



A Supreme Decision: The Next Steps for Charter Schools in Georgia

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November 2011

The Georgia Supreme Court (Court) recently found the Georgia Charter Schools Commission (Commission) to be unconstitutional. The controversial 4-3 decision sent shockwaves throughout the charter school community in Georgia. What was the issue? Some have argued that local control is the real issue, while others have said power and money are the basis of the issue, and even more have opined that it really is just about the children and what is best for them.

The question for many state policymakers, local boards of education and most importantly, parents is: How did Georgia get here and where do we go from here?

Since 1995, Georgia has seen the number of charter schools grow from a mere three schools to an astounding 205 schools. The make-up of these schools varies from start-ups, conversions, state-chartered schools, career academies, Commission-chartered and charter systems. With 72,000 students, or over 4% of the total public school population, in charter schools and the influx of recent charter legislation over the last five years, it is undeniable that charter schools are here to stay.

House Bill 881, which overwhelmingly passed the Georgia House of Representatives and the Senate in 2008, created the "Georgia Charter Schools Commission," the impetus for the lawsuit. This lawsuit, which was brought about by seven school districts, was covered more in depth in the Senate Research Office's June 2010 At-Issue Newsletter.¹

The Court ruled the Commission could not establish state-created charter schools over a local board's objection and divert the local portion of state funds to the Commission-schools. When a charter school bypassed the local district for approval and instead sought and potentially obtained approval from the Commission, the Commission charter school received from the state the funding that would have normally gone to the local district. The local schools challenged the Commission's legality to essentially bypass a local district's power and fund these schools with money the district felt it was entitled to.

During the 2010 petition cycle, out of the 23 schools to apply for approval, 13 were denied by the Commission, two were ruled ineligible, two withdrew from consideration, and two were deferred, leaving only four schools, or one-fifth of the total applicants, to

¹ http://www.senate.ga.gov/sro/Documents/AtIssue/atissue_june10.pdf

receive full-approval status. Additionally, in 2010, the National Alliance for Public Charter Schools ranked Georgia 4th in the nation on the strength of its charter school laws and again was ranked 7th in 2011 (due to new charter laws in other states and the Commission court case).

With the Court's ruling, 16 schools and a now-defunct Commission face a \$51 million funding shortfall with the loss of local funds and no legal authority to authorize any new Commission schools.

Prior to the ruling, eight Commission-chartered schools operated in Atlanta, Bulloch County, Coweta County, DeKalb County, Gwinnett County and Statesboro. These schools collectively enrolled 2,200 students and varied in their academic offerings. Two of the schools were single-gender institutions, and another focused on science, engineering and technology as its foundation. In some cases, the schools were above the state average in CRCT testing scores and equal to their local district scores. Additionally, the demographics of these schools included 48% minority students with 55% of all students eligible for free and reduced lunches.

Out of the eight Commission-chartered schools that were already in operation, two were approved by their local boards of education, while five were granted State Chartered Special School status. One school withdrew its application for local consideration and has since shut the school down with no explanation to parents or the local board.

Of the eight Commission-chartered schools that were scheduled to open in 2011, six have quickly received State Chartered Special School status, while the other two have delayed requesting approval as a State Chartered Special School or are applying to their local board of education for approval.

A State Chartered Special School is a charter public school that has been approved by the State Board of Education. State School Superintendent Dr. John Barge recommended to the State Board of Education to approve the schools seeking State Chartered status. One of the key differences in a State Chartered Special School and a charter school approved by a local district is money. The incentive for these schools to apply for local approval is financial since local approval means local dollars. The schools that have received Special status will receive their state portion of education funds, but will lose on average \$4000 per student due to the loss of the local funding they received as a Commission-charter school.

As a temporary fix and with details still being worked out, Governor Deal announced in mid-July that his office was pledging \$10 million in state funds to eight of the former Commission-approved schools scheduled to be open in 2011. The amount provided will equal the local match these schools would have been funded through the Commission. The eight schools receiving the funding include:

- Charter Conservatory for Liberal Arts and Technology (Bulloch County)
- Cherokee Charter Academy (Cherokee County)
- Coweta Charter Academy (Coweta County)
- Fulton Leadership Academy (Fulton County)
- Heritage Preparatory Academy (Atlanta Public Schools)
- Pataula Charter Academy (Baker, Clay, Calhoun, Early, and Randolph Counties)

- Odyssey School (This does not include virtual students; bricks and mortar only)

It must be noted that this only affects schools that did not receive local approval and does not include virtual schools. These schools, through private endowments or legislation in the General Assembly, will need to address this issue in order to remain operational from a funding aspect.

In the meantime, what are the options the General Assembly can consider if the members choose to confront the issue in the 2012 Legislative Session?

Both Georgia Supreme Court Justice David Nahmias and Attorney General Sam Olens have expressed statements that would lead us to believe that a Constitutional Amendment is needed to define the state's role in education. Writing for the minority in the dissent, Nahmias stated, "The majority of this Court has announced the new policy and removed the issue from the political process, unless the General Assembly and the people of our State bear the delay and enormous burden required to correct the Court's error through a constitutional amendment." Similarly, Olens stated, "Under the Court's order the General Assembly's power has been transformed from one of broad power unless expressly limited, to one of limited powers that do not exist unless expressly stated in the Constitution."

The General Assembly, if deciding to take up the issue, would face a constitutional amendment that would either grant the state broad power in educational powers or limit the question to creating the Commission with its previous legal power of approving and funding. If it received the 2/3 vote in both chambers by the conclusion of the next Legislative Session, it would be placed on the November 2012 ballot and conceivably, a new Commission would be functional to approve schools during the 2013 school year. Georgia would be the only state in the nation to take this type of action with regards to charter schools.

Another option for Georgia is the creation, by the General Assembly, of a separate and independent charter school commission, modeled after a commission similar to Arizona.

Through legislative action, in 1994, Arizona created the Arizona State Board for Charter Schools, with the purpose of approving charter schools as an authorizer, in addition to the local governing boards, university authorizers and community colleges that are currently authorized to approve a charter school. The Board² is composed of the Superintendent of Public Instruction, six members of the general public (one of whom shall reside on an Indian reservation), two members of the business community, one charter school operator, one charter school teacher, and three non-voting advisory members of the Arizona state legislature. Additionally, the Board is funded by the legislative appropriations and does not charge an administrative fee (as Georgia's Commission did) to charter applicants, unless it provides a special service to the charter school.

The importance of the Arizona State Board is evident, in that, out of 507 current charter schools in Arizona, the State Board has approved 456 of these schools. The other 51

² All Board members are appointed by the Governor to staggered four year terms; the President of the Arizona Senate and Speaker of the Arizona House of Representatives appoint the legislative members for two year terms and the Superintendent serves by default of being elected.

schools have been authorized by the Arizona State Board of Education (45) and local school districts (6). In total, Arizona's charters educate 120,000 students and make up 25% of the state public schools. Much like Georgia, Arizona's charter schools are split demographically, with half of their student population classified as a minority.

In Arizona, with almost all charter schools approved by the State Charter Board, the funding has not been an issue between state-approved schools and district schools. According to the Arizona Charter Schools Association, there is little difference in the amount of funding a traditional public school student receives versus a state-approved charter school student. When asked why charter schools overwhelmingly applied to the Arizona State Board instead of the local districts, Eileen Sigmund, President of the Arizona Charter Schools Association replied, "The State Board for Charter Schools is much less political and an easier process for charter leaders. The incentive is that the process is transparent for the State Board while a district application is very political." She went on to say, "I believe that quality choice – not just choice – must guide our charter sector moving forward, and an independent authorizer with transparent, accountable policies and procedures is the best way to achieve that mission."

Is it about the children? Local control? Money? The debate continues on and if there is one thing I am sure of, it will not end anytime soon. Both sides have their facts and figures, testimonies, graphs and a wealth of information to show the public and legislature why they are inherently right. The upcoming Legislative Session stage is set and Georgia's charter schools are sure to be a big act in the production. What is next for the charter movement in Georgia remains to be seen.