

# Charter Schools and Equal Access

Dr. Barbara Ferguson

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Charter schools with academic admission requirements are New Orleans' best performing charter schools. But, the No Child Left Behind Act does not recognize them as charter schools. Neither are they considered charter schools in any other state in the nation.

Under federal education law, to be considered a charter school, the school must provide "equal opportunity for all children to attend." New Orleans has many excellent charter schools that conform to this requirement, such as the James M. Singleton Charter School and the Dr. Martin Luther King, Jr. Charter School for Science and Technology.

Many inequalities result when schools that do not provide equal access are called charter schools. The greatest inequity is that Louisiana awards its federal Charter School Program funds, in violation of federal law, to the charter schools without equal access. Another inequity is the misconception fostered that Louisiana charter schools are beating all odds and succeeding. Those successful charter schools with open admissions **are** beating all odds. But, those that choose students are not worthy of praise for beating the odds in educating disadvantaged children, simply because they are excluding these very students through academic admissions requirements.

## Only in Louisiana

Only in Louisiana, before the 1900s, was there a Separate Railroad Car law that required separate railroad box cars for "colored and white." Nationally, railroad cars were integrated, but Louisiana held to the belief that its railroad cars could be segregated because they did not cross state lines. Louisiana concluded that federal law did not apply here.

This same warped interpretation prevails today under Louisiana's charter school law. Only in Louisiana can a charter school have "academic admission requirements." Louisiana has ignored the basis of the charter school movement, which is to provide choice to educationally disadvantaged families, and has ignored the federal mandate

that students are to be selected by lottery if more apply than can be accommodated. Instead, Louisiana allows its charter schools to set up admission requirements, choosing students who are performing well, and then Louisiana rewards this advantage by granting federal charter funds, intended for disadvantaged students, to these very schools.

Just as Louisiana justified its Separate Railroad Car law, it is trying to justify its Charter School law by claiming that if the academic-admissions schools did not open as charter schools, after Katrina, they would not have opened. This is a pretty lame excuse unless we believe that there was a plan to open all schools as charter schools, which appears to have very well been the State's master plan.

All have been told that "if they didn't open as charter schools, they would not have opened." The question is "According to whose rule?" And, the answer is according to the rule and the direction of the State Department of Education, which worked to open all New Orleans schools as charter schools.

### **The State Takeover and the Plan for an All Charter School System**

The State Takeover originally included only the failing schools in New Orleans. The constitutional amendment in 2003 allowed the State to takeover Academically Unacceptable schools, termed failing schools.

When Katrina hit, there were 84 failing schools, schools with Performance Scores below 60. Obviously the State Department of Education wanted more schools to become charter schools and wanted to acquire more successful schools. Thus, the State changed the rules. First, the Legislature passed Act 35, authorizing the takeover of low-performing schools, which were schools with Performance Labels over 60, and many with One or Two Stars. Through Act 35, seventeen (17) more schools were added to the State Takeover.

The State Takeover was a move toward an all charter system. To encourage even more schools to become charter schools, Governor Blanco issued an Executive Order, alleviating the rules of faculty and parent input so that schools, which were not under State control, could become charters.

### **Why the State Failed in its Plan to Turn all of New Orleans Schools into Charter Schools**

The State Department of Education, from the onset, operated under an erroneous assumption, that charter operators would amazingly surface to takeover all of the failing and low performing schools and turn them into successes. That never happened.

Charter operators came forward for the better-performing schools. The State's vision for an all charter system hits its lowest ebb when the Recovery School District placed 300 students on the waiting list to enter school. The Times-Picayune headline on this tragic event met with outcries from the community.

There were simply not enough charter operators to open the number of schools needed for the volume of students. To entice more charter operators, BESE expanded the scope, allowing for-profits to become charter operators and allowing charter operators to select students and/or to set standards for continued enrollment. Charter schools were moving away from what the federal definition required: Equal Access. The State Education Department's enticements still failed and, without enough charter operators, the Recovery School district was required to open and operate schools. Today, the Recovery School District operates the majority of New Orleans' failing and low performing schools.

The State's basic assumption was flawed. If the State had only talked with the many dedicated educators in the New Orleans system, they would have learned that it's not about governance, but about addressing the complexity of needs of the state's most educationally disadvantaged children and youth.

Today, there are several successful open-enrollment charter schools, as the ones mentioned above. They and the others are to be praised. It is difficult to find charter operators for failing and low-performing schools, just as it was difficult to find principals and teachers for these schools prior to Katrina. That is why the federal government reserved millions of dollars to promote these few equal access charter schools and to learn from them so that their methods can be replicated. But, in Louisiana, these millions of dollars are being siphoned off to charter schools that do not serve the students for whom they are intended.

## **Two Centralized School Systems and the Combinations Thereof**

Currently, there are two school systems in New Orleans: the Recovery School District (RSD) and the Orleans Parish School Board (OPBS). Each school system has traditional schools and charter schools. Traditional schools can be either open admissions or admission-requirements schools. Charter schools can be either open admissions or admission-requirements schools.

It is difficult to identify all charter schools with admission-requirements, since a school is not mandated, in the charter application, to state whether it has academic admission requirements and/or continued enrollment requirements, or not. While Louisiana calls such schools, which do have such requirements charter schools, they are not charter schools in the terms of NCLB and, thus, are ineligible to receive federal charter school funding.

The U.S. Department of Education issued the Charter Schools Program Guidance, which states that "charter schools are established according to individual State charter school laws. The enactment of State charter school laws is solely a State prerogative, and the definition of a 'charter school' under State law is a matter of State policy. However, in order to receive Charter School Program funds, a charter school must meet the definition in Section 5210(1) of the Elementary and Secondary Education Act, (now NCLB), which is as follows:

The term 'charter school' means a public school that:

1. In accordance with a specific state statute, is exempt from significant State or local rules that inhibit flexibility.
2. Is created as a public school.
3. Operates in pursuit of a specific set of educational objectives.
4. Provides a program of elementary or secondary education or both.
5. Is nonsectarian.
6. Does not charge tuition.
7. Complies with various federal acts, including Part B of the Individuals with Disabilities Act.
- 8. Is a school to which parents choose to send their children, and that admits students on the basis of a lottery, if more students apply for admission than can be accommodated.**
9. Agrees to comply with audit requirements.
10. Meets applicable health and safety requirements.
11. Operates in accordance with State law.
12. Has a written performance contract."

Further, the U.S. Department of Education requires each State to sign assurances when submitting a proposal for Charter School funds. Included is the assurance that "**all students in the community will be given an equal opportunity to attend the charter school.**"

The federal law permits charter schools to apply for and receive waivers of statutory and regulatory requirements, but, it prohibits waivers of any requirement relating to the elements of a "charter school," as defined in the above section of ESEA/ NCLB.

## **Now What?**

Louisiana's Separate Railroad Car act, and the holding in *Plessy v. Ferguson*, was reversed by the United States Supreme Court in *Brown v. Board of Education*. For over 50 years, Louisiana was notoriously identified with its Separate Railroad Car law. Now, another equally insidious law has crept into the Louisiana statutes. Thus, Louisiana's legislature needs to act now to amend its Charter School law, revising it so that all charter schools provide equal access to all.

Schools with academic admission requirements can continue to operate and can be returned to their rightful status as magnet schools. Most magnet school boards could then continue to operate the schools under the "schoolwide program" status, as defined within the No Child Left Behind Act. Operating as a schoolwide program is similar to operating as a charter school. All of the funds to which the school is entitled are consolidated and a plan for school improvement is developed and implemented by a board consisting of community members, parents, administrators and teachers. This form of site-level governance is similar to that of a charter school.

Likewise, the current centrally-operated low-performing schools can be operated as site-based schoolwide programs, also. The schoolwide-program model allows site-based management of schools and achieves the decentralization that is needed.

There are many options in moving forward. But, the first option must be to remove the academic admission status from charter schools, so that charter schools that provide equal access can be awarded the full amount of charter school funds.

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### Endnotes:

*Brown v. Board of Education*, 347 U.S. 483; *Plessy v. Ferguson*, 163 U.S. 537. In the landmark Civil Rights Cases, the Court limited the protection of the Equal Protection Clause to "state action" only. Then came the Plessy decision, which limited the protections offered even in cases in which state action was present. In upholding *Plessy*, Justice Henry Brown declared that the clause guaranteed political and civil equality, but not social equality. At the time of *Plessy* there was racial segregation in the schools. In the landmark, *Brown v. Board of Education* decision the Court reversed *Plessy*, holding that the Constitution is not color blind, and that separate is inherently unequal.

State Takeover -- See School Performance Scores: Louisiana Department of Education, Office of Student and School Performance, 2004-05 Accountability Results, Orleans Parish, School Level Table.

Louisiana: Charter School Definition: La.R.S. 17:3991(B); School and District Accountability: La. R.S. 17:10.1-10.7; Failing Schools: Constitution Article 8.3.

No Child Left Behind: Public Law 107-110

Public Charter Schools. No Child Left Behind, Title V, Part B, See Section 5210

Public Magnet Schools. No Child Left Behind, Title V, Part C

Schoolwide Programs: No Child Left Behind, Title 1, Sec. 1114. "A local school district may consolidate and use funds under this part, together with other Federal, State and local funds, in order to upgrade the entire educational program of a school that serves an eligible school attendance in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from such families. . . . A comprehensive plan for school improvement shall be developed with the involvement of parents and other members of the community and individuals who will carry out such plan, including teachers, principals, and administrators. . .

*"Charters Break Mold By Picking Choosing Students;"*Times-Picayune, May 18, 2008

Governor Kathleen Babineaux Blanco, Executive Order, October 2005