

Cyber Charters, Competition and Education Reform

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Thanks very much for the opportunity to share some thoughts on this important and fast-changing subject.

By way of further introduction, in addition to my academic appointment at Stanford's Hoover Institution and my role at the Thomas B. Fordham Foundation, I'm chairman of the Education Advisory Committee and a member of the board of K12, the "virtual school" effort led by William J. Bennett (with whom I worked at the U.S. Department of Education and co-authored *The Educated Child*). I'm a co-author of *Charter Schools in Action: Renewing Public Education*, as well as many articles, reports and speeches on the subject of charter schools. I'm a founding member of the national Charter School Leadership Council. And I'm involved (with support from the Walton Family Foundation) in a current study of the effectiveness of charter authorizers and sponsors. In earlier lives, I served as assistant secretary of education, as a founding partner of the Edison Project (now Edison Schools), and as professor of education and public policy at Vanderbilt University.

The Charter School Revolution

Let me turn to charter schools in general and cyber-charters in particular. They occupy one of the fastest-evolving and most promising intersections within K-12 education reform, where the freedom, innovativeness, market-responsiveness and results-based accountability of the charter-school concept meet the stunning educational potential of modern information technology and Internet transmission.

Today the United States is home to about 2700 charter schools enrolling perhaps three quarters of a million children. Forty states have statutes permitting charter schools to operate. In about a dozen of these, charters have become a significant force for education reform. They offer promising alternatives for children—especially low income and minority youngsters—who are otherwise trapped in bad public school systems but cannot afford private schooling.

The charter movement began barely a decade ago and we cannot yet glimpse where it may be headed. Nor is its overall effectiveness yet established. With schools as varied as these, and as young, it's hard to generalize. Five broad points, however, are worth noting:

First, despite efforts by critics and enemies to paint a different picture, charter schools are true public schools: open to all who wish to enroll, paid for entirely with

taxpayer dollars, and accountable for their results (and their continued existence) to duly constituted public authorities.

Second, “customer satisfaction” is very high in charter schools. This is the case with students, parents and teachers alike.

Third, according to most research summaries, academic achievement in charter schools is either equivalent or slightly superior to that of regular public schools. (These data are spotty and inconclusive, though, and not all of the analysts are objective.)

Fourth, charter schools are generally under-funded in comparison with regular public schools in their states and communities. For a host of reasons (involving the peculiar architecture of some state charter laws and the funding formulae and program practices of federal, state and local governments), they seldom receive full per-pupil funding from public sources and rarely receive capital funding for buildings and other facilities. (When they do, it’s generally less than conventional public schools receive.)

Fifth, a non-trivial and slowly growing fraction of charter schools (current estimates about 20%) are directly or indirectly operated by profit-seeking private firms. Only in Arizona may for-profit firms hold charters directly. In most other states, however, the non-profit organization holding a school charter may, if it wishes, contract with a private firm to provide goods and services to the school (as regular public schools do), even to staff and run the entire school. Perhaps a dozen private firms are currently engaged in the operation of entire schools, some on a relatively large, national scale, others in a single state or locality. Myriad companies are involved in providing specific services or products to charter schools.

Education and the Profit Motive

This involvement of profit-seeking private firms in the provision of public education is controversial. Its critics seem to forget that regular public schools have long purchased a full market basket of goods and services (textbooks, computers, chalk, testing, speech therapy, etc.) from private firms and have long “outsourced” certain school functions (e.g. cafeteria, transportation, building maintenance and cleaning) to such companies. Increasingly, that outsourcing includes instructional services, a development bound to accelerate as a result of the recent No Child Left Behind act’s allowing private provision of “supplementary services” to disadvantaged children whose “Title I” schools do not produce satisfactory academic growth.

There are a thousand reasons why such private sector involvement in public education should continue to be tried—while being carefully evaluated, like any significant experiment. Most importantly, it may turn out to work better from the standpoint of students, teachers and parents. It may bring greater efficiency and productivity gains, thus doing a worthy service both to education and to the taxpayer. And it indisputably brings new resources—human, financial and technological—to bear on public education and the solution to education problems—that would not otherwise be available for this purpose.

The charter movement needs its “mom and pop” schools, of course, places started by small groups of parents, teachers and community organizations. They bring this enterprise much of its soul, its adaptability, its freshness and its capacity to tailor

schools—often very small ones—to particular circumstances in ways that larger organizations and multi-site operators may find difficult.

But the profit-seeking firms bring unique assets that “mom and pop” schools can seldom muster. They have access to major resources and a restless, entrepreneurial, growth-minded culture that U.S. education urgently needs. They also have a broad perspective on what is happening in education, technology and public policy.

Cyber Charters

Nowhere is this clearer than in the rapidly evolving area of “cyber charters”. This arena is changing so fast that nobody knows for sure how many such schools are operating today. As best I can tell, it’s at least two dozen, though it’s difficult even to define a “school” when it exists primarily in cyberspace and can enroll students across vast tracts of geography.

The variety is already impressive. Not all cyber-schools are charters. A few are operated by conventional public school systems, by state education agencies, by private schools. Under the laws of some states (e.g. California) they can fit into several different policy niches. They also lend themselves to hybrids: situations where a child attends a “cyberschool” for part of his education, a regular school for another part; or enrolls in a brick-and-mortar charter for some subjects and activities but is “home schooled” for others, with or without the involvement of a cyberschool; or attends a brick-and-mortar school during the regular school but participates in an after-school program whose content is supplied by a cyber-education firm.

Many Americans have difficulty even visualizing a cyber-charter. To them, “school” begins with a building and goes from there. What is a school that doesn’t operate in a building? How is it different from home-schooling? From other distance-learning opportunities? For what is it accountable, and to whom? What does it mean to “attend” it? How does it live up to generic public-school responsibilities such as state testing and the provision of special education?

These and many other questions are still being answered and the answers themselves are taking many forms. Some “cyber charters”, it appears (from, for example, a KPMG Consulting study done for the Commonwealth of Pennsylvania), have far better programs than others.

That evolution needs to continue. It carries huge potential to transform American education for the better. It has enormous implications for the delivery of high quality content to children for whom conventional schools are not working well. It has a great opportunity to contribute to the development of instructional technology, to advance our understanding of cognitive science, and to pioneer new approaches to curriculum and teaching.

But that evolution is not apt to continue with vigor unless private firms are free to participate in it, firms that bring to bear the requisite financial and human capital, the technological prowess, the enterprise, the can-do attitude, the sense of urgency.

The War Against Charter Schooling

Which brings us, finally, to the problem before you. Charter schools are embattled across America. Cyber-charters are more embattled still, and the private sector's involvement with them is under fierce assault. In state after state, political and legislative efforts are underway to thwart the charter movement, to curb the growth of cyber-charters and to bar profit-seeking private firms from participating in this sector. Where the public-education "blob" (as William Bennett terms it) cannot work its will through elected officials, it has been turning to the courtroom, using litigation not only to attack the charter movement frontally but also (as in Ohio today) to harass individual schools with burdensome legal proceedings and to intimidate families and teachers from joining those schools.

Why is this occurring? Chiefly for a reason that the Federal Trade Commission has ample experience with: a near-monopoly's fear of competition from new entrants into its territory. America's public-school establishment is unaccustomed to competition, hates markets and has grave misgivings about consumer choice in education. Faced with an upstart competitor, it strives, through one means or another, to vanquish it.

For decades, public education's only competitive threat was the relatively confined and privileged world of private schooling, serving a rather stable eleven or twelve percent of the student population. Public education knew how to keep that rival within bounds: block all public subsidies, direct and indirect, thus limiting participation in it to families prosperous enough to afford to pay for it from their own pocketbooks.

That restraint-of-trade tactic may fade in the aftermath of the Supreme Court's recent decision in the Cleveland voucher case and Congress's decision to let low income families use federal Title I dollars to purchase "supplementary services" from private education providers. Yet political resistance to aiding private education remains intense.

Meanwhile, however, the "blob" was threatened from another direction, from within the public sector itself, namely by charter schools. Never mind that they, too, are public schools. They alarm the establishment because they are not under its direct control, they are free to operate differently (including such crucial areas as staffing), they are market-responsive, and, when successful, they take students (and dollars) that would otherwise "belong" to the near-monopoly.

The result is a multi-front war being waged today against charter schools. We don't have time here to review all of its combatants and tactics. The focus of this conversation is a single front in that war: the establishment's effort to make life impossible for cyber-charters in particular and especially for those involving private firms. For such schools incorporate not one, not two, but three developments that the blob hates and fears: they are charter schools, they operate in cyber space and they involve firms that hope to make a profit by succeeding in this activity. When all three of those upsetting developments are wrapped together in "cyber charters operated by private firms", the public-school establishment sees red. And it has set out to curb this innovation—or possibly to kill it.

It is worrisome that several states have recently enacted laws (e.g. Indiana, Tennessee) forbidding charter schools to be operated by private firms. It is doubly worrisome that other states with sizable charter programs are considering such a policy change (e.g. Illinois), even as more states (e.g. California) impose new regulations and constraints on cyber-charters, such as limiting the area from which they can draw students or requiring all their teachers to be state-certified.

Where the legislature is disinclined to cooperate with the near-monopoly in curbing competition, charter opponents turn to the courtroom. There is ongoing litigation against cyber-charters in Pennsylvania (despite a recently enacted law that affirms the desire of the legislature and governor to allow them to operate). There is a lawsuit in Wisconsin against a cyber-charter in that state. Ohio's teacher unions are at the forefront of a pair of ever-widening lawsuits against the entire charter-school program, including one of America's liveliest assortments of cyber-charters.

What is really occurring is that a well funded near-monopoly is attacking its nascent competition so as to retain its dominant market share. That is worthy of the FTC's scrutiny.

Not every such move is focused directly on cyber-charters. Some seek primarily to rid public education of the profit motive. Others would rein in the charter movement itself. The fact is, however, that cyber-charters are where such restrictions will have the gravest effects, where they will most surely chill inventiveness and diminish initiative. For cyber-charters, simply by virtue of being the fastest changing and most entrepreneurial sector of American K-12 education, are the domain in greatest need of allowing the private sector to innovate freely. They are where restrictions on the private sector pose the greatest menace to innovation and experimentation. This is important to keep in mind, for charter schooling is not only about bringing greater freedom, choice, and accountability into public education. It is also about fostering worthy educational innovation. If America blocks experimentation with new instructional strategies and education technologies without the experimenters being fought and sued every step of the way, the education sector will lag far behind others in terms of productivity, efficiency and effectiveness. That's not something the United States can easily afford, especially not two decades after we were declared a "nation at risk" due to the mediocre performance of our schools.

Not every cyber-charter will be a good school. Some will perish due to mediocre education, inept management, and poor business practices. Others, given the chance, will flourish, providing high-quality education to children, husbanding the taxpayer's dollar, satisfying families and—it is to be hoped—yielding a decent return to their investors. At day's end, however, we will know which are which. We will know it from their balance sheets but, more importantly, we will know it by the evidence of how much and how well their students learn. That's the right criterion for cyber-charters. Indeed, it's the right criterion for all schools. Only one other thing should really matter: whether anyone wants to enroll in them.

Fiscal Fairness

I have focused so far on efforts to deny cyber-charters permission to operate at all or to operate freely. There is, however, another front in this war that must be mentioned: funding adequacy and fairness. For we have seen that, when the blob finds that it cannot squelch cyber-charters altogether, it seeks to starve them of revenue so that they will fail economically.

This is a very shrewd tactic because it has superficial plausibility: "Surely the cost of delivering a virtual education is but a fraction of the cost of delivering a conventional education". Following that plausible but fallacious reasoning, some Pennsylvania legislators judged that the state's cyber-charters should be funded at half the per-pupil level of regular public schools. This completely overlooked the fact that, in a high-quality cyber-school, students are provided with qualified teachers, with books and materials, with a computer and printer, with monthly Internet access, field trips, and a school administration that ensures that all local, state, and federal accountability measures are met (including such costly elements as "special" education for disabled youngsters). This cannot be done well on the cheap. The KPMG study in Pennsylvania pointed out that the true cost of quality cyber-charter programs is commensurate with that of brick-and-mortar charter schools. That doesn't keep the public-school establishment from claiming the opposite, however, or from striving to impose costs on cyber-charters that exceed their revenues.

Consider the recently enacted SB 740 in California, which sailed through that state's legislature with little debate. It mandates a uniform student-to-teacher ratio in cyber-charters that makes no sense in terms of their instructional technology while sharply boosting their operating costs. It also stipulates that, for a California charter school to receive "full funding", fifty cents of every dollar it receives must be spent on certified teachers. Such restrictions on schools' budgets all but eliminate their capacity to make major investments in the information technology that yields both their educational distinctiveness and their capacity to meet children's needs more effectively. Measures such as this may be smart tactics on the part of public education's near-monopoly, but they have the effect of gutting the cyber-charter option.

The Federal Role

Before closing, let me note that, while state laws and regulations are the dominant public policy instruments that bear on charter schools in general and cyber-charters in particular, the federal government matters here, too. Will such schools receive their proper share of funding from such key federal programs as special education and Title I? How will civil rights and special-ed issues be handled? How about availability of federal charter-school start-up money? Access to various federal technology funds? There are myriad ways in which Washington can help or hinder the evolution of these schools.

The biggest issue, however, is one where I believe the Federal Trade Commission's jurisdiction is clearest. It bears on all charter schools but especially on cyber-charters: will states get away with discriminating against for-profit school operators and education providers? There is troubling evidence that they are beginning

to precisely that. This is not just a menace to free trade. It's a threat to the most promising avenue available today by which America can develop the potential of this exceptionally promising education improvement strategy.

Thanks again for giving me the opportunity to meet with you today. I look forward to your questions.