

[Click to print](#) or Select '**Print**' in your browser menu to print this document.

Page printed from: <http://www.law.com/thelegalintelligencer/almID/1202768305414>

Between a Rock and a Hard Place: The Mirage of School Choice

A client we had been representing in a special education case called recently to say that she and her daughter no longer needed our services. While the case had been proceeding in a reasonably expeditious fashion, she had become increasingly frustrated with the legal system.

Case Digest Summary

A client we had been representing in a special education case called recently to say that she and her daughter no longer needed our services. While the case had been proceeding in a reasonably expeditious fashion, she had become increasingly frustrated with the legal system.



0

A client we had been representing in a special education case called recently to say that she and her daughter no longer needed our services. While the case had been proceeding in a reasonably expeditious fashion, she had become increasingly frustrated with the legal system. Instead, she moved her family out of the district and into what she labeled a “white school.” According to our client, this change in schools meant that “my daughter is finally receiving what she needs.” Aware that race could be a sensitive subject, she lowered her voice and added, “I hate to say it, but it’s true.”

It has been more than 60 years since *Brown v. Board of Education* was decided, and we still hear parents use the terms “black” and “white” to characterize the schools where their child is educated. This is not surprising. Studies show that school segregation today is the same, if not worse, than it was in 1968. One study even found that as many as 92 percent of students in the United States attend racially- and socio-economically homogenous schools.

Such statistics are particularly concerning given parallel research that demonstrates the educational benefits of integration. According to these studies, integration has proven to be the most effective and cost-efficient way of closing the achievement gap between white and black students. The research also shows that children from integrated schools have higher SAT scores, lower drop-out rates, and are more likely to attend college. For that and other reasons, a growing number of parents want their children to attend diverse academic settings.

Paradoxically, the nation’s fastest-growing school reform phenomenon—the rise of charter schools—does not support integration. In fact, research shows that charter schools are more racially homogenous than traditional public schools in almost every state and large metropolitan areas. While some charter schools stand out with diverse student bodies, such schools make up only a small fraction of this rapidly growing share of the educational landscape.

In Philadelphia, for example, the Renaissance Schools initiative allows charter schools to enter bids to take over chronically underperforming district schools. With each conversion of a traditional public to a charter school, the African-American population decreases in the district and grows in the charter schools. Last year, the school district’s African-American population was just over 50 percent, but the charter system’s African-American population was over 60 percent.

In response to the proliferation of charter schools, last month, the NAACP approved a resolution that called for a moratorium on the expansion of privately managed charter schools, citing problems of increasing segregation, wasting public funds, and harming local communities. The NAACP even likened charter school expansion in low-income communities to predatory lending practices that precipitated the sub-prime mortgage crisis.

Other charter school critics make a similar argument. In 2014, the American Civil Liberties Union (ACLU) filed a complaint against the state of Delaware, alleging the state’s charter school law has “led to the proliferation of high-performing charter schools with practices that result in the disproportionate exclusion of African-American and Latino students, low-income students, and students with disabilities.” The complaint alleged that charter schools employed superficially benign methods to exclude students of color and students from low-income families by mandating expensive uniform purchases, activity fees, and parent involvement.

If a student has a disability, the educational options become grimmer still. Publicly funded schools, including charter schools, are required to provide special education services to disabled students to facilitate their access to the general curriculum. But these exceptional students can be more expensive to educate because they often require more resources, including additional teacher attention, specialized instruction, classroom aides and other additional personnel, assistive technology, and sometimes even private placements. Though this poses a challenge to a cash-strapped school district, the challenge is even greater for a charter school that operates on a smaller scale and often with fewer resources. Where a school district may employ different special education teachers, each with unique specializations, a charter school may have only one or two special education teachers who are responsible for developing education programs to address the needs of students with an array of disabilities, including autism spectrum disorders, intellectual disabilities, hearing, visual, and physical impairments, and many others.

The advent of charter schools has posed unique legal quandaries. Unlike school districts, charter schools can go bankrupt and close. A number of Pennsylvania charter schools have failed for reasons such as exam cheating scandals, enrollment misreporting, fund mismanagement and charter violations. In some cases, these closures have happened in the middle of a school year, with students returning to school after a break to find the building empty and the doors locked. And once a charter school has closed, it leaves all of its students behind with little to no recourse.

Our office has seen firsthand the ways in which a charter school's closure can continue to harm its student body well into the future. A common example we have witnessed is reflected in the story of a client who, several years ago, removed her son from his neighborhood school. Her son, a young man of average intelligence with ADHD and learning disabilities in reading and math, needed special education services. Because the school district was not meeting his needs, she enrolled him in a charter school following assurances that the school could meet his needs. A year later, she was in our office. The charter school had failed to implement her son's special education plan and the school was now being investigated for mismanagement. The case settled, which created a fund, held by the charter school, that her son could use for educational services. She returned him to the school district and the family planned to use the settlement fund for tutoring to make up for the ground he had lost academically while at the charter school. Another year later, she was back in our office again. The charter school had filed for bankruptcy and closed its doors. The fund that was meant to remediate the legal violations had apparently disappeared with the charter school's closure. Fortunately for our client, the Eastern District of Pennsylvania recently recognized the commonwealth of Pennsylvania as a responsible party for guaranteeing that students with special education needs receive whatever the charter school had promised. But the state continues to fight such outcomes and families in these underserved and low-income communities frequently cannot afford legal representation and don't know where to turn.

Charter school advocates have long argued that charter systems provide alternatives to students from underserved communities. But when the neighborhood school is converted to a charter, these students and their families become subject to the limitations and risks of the charter system. Proponents of charter schools frequently employ the phrase "school choice" as their marketing slogan. But the choice parents—particularly parents of color—frequently face is between an underfunded and underperforming neighborhood district school and a charter school exemplifying the problems outlined above. Choosing between two failing school systems hardly serves as a real choice for students and their families.

•

A client we had been representing in a special education case called recently to say that she and her daughter no longer needed our services. While the case had been proceeding in a reasonably expeditious fashion, she had become increasingly frustrated with the legal system. Instead, she moved her family out of the district and into what she labeled a “white school.” According to our client, this change in schools meant that “my daughter is finally receiving what she needs.” Aware that race could be a sensitive subject, she lowered her voice and added, “I hate to say it, but it’s true.”

It has been more than 60 years since *Brown v. Board of Education* was decided, and we still hear parents use the terms “black” and “white” to characterize the schools where their child is educated. This is not surprising. Studies show that school segregation today is the same, if not worse, than it was in 1968. One study even found that as many as 92 percent of students in the United States attend racially- and socio-economically homogenous schools.

Such statistics are particularly concerning given parallel research that demonstrates the educational benefits of integration. According to these studies, integration has proven to be the most effective and cost-efficient way of closing the achievement gap between white and black students. The research also shows that children from integrated schools have higher SAT scores, lower drop-out rates, and are more likely to attend college. For that and other reasons, a growing number of parents want their children to attend diverse academic settings.

Paradoxically, the nation’s fastest-growing school reform phenomenon—the rise of charter schools—does not support integration. In fact, research shows that charter schools are more racially homogenous than traditional public schools in almost every state and large metropolitan areas. While some charter schools stand out with diverse student bodies, such schools make up only a small fraction of this rapidly growing share of the educational landscape.

In Philadelphia, for example, the Renaissance Schools initiative allows charter schools to enter bids to take over chronically underperforming district schools. With each conversion of a traditional public to a charter school, the African-American population decreases in the district and grows in the charter schools. Last year, the school district’s African-American population was just over 50 percent, but the charter system’s African-American population was over 60 percent.

In response to the proliferation of charter schools, last month, the NAACP approved a resolution that called for a moratorium on the expansion of privately managed charter schools, citing problems of increasing segregation, wasting public funds, and harming local communities. The NAACP even likened charter school expansion in low-income communities to predatory lending practices that precipitated the sub-prime mortgage crisis.

Other charter school critics make a similar argument. In 2014, the American Civil Liberties Union (ACLU) filed a complaint against the state of Delaware, alleging the state’s charter school law has “led to the proliferation of high-performing charter schools with practices that result in the disproportionate exclusion of African-American and Latino students, low-income students, and students with disabilities.” The complaint alleged that charter schools employed superficially benign methods to exclude students of color and students from low-income families by mandating expensive uniform purchases, activity fees, and parent involvement.

If a student has a disability, the educational options become grimmer still. Publicly funded schools, including charter schools, are required to provide special education services to disabled students to facilitate their access to the general curriculum. But these exceptional students can be more expensive to educate because they often require more resources, including additional teacher attention, specialized instruction, classroom aides and other additional personnel, assistive technology, and sometimes even private placements. Though this poses a challenge to a cash-strapped school district, the challenge is even greater for a charter school that operates on a smaller scale and often with fewer resources. Where a school district may employ different special education teachers, each with unique specializations, a charter school may have only one or two special education teachers who are responsible for developing education programs to address the needs of students with an array of disabilities, including autism spectrum disorders, intellectual disabilities, hearing, visual, and physical impairments, and many others.

The advent of charter schools has posed unique legal quandaries. Unlike school districts, charter schools can go bankrupt and close. A number of Pennsylvania charter schools have failed for reasons such as exam cheating scandals, enrollment misreporting, fund mismanagement and charter violations. In some cases, these closures have happened in the middle of a school year, with students returning to school after a break to find the building empty and the doors locked. And once a charter school has closed, it leaves all of its students behind with little to no recourse.

Our office has seen firsthand the ways in which a charter school's closure can continue to harm its student body well into the future. A common example we have witnessed is reflected in the story of a client who, several years ago, removed her son from his neighborhood school. Her son, a young man of average intelligence with ADHD and learning disabilities in reading and math, needed special education services. Because the school district was not meeting his needs, she enrolled him in a charter school following assurances that the school could meet his needs. A year later, she was in our office. The charter school had failed to implement her son's special education plan and the school was now being investigated for mismanagement. The case settled, which created a fund, held by the charter school, that her son could use for educational services. She returned him to the school district and the family planned to use the settlement fund for tutoring to make up for the ground he had lost academically while at the charter school. Another year later, she was back in our office again. The charter school had filed for bankruptcy and closed its doors. The fund that was meant to remediate the legal violations had apparently disappeared with the charter school's closure. Fortunately for our client, the Eastern District of Pennsylvania recently recognized the commonwealth of Pennsylvania as a responsible party for guaranteeing that students with special education needs receive whatever the charter school had promised. But the state continues to fight such outcomes and families in these underserved and low-income communities frequently cannot afford legal representation and don't know where to turn.

Charter school advocates have long argued that charter systems provide alternatives to students from underserved communities. But when the neighborhood school is converted to a charter, these students and their families become subject to the limitations and risks of the charter system. Proponents of charter schools frequently employ the phrase "school choice" as their marketing slogan. But the choice parents—particularly parents of color—frequently face is between an underfunded and underperforming neighborhood district school and a charter school exemplifying the problems outlined above. Choosing between two failing school systems hardly serves as a real choice for students and their families.

•

Copyright 2017. ALM Media Properties, LLC. All rights reserved.