North Carolina has seen a wave of attacks on school choice. The emergence and growth of school choice programs like public charter schools and the Opportunity Scholarship Program have been the subject of much litigation. A recent attack by the teachers’ union on the Opportunity Scholarship Program was addressed by NCICL in July. Here NCICL will provide a brief history of another kind of school choice option, public charter schools.

A. School Choice is Popular, and its Popularity is Soaring.

According to the North Carolina Department of Education, over 100,000 students attended 184 charter schools in North Carolina during 2018-19 school year. See Highlights of the North Carolina Public School Budget, North Carolina Department of Public Instruction, Division of School Business, at 1, 37 (February 2019) Appendix 1. The North Carolina Department of Non-Public Education reported that over 100,000 students attended private schools in North Carolina that year, many with public funding from an opportunity scholarship. See 2019 North Carolina Private School Statistics, State of North Carolina, Department of Administration, Division of Non-Public Education, at 2 (2019). See also N.C. Gen. Stat. § 115C-562.2. And, school choice is not pursued only by white families as some have feared. In fact, the percentage of Black students enrolled in charter schools is actually higher than the percentage in traditional public schools. See 2019 Report to the North Carolina General Assembly: 2019 Annual Charter School Report, North Carolina State Board of Education and the Department of Public Instruction, Table 3.

The number of families choosing public charter schools and other school choice programs cannot be denied. These numbers reflect what most parents know intuitively—education is not a one-size-fits-all issue. They also reflect many families’ dissatisfaction with traditional public schools. And, these numbers scare activists, the teachers’ union, and bureaucrats who see school choice as a threat to their power.


North Carolina has had public charter schools since 1997. Originally, the law capped the number of charters to 100, but that cap was lifted in 2011.
(d) The board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures.

\(\text{N.C. Gen. Stat. § 115C-218.15}\).

The North Carolina General Assembly has expressly defined charter schools as different from traditional public schools. That is by design. North Carolina General Statutes contains hundreds of statutes that are binding in all respects on Uniform Public Schools in North Carolina. Conversely, the operation of charter schools is governed by a separate group of statutes that comprise a small and discrete subset of Chapter 115C. These statutes (hereinafter "the Charter School Laws") are contained in Article 14A of Chapter 115C. The Charter School Laws specifically state:

Except as provided in this Article and pursuant to the provisions of its charter, a charter school is exempt from statutes and rules applicable to a local board of education or local school administrative unit.

\(\text{N.C. Gen. Stat. § 115C-218.10}\).

C. The Differences Between Charter Schools and Traditional Public Schools is Feature.

Charter schools are formed when the State grants a ten (10) year charter to a private corporation and allows it to embark on an experimental educational platform that is different from the curricula requirements of traditional public schools. Charter schools can, and do, fail and cease to exist. The Uniform System of Free Public Schools—a constitutional mandate—does not and
cannot. *See N.C. Const. art. IX*, sec. 2(a) (“The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools...”).

North Carolina's charter schools were created to be different from the traditional public schools. Charter schools were created to serve as a semi-autonomous, free-market substitute for traditional public schools, whereby a charter would be given to a private corporation to engage in an educational experiment. *See Meghan Knight, Note, Cyber Charter Schools: An Analysis of North Carolina's Current Charter School Legislation, 6  N.C. J. L. & Tech. 395, 396-397 (2005).*

There are numerous practical distinctions between charter schools and traditional public schools. First, charter schools are only given a ten (10) year charter and experience has shown that they can, and do, fail and dissolve. For specific reasons listed in statute, the charter can be renewed for a period of less than ten years or not renewed at all. *N.C. Gen. Stat. § 115C-218.6.* Several “causes for nonrenewal or termination” are spelled out at *N.C. Gen. Stat. § 115C-218.95.* The public schools cannot fail in the same way. The state-run system of public schools must operate in perpetuity. The children of North Carolina have the right to the opportunity to a sound basic education. Unfortunately, for many children, traditional public schools are either not a good fit for an individual student or are sadly failing public schools.

The North Carolina Constitution requires the establishment and funding of a “uniform system of schools” *N.C. Const. art. IX*, sec. 2. This the state did with the creation, funding, and operation of the statewide public-school network controlled by state and local government. Upon realizing that the public schools of North Carolina were insufficient, and that parents and schoolchildren wanted unique educational experiences, North Carolina chose to authorize and fund charter schools among other school choice programs.

Now, North Carolina must defend and promote school choice. Our children deserve nothing less than the education best suited to their individual needs. And, our children deserve no less than a government that recognizes the right of parents to make that determination.
About the Author

Jeanette Doran has served as President and General Counsel of the North Carolina Institute for Constitutional Law since returning to the Institute to reorganize and restart the organization in July 2019.

About NCICL

NCICL envisions a North Carolina of individual liberty and a thriving, innovative economy, with state and local governments committed to following the state and federal constitutions.

Our Mission

• To help the public hold policymakers accountable by providing resources to understand constitutional law issues as they develop.
• To educate the public, bar, and policymakers about constitutional principles--why they are important, when they are at risk, and how to preserve them
• To promote liberty by encouraging a limited and transparent government and promoting free enterprise

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