Judging Choice

Court victory for charter schools in Louisiana

by JOSHUA DUNN

Charter schools have gained a substantial following in Louisiana, where 148 charters now serve more than 80,000 students. That amounts to nearly 1 in 9 students attending a charter school in the Pelican State. But charters have also attracted opposition from many school districts and teachers. In 2014, some of these opponents banded together and turned to the courts, claiming that state-authorized charter schools are not public schools under Louisiana's constitution and therefore are not eligible to receive state funding. The end result was a decisive victory for charter schools.

Charter schools in Louisiana are authorized primarily by either a local school board or the state board of education. Either way, charters receive a portion of per-pupil funding from both the state and the local district. Local school boards are often opposed to charter schools and may refuse to authorize them. Thus, allowing the state to authorize charters provides a way to circumvent local resistance.

The plaintiffs in *Iberville v. Louisiana* included the Iberville Parish School Board and several teachers unions, including the state's largest, the Louisiana Association of Educators. They challenged the constitutionality of state-authorized charter schools, basing their case on a clause in the state constitution that requires the state board of education to "annually develop and adopt a formula which shall be used to determine the cost of a minimum foundation program of education in all public elementary and secondary schools as well as to equitably allocate the funds to parish and city school systems." The plaintiffs contended that the clause implied that only parish and city schools could receive funding from the state education fund.

The plaintiffs' first foray into the courts did not go well for them. A state district court rejected their reading of the Louisiana constitution, saying that the education-funding clause required the state board to set funding levels for all public schools and to equitably distribute funds for parish and city schools, but it did not forbid the creation of other kinds of public schools. On appeal, however, the plaintiffs were successful. In a three-to-two decision, a five-judge panel ruled that the state-authorized charter schools were "not public schools in the sense of the Louisiana Constitution." The court relied on a previous decision by the state supreme court, which held that so-called foundation funds could not be diverted to non-public schools. But that case, *Louisiana Federation of Teachers v. State,* centered on a voucher program that gave parents foundation money they could use toward private-school tuition. The difference between the two forms of school choice would prove fatal to the plaintiffs' case in Iberville.

The state appealed to the Louisiana Supreme Court, which in March issued a five-to-two decision overturning the appellate court. The majority said that the appellate panel had misunderstood the supreme court's precedents and misread the state constitution. The justices pointed out that the court had never interpreted the constitution to forbid allocations to non-city or non-parish schools. As well, they maintained that the most sensible reading of the constitution was the one adopted by the trial court. Were they to adopt the plaintiffs' preferred interpretation, other types of long-standing public schools such as the lab schools at Louisiana State University and Southern University would need to be defunded. The fact that those schools already existed when the education-funding clause was added to the constitution indicated that the provision was not intended to define public schools as just parish and city schools.

Many continue to believe that school choice is not cool, and the legal hook they found to attack charter schools in Louisiana might well succeed elsewhere.

The Louisiana Association of Public Charter Schools praised the court for "putting students first, and empowering parents." Judge Jefferson D. Hughes III, a Republican elected to the court in 2012, agreed that the goal of funding charters through the formula was "laudable" but nevertheless dissented from the decision, saying, "shortcuts around the Constitution . . . are inimical to democracy and are not cool."

Despite Hughes's dissent, the decision constituted a clear win for charter schools. But charter advocates should be prepared for similar legal challenges around the country. Many players in the K–12 arena continue to believe that school choice is not cool, and the legal hook they found to attack charter schools in Louisiana might well succeed elsewhere.

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