

House Testimony

Introduction

My name is Thomas Hehir. I am a Professor of Practice at the Harvard Graduate School of Education where I teach courses on educating students with disabilities and federal education policy. I also work as a consultant in the area of special education primarily with large city school districts. My clients have included New York City, Los Angeles, San Diego, and Baltimore among others. I have spent my entire career in the field of special education as a classroom teacher, local administrator in both Boston and Chicago, and as a university professor. I also served as Director of the Office of Special Education Programs for the U.S Department of Education during the first six years of the Clinton Administration.

In relationship to today's hearings I do not purport to be an expert on all aspects of charter schools. My expertise is primarily in special education. My knowledge of charter schools is based on work I have done in San Diego and Los Angeles assisting these districts to improve their programs for students with disabilities. I have also, supervised two doctoral students who have conducted research on the participation of students with disabilities in charters in Massachusetts and New Orleans, reviewed the literature in this area in preparation for teaching my courses. Further I have consulted with faculty colleagues who have done research on charters, and consulted with many of my former students who run charters. I have done research in three charter-like "pilot schools" in Boston that have enrolled a diverse population of students with disabilities that are outperforming their urban counterparts. I have also had the opportunity to speak with numerous parents of children with disabilities who have enrolled their children in charters or have considered the option.

I would like to state from the onset that I am a proponent of charter schools. I believe that parents, particularly those who reside in urban and low-income areas should have choice within the public system. The need for choice is even greater for families of students with disabilities given the huge variability between schools in implementing the *Individuals with Disabilities Education Act*.

The Opportunity Charters Present for Special Populations

Charters provide choice to all parents. For parents of students with disabilities choice is highly valued due to the high degree of variability that exists across public schools in educating their children. Though we have made great strides in improving educational offerings for students with disabilities, non-compliance with IDEA continues in many schools. Affluent parents sometimes move to get their children into schools that welcome their children and provide them with a high-quality education. I have done work with a high school in the Boston suburbs that does a great job including students with disabilities. I have met a number of parents who moved to this community simply to allow their children to attend this school. Poor and middle class parents do not have that option. Charters can and in some cases do provide this option.

Some charter schools have even been created by activists who are seeking a more inclusive and effective option for children with disabilities. The Mary Lyons School, Boston Arts Academy

pilot schools, Democracy Prep Charter in Harlem, and Chime Charter in Los Angeles are examples of schools that from their onset have sought to be inclusive of a diverse population of students with disabilities.

There is also evidence that charters may serve students with disabilities in more inclusive settings than traditional public schools. Chris Wilkens, a doctoral student at Harvard, found that urban charters in Massachusetts were more likely to serve similar students with disabilities in inclusive settings than traditional urban public schools. His research also found that over-placement of African American students in special education was far less of a problem in charters than traditional urban public schools.

Many charters focus intently on individualization that is a central tenet of IDEA. Others such as the KIPP schools focus on explicit direct instruction needed by many students with disabilities and other students who may struggle in school. These approaches may account for some of the lower levels of special education identification in charter schools. To the extent that these practices prevent inappropriate referrals to special education, they should be encouraged.

A similar dynamic exists for English language learners and other special populations. Like students with disabilities, English language learners participate in charters in much smaller numbers than they exist in the population at large. However, some advocates for English language learners have seized upon the opportunity provided by charters to promote better education for these children. For instance, the National Council of La Raza has supported the establishment of over 50 charters in their efforts to expand educational opportunity for this population.

The Problem of Charters and Special Populations

Research on the participation of special populations and charters demonstrates that in most places these students are under-represented. For instance in the area of disability, charters generally serve fewer children with disabilities than traditional public schools. When one looks at students with more significant or complicated disabilities in general, charters serve far fewer students and in many instances none at all. Research conducted in a number of major cities bears this out. In San Diego, close to 10% of all students now attend charter schools. Though the enrollment of students with disabilities in traditional public schools overall approaches 12%, the average enrollment of students with disabilities in non-conversion (from scratch) charter schools during the 2005-2006 school year was 5.8% (Hehir & Mosqueda, 2008). With respect to students requiring extensive special education services, the imbalance is even more dismal. For example, during the 2005-06 school years, there were only three children with mental retardation in all San Diego non-conversion charter schools *combined*; traditional schools across the district, meanwhile, educated almost one thousand students with mental retardation. That same year, non-conversion charter schools in San Diego educated just two students with autism.

The picture is quite similar in Los Angeles. The enrollment of students in charter schools throughout the city is large (approximately 8%). The enrollment of students with disabilities across the district averages over 11%, while the enrollment of students with disabilities in independent charter schools averages fewer than 7% (Independent Monitors Office, 2009). As in

San Diego, the distribution of disability types within independent Los Angeles charter schools is skewed; for students with disabilities requiring extensive special education services, the likelihood they will be enrolled in independent charter schools is one-fourth that of traditional public schools.

Similar data emerges for charters serving urban areas in Massachusetts. For the 2006-07 school years, the percentage of enrolled students with disabilities in traditional urban schools was 19.9%, while the percentage of enrolled students with disabilities enrolled in urban charter schools was significantly lower, 10.8%. As is the case in Los Angeles and San Diego, significantly fewer students were enrolled in all urban charter schools who had more substantial needs such as mental retardation, emotional disturbance, and autism. Several cities' charter schools enrolled none of these students.

The under-enrollment of English language learners in charters mirrors that of that of students with disabilities in many places. In Boston where approximately 20% of students are English language learners, only one charter school enrolled more than 4%. In NYC a similar pattern emerges where the district enrollment is 15% English language learners and the charters serve approximately 4%.

As for disadvantaged students, there is some evidence that charters in some places may enroll a more advantaged population. However the vast majority of charters are enrolling large number of disadvantaged students.

Why is under-representation a problem?

The under-representation of special populations in charter schools is a problem on a number of levels:

- a. First low participation rates raise potential civil rights concerns. Students with disabilities, English language learners and homeless students have rights as American citizens both granted to them by the Constitution and within various federal education laws. Anecdotal information suggests that some parents are discouraged from applying to charter schools and that some charter schools "send back" students with complicated needs to traditional public schools. America has opened doors to previously excluded groups through the Civil Rights Act, the IDEA and The Elementary and Secondary Education Act. The federal government needs to assure that discrimination is not occurring within the charter sector.
- b. The "experiment" that charters represent is compromised when charters do not serve the same populations as traditional public schools. One of the primary justifications for allowing charters to exist is to demonstrate better approaches for educating students for whom the current education system has failed. If they fail to serve representative populations their claims to being exemplary are significantly compromised.

- c. The failure of charters to enroll representative populations of students from special populations can disadvantage traditional public schools financially. As the San Diego school system demonstrates, the financial responsibility for educating students with disabilities rests with the traditional public schools. Yet, the charters receive roughly the same amount of money per-capita. It should be noted the per-capita cost in most school districts include the cost of educating special populations and that this cost is higher per pupil. For instance the cost of providing language supports to English language learners or transportation to homeless students increases the financial burden on school districts. In the case of students with disabilities this cost can be much higher. The population least represented in charters, students with low incidence and more complex disabilities, are the most expensive for schools to educate.

- d. There is financial incentive for charters not to educate students for whom additional costly services may be necessary. Under the current system many charters receive the same amount of money per student whether they educate students with more complex needs or not. Many charters, like many traditional public schools, encumber most of their money on the first day of school by hiring staff. When an unforeseen need arises during the year they may not have the resources to address that need. In traditional public schools the central office may step in with needed support or the anticipated needs of students from special populations are budgeted upfront. Some charters have established similar mechanisms but many have not. Therefore, when a child with additional needs becomes apparent the charter may not have the resources to meet this need. I am aware of charters that have not even budgeted for a single special education teacher upfront.

Policy Considerations

In my opinion, it is time for policy makers to directly address the issue of imbalanced enrollment of students from special populations in charter schools. Though some may have argued in the past that charter schools needed time to get established, and to have flexibility to experiment, they are now a well-established segment of our education system. The charter choice should be available to all students and parents. Toward that end I believe the federal government has a role in assuring equity and promoting more effective public school choice for parents of children from special populations. The following recommendations are offered:

- (1) The federal government should require states to proactively address issues of access involving special populations as a condition for receiving federal funds.**

The US Department of Education historically has played a crucial role in promoting equity in education in the areas of racial desegregation, gender equity and disability access among others. The lack of access for special populations to some charters raises serious equity and civil rights concerns. At a minimum, states should be required to submit their authorizing regulations to their Departments of Education for approval. States should further be required to investigate charters that enroll significantly fewer students from special populations than their surrounding area

contains. It is important to emphasize here that states should be allowed flexibility as there should not be an expectation that charters always mirror the population of the surrounding area. Some charters may have lower special education counts simply because they have been successful in eliminating inappropriate referrals to special education. Others may have been established to serve English language learners. These innovations should not be discouraged. The point here is that the state needs to reasonably assure the federal government that special populations' access to charters is not impeded.

States should also be required to assist charter operators in meeting their obligations to provide access to special populations. The vast majority of charter operators I have met want to address the needs of all students. Again, this may take many forms and states should be allowed a good deal of flexibility in meeting this requirement.

(2) The federal government should establish a federal technical assistance center focusing on the needs of students from special populations in charter schools.

This center would primarily serve the states in meeting their obligations detailed above. Such a center could provide states with model authorizing documents as well as information about successful practices in charters serving special populations. This model has worked very effectively in IDEA and the Elementary and Secondary Education Act as a vehicle to promote better practices in the schools.

(3) Fund research on serving special populations in charter schools.

Though I am sure Congress has gotten advice from many quarters on how to address these issues, there is no consensus on the range or extent of the problems concerning special populations and charter schools. I believe this issue is important enough to warrant a National Research Council study. Such a study would provide an objective picture of the current state of charters and special populations and identify promising practices. Congress should also fund a research program to investigate ways in which charters can better serve special populations.

Final Reflections

This past year I assisted my cousin in choosing an elementary school in Boston for her four year-old twin boys. Having worked in the Boston system from 1977-1987, I was pleasantly surprised at how much the system had improved. My cousin is currently considering two public charters and two traditional public schools for the boys. All four are strong choices. This contrasts to the system I left where parents were often given few or no choices and were forced to send their children to underperforming schools. I believe Boston is a far better system for a number of reasons but one is parental choice. Boston outperforms most major cities on the National Assessment of Educational Progress as does the state of Massachusetts. Parental choice is deeply embedded in the state as well. The challenge facing Massachusetts as well as Congress is how we make this choice real for all parents.

Finally, in doing research for this testimony I relied on an old and tested method; Facebook. I posted a request for assistance to my former students many of whom work in charters. They

responded well to their old professor. One related that she was working as a psychologist in a major city with troubled youth many of whom are in the foster care system. Many of her students have opted for charters in lieu of large impersonal high schools that had utterly failed them. She found that charters had been particularly effective in serving GLBT youth who felt unsafe in traditional high schools. Another student related how her sister had placed her son in a local charter school and how happy she was that she was not forced to send him to an underperforming elementary school. However, she has another child with disabilities for whom this choice was not an option. For her disabled daughter, she had no choice and was forced to place her in the same underperforming school she avoided for her son. She has been forced to file for a due process hearing in order to get an acceptable choice for her. This will be a huge financial burden on the family. Public school choice is an incomplete option for this family.

It's time for the adults who run charters and for those who authorize them to act. The charter "experiment" has gone on long enough. Access to all must become a priority. When PL 94-142 was passed in 1975 opening up the doors of schools to thousands of previously excluded students with disabilities Congressman Miller stated, "I believe the burden of proof...ought to rest with the administrator or teacher who seeks for one reason or another to remove a child from a normal classroom..." We need to provide that same logic to charter schools and special populations. The burden of proof should fall on government officials, charter school operators and charter advocates who need to take proactive responsibility to deal with the very real issues of access for special populations.

I hope Congress leads the way.

Thank you.