

Cyber Charter Schools in Indiana: Policy Implications of the Current Statutory Language

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In the seven years since former U.S. Secretary of Education William Bennett helped develop “virtual charter schools” that provide educational programs to charter school students via the Internet (Kafer, 2003), the number of these schools has rapidly increased. At least 90 (or around 3%) of the almost 3,000 charter schools in operation in 2004 were virtual charter schools, also referred to as cyber charter schools (Hassel & Terrell, 2004), and 16 states had at least one cyber charter school in operation during the 2004-05 school year (U.S. Department of Education, n.d.). Cyber charter schools offer many benefits to the students they serve (Bogden, 2003; Cook, 2002), but without specific statutory language governing these schools, complications can arise (e.g., Pennsylvania School Boards Association v. Zogby, 2002).

Indiana currently has no cyber charter schools, but proposals for their creation have been submitted to potential sponsors. During the 2005 session of the Indiana General Assembly, a charter school bill passed that in part addressed the concept of cyber charter schools. However, Indiana charter school law remains vague regarding the establishment and funding of cyber charter schools. This Education Policy Brief examines possible implications of the current law regarding cyber charter schools.

I. OVERVIEW OF CYBER CHARTER SCHOOLS

Cyber charter schools, like traditional charter schools, are independent public schools created through formal agreements with a sponsoring entity. Additionally, these schools operate free from many regulations which govern traditional public schools. However, instruction in cyber charter schools is delivered through alternative, non-classroom-based strategies (i.e., usually via the computer and Internet), and cyber charters usually provide students with a computer, a curriculum, textbooks, and Internet access for no charge (Cook, 2002; Huerta & Gonzalez, 2004). Typically, cyber charter schools are able to cross district boundaries and enroll students from multiple districts, and they are composed predominantly of previously homeschooled students (Bogden, 2003; Cook, 2002; Huerta & Gonzalez, 2004). A study of Ohio’s 23 cyber charter schools revealed that they serve mostly secondary level students and are composed of a much smaller percentage of minority students than traditional charter schools in Ohio (21% vs. 80%, respectively) (Legislative Office of Education Oversight [LOEO], 2004). Although smaller studies, such as the research in Ohio, have been conducted, there are no comprehensive studies that have analyzed a wide sample of cyber charters (Huerta & Gonzalez, 2004).

Among the benefits of cyber charter schools is the ability to serve a wide range of students, such as students who are homebound for medical reasons, who are employed, who are incarcerated, or who do not feel comfortable in traditional classrooms for various reasons. Cyber charter schools also offer homeschooling families the option of public financing for a program that relieves parents of much of the instructional burden but with little loss of autonomy. Addi-

tionally, cyber charters may offer innovative curriculum choices, individualized curriculum, and personalized pace of instruction (Bogden, 2003). Finally, school districts which sponsor cyber charters can expand educational opportunities and retain students who may otherwise drop out of school or leave the district for another charter school (LOEO, 2004).

II. POLICY IMPLICATIONS

A. Enrollment

The most significant policy issues that cyber charter schools raise is the question of funding cross-district enrollment and enrollment of formerly homeschooled students. Charter schools in some states can claim 75% or more of a state’s per-pupil allocation for each student who enrolls in the school (Conn, 2002). However, allowing cyber charter schools to draw enrollments across district boundaries creates conflict when districts are charged based on a portion of their per-pupil expenditures for students who are no longer under their supervision (Bogden, 2003; Cook, 2002; Huerta & Gonzalez, 2004).

Additionally, many cyber charter students were formally homeschooled and therefore not previously covered by public dollars. Since the enrollment of these students into cyber charters causes unexpected new obligations to public school budgets, Colorado’s charter school law, for example, specifically bans online schools from enrolling previously homeschooled students (Bogden, 2003). It is not clear how these national patterns apply to Indiana, where charter schools are able to enroll students from across district borders, but the state is the primary source of funding for charter schools.

B. Accountability

In addition to financial accountability, cyber charter schools must be held responsible for student performance and program quality (Bogden, 2003; Huerta & Gonzalez, 2004). Cyber charters often contract with educational management organizations (EMOs), and there have been complaints of corruption, conflicts of interest, and the withholding of computers and special education services (Cook, 2002; Huerta & Gonzalez, 2004). Bogden (2003) contends that measures need to be implemented to ensure that students, rather than their parents, are completing the work and that cyber charter schools are reporting accurate enrollment figures and using the best practices in instruction and assessment. In Ohio, local school districts are sponsoring their own cyber charter schools, making it easier to monitor accountability. Given the strong accountability systems used by most Indiana sponsors, these accountability issues should be given serious attention but should not be insurmountable.

C. Serving Special Education Students

Both charter schools and virtual schools are required to comply with all federal laws, including the Individuals with Disabilities Education Improvement Act (IDEIA), Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act (ADA), and the Fourteenth Amendment of the U.S. Constitution, which guarantees equal protection of the law to all individuals. Although no litigation exists to date over students with disabilities having difficulty obtaining equal opportunities from individual charter schools, the absence of litigation is not necessarily conclusive. For example, the U.S. Office for Civil Rights (OCR) received 35 complaints in 2002 about charter schools relating to Section 504 violations, exceeding the total number of racial or gender discrimination complaints about charter schools received by OCR from 1998 to 2002 (Martin, 2004).

Müller and Ahearn (2004) conducted interviews with representatives from state education agencies and two prominent virtual schools regarding the provision of services to students with disabilities in virtual schools. Although this study dealt with non-charter virtual schools, the results are applicable as “charter schools are increasingly likely to adopt a virtual approach to education” (Müller & Ahearn, 2004, p. 9). The researchers found that although virtual schools are enrolling special education students at rates less than traditional schools, the virtual schools in the sample do enroll significant numbers of students with disabilities. However, these stu-

dents primarily have high incidence disabilities, such as attention deficit hyperactivity disorder (Müller & Ahearn, 2004).

The virtual schools in Müller and Ahearn’s (2004) research handle individualized education program (IEP) meetings through conference calls, videoconferencing, and occasionally face-to-face meetings. However, many virtual schools rely heavily on parents to implement IEPs, and other virtual schools lacking the resources to establish special education networks contract with non-public agencies for these services (Müller & Ahearn, 2004). The states in this study (California and Pennsylvania) determine special education caseloads in their virtual schools through state guidelines for virtual and/or charter schools.

Although many interviewees in Müller and Ahearn’s (2004) study agreed that virtual schooling is a viable educational option for students with disabilities, others expressed doubts that these schools could adequately meet the needs of this population of students. For example, the standardized curriculum and instruction methods used by the EMOs are not conducive to students with special needs (Zollers & Ramanathan, 1998). Specifically, the provision of occupational therapy, physical therapy, or speech and language therapy to the wide geographic range of enrolled students poses a challenge. Additionally, monitoring of the virtual schools is necessary to ensure proper compliance with special education provisions; however, the concept of state-level monitoring is problematic because these virtual schools have often been created to avoid state oversight and other bureaucratic constraints (Müller & Ahearn, 2004).

III. EVIDENCE FROM PENNSYLVANIA

Conflict over cyber charter school enrollment and funding has been the subject of litigation in Pennsylvania. Legal action resulted in 2001 when 70% of the districts with students attending the Western Pennsylvania Cyber (WPC) charter school (now the PA Cyber Charter School) refused to send the required payments to the cyber schools as required by state law. The state school board association and numerous districts claimed that WPC, TEACH-The Einstein Academy, and other cyber charters were violating state regulations and did not have a legal right to exist (Pennsylvania School Boards Association v. Zogby, 2002).

In response, the state education commissioner withheld funds from the districts to pay the cyber charter schools, and when the districts were not allowed to appeal this decision, fur-

ther litigation ensued (Boyertown Area School District v. Department of Education, 2002; see also Boyertown Area School District v. Department of Education, 2004). Although Pennsylvania’s Commonwealth Court ruled that the state’s cyber charter schools were legal (Pennsylvania School Boards Association v. Zogby, 2002), the charter law was changed to further define cyber charters and funding requirements and to make the state Department of Education the only sponsoring agency for cyber charter schools (Cook, 2002; Huerta & Gonzalez, 2004).

Furthermore, it appears that cyber charter schools in Pennsylvania are enrolling more white, non-minority students than their host districts and avoiding special education students (Miron, Nelson, Risley, & Sullins, 2002). This is an issue which merits further investigation: if this enrollment trend is seen elsewhere, stronger laws may need to be written and enforced to ensure equal education opportunities for all.

IV. THE CASE IN INDIANA

Senate Enrolled Act 598-2005 amended Indiana Code 20-5.5-8-2 pertaining to charter schools, but the resulting language is unclear regarding the establishment of cyber charter schools. Specifically, the law states that “(a) A charter school may not do the following: ... (5) Provide solely home based instruction” (Indiana Charter School Law, 2005). Furthermore, (b) A charter school is not prohibited from delivering instructional services: (1) through the Internet or another online arrangement; or (2) in any manner by computer; if the instructional services are provided to students enrolled in the charter school in a manner that complies with any procedures adopted by the department concerning online and computer instruction in public schools (Indiana Charter School Law, 2005).

The use of the word “solely” in the statute allows room for interpretation whereby home schools could become charter schools by providing primarily cyber instruction and using a bricks-and-mortar school strictly for testing or other purposes that require minimal time outside of the home. Additionally, Sec. 2(b) is problematic because the Indiana Department of Education has no procedures concerning online and computer instruction in public schools. The ambiguity of this section of the Code has already led to some debate about whether cyber charters can exist in Indiana. The issue of whether cyber charter schools are allowed needs to be resolved by the legislature before the situation escalates and litigation ensues at the expense of public tax dollars and students’ education.

V. RECOMMENDATIONS

Indiana law is currently vague about the acceptability, governance, and operation of cyber charter schools. Although the current situation is understandable, avoiding specific enabling legislation is highly likely to lead to the legal and financial problems encountered in other states. The following provisions should be addressed in any legislation or regulations governing cyber charter schools:

- *Eligibility to Sponsor Cyber Charter Schools:* Is Indiana’s sponsorship system for bricks-and-mortar charter schools sufficient for the authorization of cyber charters? Since the cyber charter schools have no physical location, should the Indiana State Board of Education or Department of Education authorize these schools?
- *Funding Levels:* Although cyber charter schools appear to incur lower operating costs, will the cyber charters receive the same amount of funding as traditional charter schools?
- *Enrollment:* Should legislation mandate a minimum enrollment to discourage home schools operating as charter schools?
- *Accountability:* How can sponsors and the state ensure that cyber curricula are based on state standards? How will NCLB and PL221 accountability systems be applied to cyber charter schools? How will existing laws and regulations (e.g., length of the school day and year) be applied and monitored?
- *Special Education:* How will special education services be delivered to students in virtual charter schools? How can discrimination against special education students be prevented?

Of these issues, we believe that questions about funding are the most important to address (although all other issues mentioned above should also be addressed). Unless the cyber charter is a conversion school (which seems unlikely), the funding burden will fall on the state. If a large part of the 22,403 homeschooled students in Indiana (Kunzman, 2005) choose to enroll in cyber charter schools as has happened in other states, state resources may not be able to handle the sudden increase in the ADM count of public school students. Related questions about funding level (i.e., Should a virtual school receive the full per pupil funding of bricks-and-mortar charter schools?) are complex and, if not addressed adequately, have the potential to derail Indiana’s progress in developing a strong state charter school environment. We acknowledge that the political combination of charter schools, virtual instruction, and homeschooling is essentially the “third rail” of Indiana education policy, but avoidance of these issues will likely lead to important policy decisions being settled through arguments in the legal arena and not debate in the legislature.

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