

Public dollars, private rules: The charter school calculus

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The phenomenal growth of charter schools nationwide has been aided by a canny legal strategy in which the schools claim to be public for the purpose of taking in tax dollars but private for the purpose of evading government oversight, according to Preston Green, John and Carla Klein Professor of Urban Education at UConn's Neag School of Education.

"They're picking and choosing whether they're going to be public for one purpose or private for another," says Green, who is also a professor of educational leadership and law at UConn.

Along with co-authors Bruce D. Baker (Rutgers University) and Joseph O. Oluwole (Montclair State University), Green published a paper in the *Emory Law Journal* earlier this year showing that attorneys for [charter schools](#) have argued both that such institutions are entitled to public funding and that they are exempt from rules that govern traditional [public schools](#), ranging from labor laws to constitutional protections for students.

Charter schools have, for example, successfully fended off attempts to organize their employees into unions, with just 12 percent of charters unionized, compared with more than 35 percent of all education, training, and library professionals. Exempt from collective bargaining agreements in 21 states and the District of Columbia, they're able to extend the school day or increase instructional time with no input from teachers.

One of the most significant, but so far overlooked, ways this affects students is in the area of discipline. While public schools must provide due process to students when making decisions about suspensions or expulsions, most states exempt charter schools from school district discipline policies. This lack of protection may have enabled some charter schools to suspend and expel students at much higher rates than their public counterparts. In San Diego, Green and his coauthors report, the city's 37 charter schools have a suspension rate twice that of the public schools, while in Newark, the suspension rate in charter schools is 10 percent, compared to 3 percent for the city's public schools.

"Students of color in particular should be seriously concerned about the issue of discipline, because even in traditional public schools they're

suspended and expelled at a much higher rate than their white classmates," Green says.

It's not just discipline, though; charter schools may be exempt from constitutional protections in areas like search and seizure and the exercise of religion. It's obviously one thing for a Catholic school to require religion classes, but does the same logic apply to a charter school like Arizona's Heritage Academy, which last month was criticized by Americans United for the Separation of Church and State for requiring 12th graders to read books claiming that God inspired the drafting of the Constitution?

"When charter schools were created, there were widely shared assumptions about what it meant to be a public school," Green says.

"What charter schools have been very good at since then is taking advantage of the fact that it's actually unclear what's meant by the term 'public school.'"

The first charter school opened in Minnesota two decades ago. Since then, they've become a favored tool of the school reform movement, spreading to 42 states and the District of Columbia. In May, New Orleans announced it would be the first school district in the country to entirely replace traditional public schools with privately-run charters.

But as they grow, the strategy of having their cake and eating it too may come back to haunt charter schools, Green argues. The more that charter schools argue they should essentially be treated as private schools, the more likely courts will be to declare them ineligible for [public funding](#), he says.

As an example, Green points out several court decisions that argue charters are entitled to tax dollars because they're required to meet the same accountability measures as traditional publics. Recently, more

charters have been seeking to free themselves from teacher evaluation requirements, setting up a possible collision over funding.

"Ideally, what would happen is that lawmakers would stipulate in the statutes that create charter schools that charters are public for transparency and evaluation requirements, and for student rights," Green says. "At the very least, though, this is a discussion that should happen in public."

More information: Having it Both Ways: How Charter Schools Try to Obtain Funding of Public Schools and the Autonomy of Private Schools, *Emory Law Journal*, Vol. 63, No. 2, 2014 , papers.ssrn.com/sol3/papers.cfm?abstract_id=2399937

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