

A Reciprocal Charter: Improving the Relationship between Authorizers and Charter Schools

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Abstract: Charter schools are changing the landscape of America's public schools. There are over 6,000 charter schools operating across the United States. A charter school is created through a contract (the "charter") and a lawful charter school authorizer. The authorizer approves, monitors, renews and when appropriate closes charter schools. Charter schools have not lived up to their promise of improving academic performance. As a consequence authorizers are writing more detailed charters and stepping up monitoring activities. This flies in the face of the very mission of charter schools. Charter schools are given freedom and flexibility from state and local laws in exchange for using innovating ways to improve academic performance. What alternatives do charter school authorizers have to the drastic measures of overregulation and closing the schools? The answer might lie in an area of contract law and behavioral economics. This paper proposes the use of incentives based on reciprocal norms and social norms instead of market norms.

Key words: reciprocity norm; charter school authorizers; social norms

JEL codes: H75, H51, H52, H53

A charter school is a publicly funded school. According to the National Alliance of Charter Schools (2014) there are currently over 6,000 charter schools operating in the United States. More than two and a half (2.57) million children attend charter schools. By state and federal law charter schools must open their schoolhouse to all children. Like traditional public schools, charters cannot charge tuition fees.

Charter schools are a billion dollar industry. Whether charters are for-profit or non-profit (which usually contract with for-profit education service providers) operators are in a business and trying to maximize their earnings.

Diane Ravitch, One of America's most well-known education historians, has identified charter schools as the most important educational development in the past 50 years. According to Minow (1999), charter schools are squarely centered in the consumer driven American free marketplace relying on marketplace strategies and beliefs.

In practice and theory charter schools represent an expansion of the privatization movement that has gripped local, state and the federal government. Today, traditional government services ranging from prisons to garbage

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collection to running interstate highways have been outsourced (privatized) to private enterprise.

A charter school is created through a contract (a.k.a. the “charter”) between the school and an authorizer. A charter school authorizer is an entity that state law and policy allow “to approve, monitor, renew, and if necessary close charter schools” (National Association of Charter School Authorizers, NACSA, 2014). The authorizer is funded through public funds and is held accountable by a state government entity for its use of the money.

Charter schools receive public education funds in exchange for considerable freedom and flexibility from state laws and local school board rules and regulations. However, charter schools are part of each state’s public education system.

All state laws require charter schools to have an independent governing board (similar to traditional local school boards). The governing board is the entity that signs the contract with the charter school’s authorizer. The governing board has the authority and charge to make all decisions relating to the charter school’s finances. Charter schools are subject to federal and state audit requirements.

In 2009 CREDO at Stanford University reported that 37% of charter schools nationally were underperforming local public schools on standardized test scores. The study also found that only 17% of charter schools were outperforming the local public schools. The study compared the results of charter schools in 25 states to local schools with equivalent demographic and economic profiles.

CREDO conducted the same study in 2013 and found that charter schools were improving but 21% of the charters continued to trail local public schools.

The 2009 CREDO results were a wake-up call for charter school authorizers, state legislatures, and charter school operators. Charter schools were not the educational pinnacle that so many legislators and charter school educators said they would be.

The NACSA (2013) reported that charter school closure rates increased from 6.2% in 2011 to 12.9% in 2012 pursuant to charter school renewal evaluations. The closure rate beyond the renewal proves when from 1.5 percent to 2.5 percent.

Charter school academic under-achievement became a major national issue. The charter school community’s response was two-fold: one, to close low performing schools; two, tighten the grounds for non-renewal and expand the grounds for school closure. The result is a contract (charter) that is more specific, driven by higher standards for student achievement and student growth. In addition, authorizers created more rigorous accountability requirements.

Nearly 200 charter schools closed between the school year 2012-2013 and the beginning of the 2014-2015 academic year. California witnessed 39 school closings, Florida had 26 closed schools, Ohio had 19 closed schools, Wisconsin saw 17 closed schools and Arizona blinked at 16 closed schools.

What alternatives do charter school authorizers have to the drastic measure of closing schools? The answer might lie in an area of contract law and behavioral economics. Epstein (2014) a Depaul University of Law professor argued in her excellent article, entitled: Public-Private Contracting and the Reciprocity Norm:

When governments outsource work to private entities — running prisons and schools, administering state benefits, and the like — they tend to write extremely detailed contracts. The conventional thinking is that these private entities need to be constrained lest they act opportunistically. Therefore, governments write contracts that highly specify tasks, contain robust monitoring provisions, and financially reward task compliance. This detailed contracting approach, which views agents as selfish, profit-driven, and looking for opportunities to shirk, finds support in both the agency cost and public law literatures.

[Epstein] challenges the prevailing approach. [She] argues that control-based contracts are not only difficult and expensive to write and costly to monitor, but they stifle intrinsic motivation and innovation. Such detailed contracts frequently

fail in practice, with serious negative implications for the public (p. 1).

Charter schools must comply with their contract but the setting of detailed school performance criteria based mainly on standardized test scores and stepped up monitoring requirements certainly squeezes the autonomy out of the charter school.

The different approach that Epstein (2014) espouses is not “predicted on the assumption of fully rational and selfish individuals looking for opportunities to shirk. Viewed this way, agents (charter school operators) need to be controlled or need to be given incentives so that their rational, profit-maximizing interests align with the principals (authorizers)” (p. 35).

The behavioral economics literature has recognized reciprocity as an approach to public-private contracting. Cooter and Ulen (2012) refer to relational contracts where in repeated business, which is naturally assumed in the context of permitting an operator to open and run a public school that remedies for broken promises are dealt with by informal devices. Epstein suggests that a less specified contract and a minimum of monitoring will prompt better agent performance. Further, Epstein asserts:

It is not only specificity that can crowd out intrinsic motivation. Studies have shown that the use of tangible rewards or sanctions undermines motivation for a range of activities. Use of incentives and incentive-based compensation specifically can damage self-esteem and harm the norms of professionalism. Incentive-based compensation (so-called “carrots and sticks”) may actually crowd out intrinsic motivation. Also, monitoring at a certain level decreases work effort. Monitoring and specificity together have been shown to be particularly problematic (p. 42).

Charter schools were built on the cornerstone of innovation, creativity, and flexibility from too much oversight and regulation. Clearly, authorizers must ensure to the extent possible that their charter schools are successful. But setting unreasonable expectations and stifling motivation through excessively detailed contracts is not the answer.

Fortunately, some states have passed charter school laws that establish mandatory closure provisions. This is an excellent idea and all states should do the same. This will relieve authorizers of some pressure associated with deciding to close a school.

Dan Ariely (2008) in his brilliant bestseller Predictably Irrational suggests the importance of social norms in the realm of public education. While not dismissing money as a way to motivate teachers and school administrators, Ariely takes a fresh look at social norms as incentives to improve public education. Instead of focusing on high test scores and salaries, Ariely maintains that “it might be better to instill in all of us a sense of purpose, mission, and pride in education. To do this we certainly can’t take the path of market norms.” (p. 93).

Ariely urges us to “first rethink school curricula, and link them in more obvious ways to social norms (elimination of poverty and crime, elevation of human rights, etc.)” (p. 93). In other words, transcend pay for performance incentive clauses in school charters with an appeal to reciprocal norms. Authorizers can build a shared social trust, and culture, through the charter that focuses on purpose, mission, and social norms. Status and recognition for improved performance are high-charged motivators that could be incorporated into a charter.

Alternative assessments beyond measuring academic performance would most likely be welcomed by charter schools as part of their initial charter school application and renewal process. Data could be collected and reported as applicable to the school’s authorizer on matters such as character education, physical education, reduced drug and alcohol usage, parental participation, links to the business community, grade promotion, fund raising, community work/involvement, study skills, field trips, participation in extracurricular activities, professional

development for teachers and administrators, etc.

The Loveland City Schools of Loveland, Ohio have created a “quality profile” that “helps characterize the overall educational value of the school district that matter most in our community”. It is a comprehensive assessment model that covers academic success beyond state requirement of the Common Core Standards.

The “quality profile” covers academics, arts, digital learning, fiscal stewardship, parent and community involvement, staff leadership, student activities, student leadership, student services and the district’s commitment to improvement.

The “quality profile” looks at the “whole child” and the high degree of importance the district places on ensuring students can meet their potential inside and outside the classroom.

Alternative charter school assessments could easily be negotiated into the school’s charter used on both the authorizer’s mission and the school’s unique mission and purpose. As Conard pointed out in his masterful book, Unintended Consequences (2012), “It’s not so much the rewards per se that motivate people, but the lack of status that comes from not having achieved them.” (p. 78). The benefits far outweigh the costs of using an alternative charter school assessment (however weighted) in terms of creating and growing the social norms and reciprocity between charter school and authorizer.

Charter school authorizing is a relatively new profession. But education is a very old profession. It is a caring profession similar to the medical and health profession. In order to maintain high standards, protect children and protect the charter’s autonomy, authorizers must invest more in the human capital side of education.

References:

- Ariely Dan (2008). *Predictably Irrational*, New York, New York Harper Collins Publishers.
- Conard Edward (2012). *Unintended Consequences*, New York, New York: Portfolio/Penguin.
- Cooter Robert and Ulen Thomas (2012). *Law and Economics* (6th ed.), Boston: Addison-Wesley.
- Epstein Wendy (2014). “Public-private contracting and the reciprocity norm”, *American University Law Review*, Vol. 64, p. 1.
- Loveland City Schools Quality Profile (2014). “Loveland City Schools”, Loveland, Ohio.
- Minow Mary (1999). “Reforming school reform”, *Fordham Law Review*, Vol. 68, p. 257.
- National Alliance for Public Charter Schools, available online at: <http://www.publiccharters.org>.
- National Association of Charter School Authorizers, available online at: <http://www.qualitycharters.org>.
- Ravitch Diane (2010). *The Death and Life of the Great American School System: How Testing and Choice are Undermining Education*.