

GAMES

Charter Opponents PLAY

Considerable attention has been paid to the most blatant barriers that public charter schools face. By lobbying against good charter legislation and fair funding (see Figure 1), financing anti-charter studies and propaganda, filing lawsuits, and engaging the public battle of ideas, teacher unions and other charter opponents openly wage what might be called an “air war” against charters.

How local school boards —and their allies— block the competition

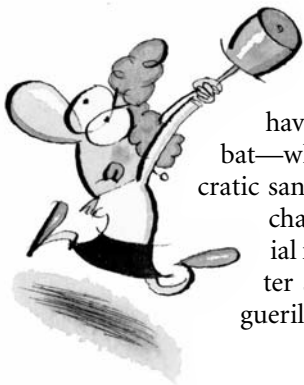
middle. Attempts to establish public charter schools in Maryland have been thwarted at almost every turn by entrenched school boards, teachers unions and principals resistant to any competition.”

The goal appears to be to stop charter schools any way possible. A decade after Massachusetts passed its charter school law as part of the

Education Reform Act of 1993, city officials in North Adams, Massachusetts, sued the state Department of Education, challenging the constitutionality of charter schools. Citing a 150-year-old clause in the state constitution, the city claimed all public school money had to go to schools that are controlled by “public agents.” The suit was later dismissed but shows the lengths to which local interests will go to stop the schools or at least slow them down.

Today, more than 1 million students are enrolled in public charter schools in the 41 states (and the District of Columbia) that have charter laws, with almost 4,000 charter schools in all. Most, if not all, of these schools have encountered some

But there is also evidence of a perhaps more damaging “ground war.” Interviews with more than 400 charter school operators from coast to coast have revealed widespread localized combat—what one administrator called “bureaucratic sand” that is often hurled in the faces of charter schools. Indeed, as a 2005 editorial in the *Washington Post* described charter school obstruction in Maryland, “It’s guerilla turf war, with children caught in the



BY JOE WILLIAMS

ILLUSTRATION / HAL MAYFORTH

form of bureaucratic resistance at the local level. That resistance may take place at the school's inception, when it first looks to purchase a building and comply with municipal zoning laws. It may come when opponents play games with a school's transportation or funding, or when legal barriers are tossed in the way, or when false information about charter schools is widely disseminated. Despite the obstacles, many charter schools are thriving. It's worth taking a look at the forces on the ground that would have it otherwise and the myriad ways they attempt to stymie the charter school movement.

No-School Zone

Often the most painstaking and difficult parts of launching a charter school are locating, purchasing, and maintaining the school building. Many charter opponents believe that if they can sufficiently complicate this nascent stage of a charter school's life, they will have dealt a major blow to its future success.

In Albany, New York, opponents have used the city's zoning commission to halt charter school growth. When Albany Preparatory Charter School requested a variance on property it was eyeing, opponents appeared before a public hearing about the proposed school building and used the opportunity to argue against charter schools in general. Both the city and the board of zoning appeals denied the variance request in February 2005 on grounds that the proposed building was in a location that was not suitable for a school. It wasn't difficult for the charter school to prove that the decision was unfairly "arbitrary and capricious," however. The building that Albany had deemed unsuitable for a school had been, for more than 70 years, Albany's very own Public School 3. In December 2005, State Supreme Court Justice Thomas J. Spargo gave the city 60 days to approve the variance request.

That same month, the Albany school system discussed ways to prevent another school, the Green Tech Charter High School, from opening. The school board voted to have Superintendent Eva Joseph review possibilities for taking the property by eminent domain so the district could seize the land before the charter school could be built. As the *Albany Times*

Union reported, M. Christian Bender, chair of the proposed school's board of directors, remarked, "Two words come to mind—laughable and desperate." The school is expected to open in September 2007.

Albany's story is not unusual. Playing games with facilities and zoning is a powerful way to get charter schools to delay or abandon plans to open. Certainly some zoning boards resist on principle any new land use that may increase traffic or noise, but blatant political hostility is quite common. Why are local boards hostile to charter schools? Some may view charter schools as a threat to local traditions and long-standing power-sharing arrangements. One Ohio charter school operator suggested that appointees to zoning commissions in her area tend to be eager political up-and-comers. To build political capital, they're often willing to deliver for the public school systems. And those systems don't want charter schools competing for students and dollars. "Especially if you are a Democrat, standing up to a charter school can help you make a name for yourself in the most important political circles," she said.

Charter opponents understand that zoning commissions and boards of appeal have the power to halt new charter schools in their tracks. All over the country, particularly in the suburbs, zoning issues have been used to thwart attempts to open charter schools. To be sure, some cases involve garden variety "Not In My Back Yard" resistance to the increased traffic flow and daily bustle new charter schools bring. But often the opposition is blatantly political. When Lyndhurst, New Jersey mayor, James Guida, an opponent of charter schools, proposed zoning changes in 2001 that would require school lots to be a minimum of 1.5 acres in size, it stymied at least one charter school plan. Guida talked about the school with a *Bergen Record* reporter: "We didn't target it, but if [the zoning law] hits it, so be it."

In a similar scenario, Englewood, New Jersey, officials wreaked havoc on the Englewood Charter School by abruptly rezoning the site of a converted warehouse that the school was planning to use. The change prevented elementary schools from operating on the location. "They passed zoning

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changes to specifically exclude us from buildings,” said charter school organizer Paul Raynault.

In 2000, California voters approved Proposition 39, which requires that unused public school buildings be made available to public charter schools. Some districts have simply chosen not to follow the law, which gives public charter schools the right of first refusal. Two charter schools in southeast San Diego, Fanno Academy and KIPP Adelante Academy, filed a lawsuit against the district in 2005 accusing school officials of “blatant non-compliance” because classroom space was denied to charter schools and given instead to private schools that could afford to pay higher rent.

The San Diego lawsuit, filed with the help of the California Charter Schools Association, contends that districts usually sabotage charter schools in one of three ways: claiming a facilities request is incomplete and therefore denying it; offering sites that are impractical; and outright denial of the facility request. Eight out of nine charter school applications for space in San Diego in 2005 were denied, even though all completed the necessary paperwork for requesting classroom space. Before suing the district, both Fanno and Adelante reportedly sought to hold meetings with the agency to discuss their options. After several months without a response, their requests were denied. Early in 2006, the district had declared invalid requests from 24 charter schools seeking space declaring that none properly explained how the school’s projected enrollment was determined. That level of detail hadn’t been required on previous applications.

“This feels like political posturing,” said Luci Flowers, principal of the Albert Einstein Academy Charter School. “I feel like we are pawns in a political game.”

Sometimes hurdles for charter school facilities are thrown up not by districts, but by competing private-school interests. In Brooklyn, New York, the founders of the Explore Charter School signed a 10-year lease in 2002 for a property across the street from the St. James Catholic Cathedral. The property was co-owned by a private landlord and the Diocese of Brooklyn. The private landlord signed off on the lease, but just weeks before the school was scheduled to open, the diocese began

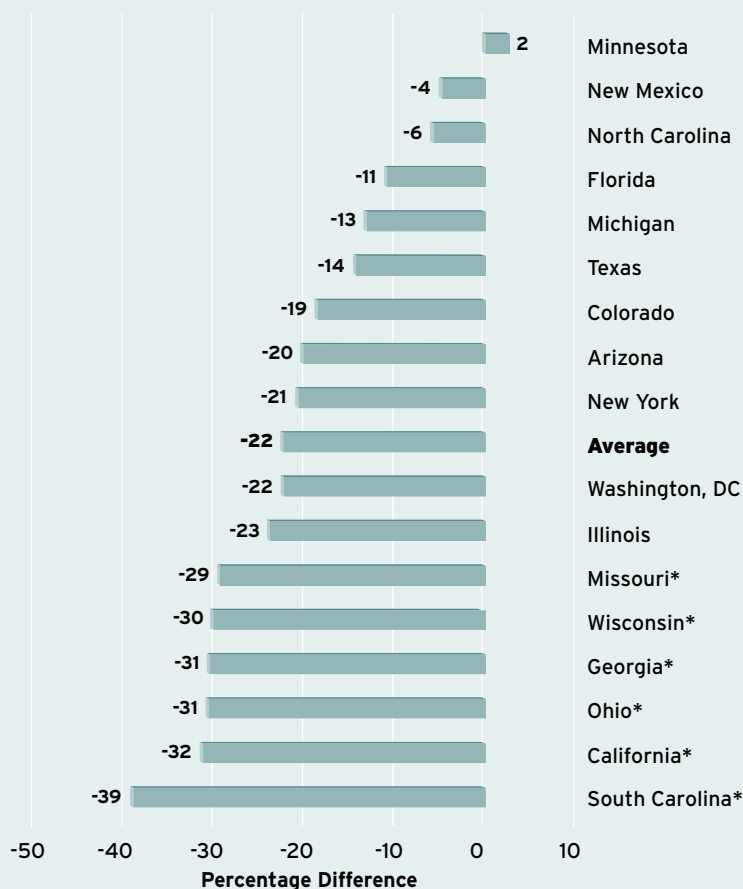
unraveling the deal. The 10-year lease was slashed to two years, forcing school leaders to go back to the nearly full-time job of finding a suitable long-term facility.

Why the sudden resistance from the diocese? The church said it had new concerns that sex education might be taught in the public charter school. But Morty Ballen, the charter school’s founder, claimed that a lawyer for the diocese told him that it was not the church’s policy to support charter schools. “It’s a hunch that we represent competition to the parochial schools,” Ballen said. “It’s unfortunate, because we

Fair Funding? (Figure 1)

Charter schools across the country receive less funding than regular public schools.

Disparities between Charter and Traditional Public School Funding (Selected States, 2002–03)



* Statewide data were unavailable. Difference is estimated from large districts in the state. Note: Average is across the 17 states included in the study.

SOURCE: Thomas B. Fordham Institute, “Charter School Funding: Inequity’s Next Frontier,” August 2005

all have the same goal—to provide kids with a good, solid education.”

You Can't Get Here from There

Using transportation as a weapon against charters is particularly harmful to those charter schools that have longer school days and years than traditional public schools. “Transportation is huge,” commented Jamie Callendar, a former Ohio legislator. “In the first few years the districts would outright refuse to provide transportation. Now they make it as inconvenient as possible.”

In Ohio, students attending non-public and charter/community schools are eligible to receive transportation services from the local district if they and the school they attend meet certain criteria. The local district can, however, declare providing eligible students with transportation “impractical” for a variety of reasons and issue payment instead. In July, the Columbus Public School district announced its intent to notify 1,384 private and charter school students that it would be “impractical” to transport them to school on district school buses. Instead, students would be given a \$172 check toward providing their own transportation to and from school—less than \$1 per school day.

Similar scenarios play out all over the country. For nearly four months of the 2005–06 school year, the school bus belonging to the Ross Montessori School in Carbondale, Colorado, sat unused in the school’s parking lot, another victim of the below-the-radar war against public charter schools.

The K–6 school paid \$25,000 for a 78-passenger turbo-diesel school bus in the fall of 2005 with high hopes that it would make it easier for students—particularly Latinos—who didn’t live close to the school to enroll. Critics at the nearby Roaring Fork School District, who had long opposed the charter school’s existence, had complained publicly that Ross Montessori didn’t serve its share of Latino students. The administration of Ross Montessori believed the bus would make it easier for Latino families to select the school.

“I thought this would be a solution,” said Mark Grice, the school’s director. Instead, as the bus sat, unused in the lot, week after week, it became a symbol for the passive-aggressive relationship that existed between the independent public

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charter school approved by the state and the local school district.

Why weren’t students allowed to ride on the Ross Montessori bus? In Colorado, as in many places, school buses may not carry student passengers unless the vehicles are regularly inspected by a specially licensed school-bus mechanic. Grice and his administrative team quickly learned that most of the licenses to conduct inspections in the region belonged to mechanics employed full time by a school district.

When the charter school leaders checked with the mechanic at the local district in early October 2005, they were given the bureaucratic cold shoulder. Grice and his team decided the best way to proceed would be to call the next closest school district to see if its certified school-bus mechanic would conduct the required inspection. Arrangements were made to do just that, until Grice got a return call shortly before the scheduled inspection informing him that the appointment had been cancelled.

“They said they didn’t want to get involved in the politics of our district,” Grice recalled. The charter pushed back, and eventually the neighboring district agreed to inspect the bus—but only if the school could produce a letter from the superintendent of the charter school’s geographic district giving permission. Eventually, the Carbondale superintendent agreed to call the neighboring superintendent. “I should have had him put it in writing,” Grice said. Whatever the superintendents may have said between themselves, it didn’t result in a bus inspection.

By chance, several months later, the charter school stumbled upon both a certified school-bus mechanic who was employed at a nearby Chevrolet dealership and a Catholic school that was looking to share with another school the cost of bus transportation in the region. “It allowed us to share the cost of the bus and to pay the driver better,” Grice said. “But as soon as the district found out about it, someone called the Colorado Department of Education to question the separation of church and state.”

The bus eventually got rolling, but Grice said he hates to think of how much time was spent dealing with these clearly avoidable hassles, time that could have been better spent on education.

The Check Is in the Mail

When districts are the ones passing along funding to charter schools, they gain immense influence over those schools' basic operations, and the charters are placed in the undesirable position of having to rely on those who may oppose their very existence.

The Franklin Career Academy, of Franklin, New Hampshire, ultimately perished after the local school district and city council simply refused to pay the school the already-low \$3,340 per child that was guaranteed under the state's charter school law. As in many locations, New Hampshire law requires the per-pupil funds to pass from the state through local school districts, and then to charter schools. But Franklin school and city officials argued that the money was needed in the traditional schools and, astonishingly, voted against giving it to the charter school in the city budget. In its first year, Career Academy served 35 at-risk students in grades 7 through 12, but ended the year being owed \$77,000 by the local district. The financial uncertainty forced the charter school to shut its doors. "Nothing went wrong with the school," said the charter school's board chairman Bill Grimm. "We closed because we didn't see any other option." The New Hampshire legislature is currently considering funding charter schools directly.

Ohio has a similar process for funding charter schools. Ohio charters are paid through the districts with which they are competing. Those districts, in turn, have the right to question the validity of every student record, a practice called "flagging." Because charter schools can't be subsidized for a student whose record is "flagged," dozens of charter school leaders throughout Ohio charge that their local public-school districts have used excessive "flagging" with the specific intention of harming the often fragile finances of their schools.

Depending on the size of the school, and the aggressiveness with which local districts decide to "flag" students, individual charter schools can see tens of thousands of dollars in legitimate funding delayed or withheld each year. And charter school administrators report that their limited office staffs can be overwhelmed as they scramble to investigate the reasons behind the flagging.

One Toledo charter school leader said her school had twice been denied six weeks' worth of funding for enrolled students. In both cases, she said, the local district raised objections to student records just before the deadline for closing out monthly payments, making it impossible for the charter school to gather the supporting documentation in time for payment.

"We don't even know that we have a problem, then all of a sudden they'll put up a flag and say, 'We need proof of residence,'" the charter leader said. "We've had kids who were in the [Toledo Public] schools for their entire academic careers and suddenly the district wants to challenge where they live."

Another charter school administrator reported that an official with the Toledo Public Schools (TPS) often flags student entries, but doesn't make clear what is wrong. (In one

Knocking Down the Building to Spite the Charter

In the summer of 2000, a group of St. Louis education activists, including two Washington University social work professors, was moving full speed ahead with plans to open a new charter school in the Walnut Park section of the city. The organizers had a site within their grasp—a boarded-up Catholic school that a developer was willing to renovate. The project had financial backers, and even though the actual charter hadn't yet been approved, signs were hung on the outside of the old school building announcing the plans for its new educational life. Construction was set to begin as soon as the charter was approved.

Without warning, city bureaucrats decided that the abandoned Catholic school had been vacant for too long. A raze order that was in effect was

unexpectedly kicked into motion.

Organizers were notified on June 6 that they had 30 days to board up broken windows and repair a broken fence or the building would be torn down. On Saturday, September 9, 2000, demolition crews arrived to tear the school down. By the next day, the building—including the charter school signage outside—was completely gone.

The site's real-estate developer, Willard Owens, was perplexed, particularly since the city hadn't previously shown much of an interest in removing the building. "No one started bothering me about the property until I brought up the idea of a charter school," Owens told the *St. Louis Post-Dispatch*. Without the building, the plans for the charter were also relegated to the scrap heap.

case, he allegedly claimed the word "Toledo" was spelled incorrectly on the database, but the school insisted they had it right. To make matters worse, she said, the TPS official wouldn't return telephone calls or e-mails to discuss the flag he had thrown.)

Official Ohio Department of Education policy bans districts' use of flagging to harass the charter schools, but some charter operators complain that the state often looks the other way and insists that charter schools resolve the problem

with the local districts. Others note that there is a financial incentive for districts to delay making payments for as long as possible, even if they eventually have to pay the charter schools what they are owed in later installments.

“The district gets to use our money for a while [before eventually reconciling the accounts and spreading back-payments over several months] and we go into debt,” a Toledo charter leader said. “Meanwhile, they accuse us of sucking the system dry.”

Slinging Mud

Charter schools that either escape or survive the bureaucratic messes are lucky—but they’re not safe. In many districts, organized campaigns of disinformation and slander have been launched against charter schools. Like lawsuits, faux research, and campaign contributions, name calling has emerged as one more useful political tool.

Toledo Public Schools teachers handed out flyers outside the East Toledo Charter School in 2006 to parents attending an informational open house. The flyers suggested inaccurately that the school wasn’t performing well.

In Massachusetts in 2004, where district hostility to charter schools got so bad that state education officials had to warn superintendents to moderate their anti-charter politicking, one district student reported being pressured to sign a petition opposing charter schools. She was told if she didn’t sign, funding for the school band might be cut from the budget. Reported the *Boston Globe*, “Children say their public school teachers have pressed them to sign petitions protesting new charters. School committee members have repeatedly called neighbors, imploring them to step down from charter boards. And flyers have circulated, sounding the death of public schools if a charter school opens.”

In 2003 in Waltham, Massachusetts, an elementary-school principal sent out e-mails to families urging them to oppose pending charter-school proposals. In nearby Framingham that same year, city officials included with tax bills letters explaining how much money was going to charter schools. And in Cambridge,

school officials in 2005 mailed letters to 4,000 families questioning the academic effectiveness of a charter school that had yet to open. Those letters also warned that students who chose to attend the Community Charter School of Cambridge wouldn’t be able to join sports and clubs that regular public schools offer.

Some of the tactics used by charter opponents amount to bluffing but reveal how far they are willing to go to stop a charter school from opening. As the University of Wisconsin-Milwaukee (UWM) considered authorizing charter schools for the first time in 1999, the local teachers union and top administrators in the Milwaukee Public Schools threatened to ban the college’s student teachers from obtaining required classroom experience if UWM approved any charter schools that would be managed by the for-profit firm Edison Schools.

No Truce in Sight

This ground war is both expensive and demoralizing. As the Thomas B. Fordham Foundation’s Terry Ryan described the reality in one state, “Charter schools, many working in Ohio’s toughest neighborhoods to educate the state’s neediest children, are also forced to live under a cloud of uncertainty, harassment and intimidation.”

Many of the charter principals interviewed for this story report spending upward of a third or even half of their time fighting these battles. In truth, charter opponents can lose some battles and still win the war, as charter school operations continue to be hampered by endless attacks on so many fronts. One can only wonder how these distractions impede the efforts of charter schools to educate their students.

Truce cannot be expected anytime soon. The enemies of charter schools are motivated and well-financed. For charter supporters, then, there is only one choice: fight back and win.

Joe Williams, a former staff writer on education for the New York Daily News, is a nonresident senior fellow with Education Sector and author of Cheating Our Kids: How Politics and Greed Ruin Education.

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