled, but the national

experience with contracting is still much too limited to draw conclusions about the viability of this option.

Vouchers still face important federal and state constitutional challenges, as well as strong political opposition. Their efficacy is, as yet, unclear.

1. Cremin, L. *The American common school: An historic conception*. New York: Teachers College, Columbia University, 1951.
2. U.S. Department of Education, National Center for Education Statistics. *Digest of education statistics, 1996*. Washington, DC: U.S. Government Printing Office, 1996, pp. 12, 96.
3. Bose, J. *Characteristics of the 100 largest public elementary and secondary school districts in the United States*. Washington, DC: National Center for Education Statistics, June 1996.
4. Kerchner, C., Koppich, J., and Weeres, J. *United mind workers: Unions and teaching in the knowledge society*. San Francisco: Jossey-Bass, 1997.
5. However, charter schools must abide by federal statutes, such as civil rights laws.
6. Education Commission of the States. *Clearinghouse notes: Charter school statistics*. Denver, CO: ECS, March 1997, p. 7.
7. California, for example, allows only local school boards to grant charters. Michigan empowers local boards as well as universities and community colleges to do so. Wisconsin and Minnesota authorize the state board of education to approve charters. Arizona has established a separate board for charter schools.
8. Education Commission of the States. *Charter schools: What are they up to?* Denver, CO: ECS, 1995.
9. Integrated interdisciplinary curricula incorporate different disciplines into one theme or project. For example, the study of local waterways could incorporate local history, science, math, and writing.
10. States included in the survey were Arizona, California, Colorado, Massachusetts, Michigan, Minnesota, and Wisconsin. Partial data were collected on an additional 8 charter schools, bringing the total studied to 43. Finn, C.E., Jr., Manno, B.V., and Bierlein, L. *Charter schools in action: What have we learned?* Washington, DC: Hudson Institute, August 1996, pp. 27, 37–41, 90–91.
11. The U.S. Department of Education in 1996 began a four-year study of charter schools designed to examine their implementation, impact on students, and effect on public education. The study will include yearly telephone interviews with all operational charter schools nationally, plus field visits and longitudinal assessment of student achievement in a sample of charter schools. Office of Educational Research and Improvement. *A study of charter schools: First year report 1997*. Washington, DC: U.S. Department of Education, 1997.
12. Bierlein, L. *Charter schools: Initial findings*. Denver: Education Commission of the States, March 1996.
13. Bierlein, L.A., and Fulton, M.F. *Emerging issues in charter school financing*. ECS Policy Brief. Denver, CO: Education Commission of the States, May 1996.
14. Schnaiberg, L. State charter laws get new round of attention. *Education Week* (June 25, 1997) 16,39:10,16. Available online at <http://www.edweek.org>.
15. The U.S. Department of Education's charter school Web site is located at <http://www.uscharterschools.org>.
16. Kerchner, C.T., and Koppich, J.E. *A union of professionals: Labor relations and education reform*. New York: Teachers College Press, 1993.
17. Charter schools also represent contracting arrangements when a private firm operates the school.
18. Toch, T. Do firms run schools well? *U.S. News and World Report*. January 8, 1996, pp. 46–49.
19. U.S. General Accounting Office. *Private management of public schools: Early experiences in four school districts*. GAO/HEHS-96-3. Washington, DC: GAO, April 1996. The GAO study did not examine Edison or Alternative Public Schools.

20. Because teachers in Baltimore remained employees of the school district, EAI had only a contract to *manage* schools, not to *operate* them. An important feature of an operating contract is the ability to control the selection of employees. The concept of operating contracts for public schools is explored in depth in Hill, P., Pierce, L., and Guthrie, J. *Reinventing public education*. Chicago: University of Chicago Press, 1997.
21. EAI attempted to claim that first-year test scores had risen, but when an analysis showed they had not, EAI was forced to take back this assertion.
22. University researchers evaluated seven EAI-managed schools and seven “matched” public schools. Williams, L.C., and Leak, L.E. *The University of Maryland Baltimore County evaluation of the Tesseract Program in Baltimore*. Baltimore: Center for Education Research, University of Maryland Baltimore City, August 1995.
23. An independent audit criticized EAI for “booking” school budgets as corporate revenue even though most of the money was liened.
24. EAI was also hired to manage the South Pointe Elementary School in Dade County (Miami). A study of that experience concluded that “South Pointe students did not improve their academic skills beyond what they would have achieved had they attended a regular Dade County public school.” Abella, R. *Evaluation of the Saturn Project at South Pointe Elementary School*. Miami: Dade County Public Schools, July 1994. The contract was not renewed. EAI’s contract to manage all 11 public schools in Hartford, Connecticut also was terminated.
25. The Edison Project has been plagued by money problems. Unable to raise sufficient capital to implement its original ambitious goal of opening its own schools, Edison has instead opted to manage existing public schools.
26. These points are discussed in greater detail in Hill, P.T. Contracting in public education. In *New schools for a new century*. D. Ravitch and J. Viteritti, eds. New Haven: Yale University Press, 1997.
27. Privately funded voucher programs are not treated here.
28. For additional arguments against vouchers, see Lowe, R., and Miner, B., ed. *Selling out our schools: Vouchers, markets, and the future of public education*. Milwaukee, WI: Rethinking Schools, 1996.
29. Chubb, J., and Moe, T. *Politics, markets and America’s schools*. Washington, DC: Brookings Institute, 1990.
30. Friedman, M. Public schools: Make them private. *Wall Street Journal*. February 19, 1995, at C7.
31. Coons, J.E., and Sugarman, S.D. The private school option in systems of educational choice. *Educational Leadership* (December 1990/January 1991) 48,4:54–56.
32. Coons, J.E., and Sugarman, S.D. The scholarship initiative: A model state law for elementary and secondary school choice. *Journal of Law and Education* (Fall 1992) 21,4:529–67.
33. National Center for Education Statistics. *Private schools in the United States: A statistical profile, 1990–91*. NCES 95-330. Washington, DC: U.S. Department of Education, Office of Educational Research and Improvement, 1995.
34. Even if the U.S. Supreme Court finds vouchers to be constitutionally permissible, a state court may find them to be a violation of the state constitution’s establishment and/or free expression clauses. Some state courts have already done so. Kemberer, F.R., and King, K.L. Are school vouchers constitutional? *Phi Delta Kappan* (December 1995) 77,4:307–11.
35. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).
36. *Everson v. Board of Education*, 330 U.S. 1 (1947).
37. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).
38. *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973).
39. *Mueller v. Allen* 463 U.S. 388 (1983).
40. *Witters v. Washington Department of Services*, 474 U.S. 481 (1986).
41. *Zobrest v. Catalina Foothills School District*, 113 U.S. 2462 (1993).
42. *Agostini, et al. v. Felton, et al.* 117 S.Ct. 1997 (1997); *Chancellor, Board of Education of the City of New York, et al. v. Felton, et al.* 117 S.Ct. 1997 (1997).
43. Voters in California, Colorado, Oregon, and Washington have rejected voucher initiatives.
44. Nonsectarian private schools in Milwaukee currently are at capacity. Nearly 90% of private schools in the city are religious.

45. Forty percent of voucher students left voucher schools in the first year of the program.
46. Greene, J.P., and Peterson, P.E. Methodological issues in evaluation research: The Milwaukee school choice plan. Paper prepared for the program in Education Policy and Governance, Department of Government and Kennedy School of Government, Harvard University, August 29, 1996. Available at <http://hdc-www.harvard.edu/pepg/op/witte2.html>.
47. The program also provides \$500 grants for tutoring for children on the voucher waiting list.
48. Walsh, M. Court clears Cleveland's voucher pilot. *Education Week* (August 7, 1996) 15,4:1,20. Available online at <http://www.edweek.org>.
49. Skertic, M., and Theis, S. Ohio court finds voucher illegal. *The Cincinnati Enquirer*. May 2, 1997. Available online at http://enquirer.com/editions/1997/05/02/oc_vouchers.html.