

## Issue Paper:

# Expanding Choice Within the Public School System

---

**O**PEN ENROLLMENT AND CHARTER SCHOOLS are two strategies to expand choice within the public school system. Open enrollment policies provide a mechanism for parents to seek an alternative public school to their residentially zoned neighborhood school. Currently 13 states operate statewide, inter-district open enrollment while 31 other states, including Oregon, offer limited open enrollment. Since Minnesota enacted the nation's first charter school legislation in 1991, 41 states—including Oregon—and the District of Columbia have established charter school laws to increase the number of options available to parents within the public education system. Today, roughly 2,700 charter schools serve over half a million American students. Many states prefer these “choice” programs because they are politically feasible as they do not disrupt the current status and governance structure of the education system.

With limited open enrollment and existing charter school laws, Oregon's parents already have some measure of school choice. In addition, intra-district transfers like those in Portland and Eugene provide additional mechanisms for parents seeking alternatives to their local district or neighborhood schools. Our earlier report, *Improving Quality and Strengthening Accountability in Oregon's Schools* (2005), concluded that market-based reforms show potential to produce higher-performing, cost-effective institutions by engaging potent market forces such as competition, specialization, dynamic adjustment, self-regulating exchange, and consumer choice. The report suggested several policy options that included the following:

- Amend Oregon's open enrollment laws to allow state school funds to follow the student. Current law is limited in that it enables districts

to accept students from outside the local district, but leaves the ultimate decision of allowing state school funds to follow the student to the districts themselves.

- Amend Oregon's charter school laws to increase per-student payments received by charter schools. Currently, elementary-level charter schools receive only 80 percent of the per-student allotment given to traditional public schools in the district, and secondary-level receive 95 percent of the district per-pupil allotment. Charter schools must defray many real estate costs not charged to traditional public school budgets. Some of these costs could be reduced if conventional public and charter schools could be co-located in public facilities or if districts were obligated to bargain in good faith

over the terms governing the use of idle facilities.

- Amend Oregon’s charter school laws to permit additional charter school sponsors. Currently, charter school organizers must first apply to the district in which they intend to operate and, if denied, can appeal

to the State Board of Education. An alternative system could establish additional sponsors including other public school districts, community colleges, universities, or nonprofits.

This report explores in more detail steps Oregon could take to implement these recommendations.

## OPEN ENROLLMENT

### **Background**

As noted in *Improving Quality and Strengthening Accountability in Oregon’s Schools* (2005), open enrollment policies provide a mechanism for parents to seek an alternative public school to their residentially zoned neighborhood school. Arguments in favor of inter-district open enrollment fall in two categories:

- **Expanded Options for Students and Parents.** Open enrollment widens the academic and curriculum options available to students and parents. Students, or parents, who would prefer a particular program or teaching approach and do not find it in their neighborhood school have an increased ability to look elsewhere. Open enrollment would expand access to magnet schools and other quality options outside of a student’s home district. Magnet schools (specialist schools concentrating on foreign language, math and science, or the arts) were originally created to reduce segregation and have grown in popularity since their inception in the late 1960s.
- **Improved Schools through Competition for Students.** Open enrollment exposes districts and schools to competitive pressure from neighboring districts. Market theory suggests that teachers and administrators will respond to

the competition by enriching their academic offerings and generally improving quality of their schools in an attempt to retain students. By embracing competitive forces that create efficient and accountable institutions—specifically ones that attract rather than compel parents to place their children in their care—education systems that include open enrollment, and other forms of school choice, can deliver the high quality, cost-effective education that parents and taxpayers demand.

As of 2003, 13 states operated statewide, inter-district open enrollment while 31 other states, including Oregon, offer limited open enrollment. Inter-district open enrollment policies can be mandatory—requiring all districts to participate—or voluntary—allowing districts to opt out of the system.

Minnesota established the first statewide inter-district open enrollment program in 1988. Under the Minnesota law, which became mandatory for all districts in 1991, students may apply to enroll in any public school located outside their resident district. Applications to enroll in a non-resident district may be denied only if space is unavailable. During 1988-2001, the number of students participating in open enrollment increased from 140 to 28,077 (or about 3 percent of Minnesota’s 851,382 in 2001). As with other choice-related programs, research has yet to establish a definitive

link between open enrollment and a change in student achievement; however, through a random sample survey, Minnesota principals perceived that open enrollment stimulated improvements to school curriculum, promoted greater parental involvement, and increased the ethnic and cultural diversity of schools.

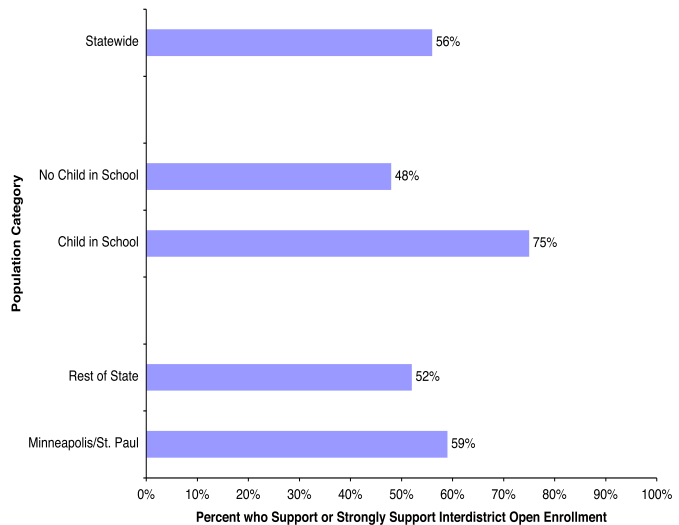
Open enrollment has proven increasingly popular with Minnesota’s public. A 2003 poll conducted by the Center for School Change at the University of Minnesota’s Humphrey Institute found that 75 percent of registered voters believe “families should have the right to select among various public schools” and 56 percent strongly support, or support open enrollment (32 percent oppose). Support for open enrollment extends beyond the Minneapolis-St. Paul area and is particularly strong among families with school-aged children (see Figure 1).

### Open Enrollment in Oregon

In Oregon, open enrollment is limited in that State law enables districts to accept students from outside the local district, but leaves the ultimate decision of allowing transfers in or out of the district to the districts themselves.

1. School districts may unilaterally admit students from outside the local district (known as “nonresident students”). The local school district board may set tuition rates for these nonresident students. The State Department of Education recommends that the tuition be set at a level equal to the actual cost per student, at an average cost per student or at some other rate acceptable to the district board.<sup>1</sup>
2. School districts may admit nonresident students and claim the

**Figure 1. Support for Statewide Open Enrollment Among Likely Minnesota Voters, 2003**



Source: Mason-Dixon Polling and Research, Inc.

students for purposes of obtaining state school funds if the district board where the student lives and the district board where the student wants to attend both consent to the inter-district transfer in writing. Because the transfer must be approved by both boards, either board has the ability to deny the transfer. A denial from either board may only be appealed under the denying board’s policy.<sup>2</sup>

Districtwide education costs are distinguished by returns to scale—over a broad range of enrollment, the costs associated with one more or one fewer student is nearly zero. In other words, adding or losing a pupil has a modest impact on a school district’s costs. The distribution of per-pupil state school funds does not reflect this principle. Instead State school funds are provided based on average enrollment, rather than incremental cost. Consequently, while the gain or loss of a pupil has a modest impact on a district’s costs, it can have substantial impacts on a district’s revenues.

From a fiscal standpoint, districts encourage unilateral transfers (option 1)

into the district and are ambivalent about unilateral transfers out of the district. The district may charge tuition that reflects the costs of educating the transfer student—indeed, the State department of education tacitly recommends charging tuition that is greater than the cost of educating the transfer student. The accepting district is no worse off fiscally and—if it follows the State’s suggestion—likely receives a revenue windfall. Unilateral transfers out of district have no fiscal impact on the district out of which the pupil transfers because state school funds remain with the local district, even though the district no longer bears the costs of educating the student.

Consent transfers (option 2) have much more important fiscal impact on districts because the district from which the pupil is transferring loses the state school fund support associated with that student and the receiving district gains the funds. Because the state school fund revenues associated with the pupil, in many cases, greatly exceed the pupil’s cost to the district, a transfer out of a district likely has a substantial net negative impact on the district losing the pupil and a substantial net positive impact on the district gaining the pupil.

While Oregon law enables inter-district transfers, districts’ policies and practices tend to stifle such transfers. For example, beginning in 1996, Portland Public Schools halted most transfers out of the district, but continued to accept transfers into the district. With the most recent downturn in Oregon’s economy and declining enrollments in several large districts, some suburban districts have halted, or are considering halting, transfers out of their districts.<sup>3</sup>

There has been some backlash to districts’ restriction on consent transfers. For example, some families in the Gervais School District successfully petitioned voters in their local educational service district to be removed from Gervais and

included in the Silver Falls School District boundaries. Not only did Gervais lose the state school funds associated with those students, but also lost the property tax revenues associated with all the transferred property.

## Implementation Risks

Much of the opposition comes from districts concerned that a large number of students will transfer out of the district. The loss of state school funds associated with the transfers could have significant fiscal impacts on such districts. In addition to fiscal considerations, opponents of open enrollment have expressed the following concerns: adverse consequences for “non-choosers” who remain in poorly performing districts, increased racial /ethnic segregation, and transportation barriers for some students who are interested in interdistrict transfers. Each of the concerns is addressed in detail below.

### *Consequences For Non-choosers In Poorly Performing Districts*

Open enrollment will work well only if students and their parents have ready access to good information about schools. Given that education has been provided publicly for the better part of the last 150 years, critics of market-based reforms argue that schools are ill prepared to furnish the necessary information required to make good school choices. Moreover, they believe that even if schools were well practiced at providing information, in the short-run many parents would have little practice using it. Sub-par information and poorly prepared consumers, critics argue, would generate a group of non-choosers who would passively leave their students in poor-performing schools while their parents’ peers choose out-of-district alternatives. As a consequence, non-choosers would be left in poorly funded schools with inferior teachers.

Economic theory suggests poorly performing schools will rapidly adopt

improvement measures and strengthen school quality for the non-choosers; however, critics of market-based reforms argue that standard theory may not apply because parents' perceptions of school quality are based on the socioeconomic composition of the enrolled students. Consequently, they believe schools serving large shares of low-income and low-performing students have an inherent disadvantage when placed in competition with schools in affluent areas.

Moving beyond theory, researchers in Massachusetts evaluated expenditure trends of "sending" districts under open enrollment and found impacts were modest (3.3 percent decline or less) for all but one district (see Table 1.) Researchers found that sending districts were numerous, so the impact on any given sending district was modest. By contrast, benefits to receiving districts were larger and more concentrated.<sup>4</sup> The Massachusetts findings suggest that—in terms of resources—non-choosers were not disadvantaged by open enrollment.

The strongest evidence for adverse effects on non-choosers comes from New Zealand, which transferred authority for its schools from the Department of Education to school-level boards (similar to U.S. charter schools). New Zealand saw numerous schools struggle to maintain students and ended up with concentrations of dysfunctional and high cost students. The disparity between high and low performing schools widened in part because once newly formed self-governing schools reached capacity, they were not required to accept additional students. In short, many low-income students remained in substandard schools with no good alternatives, and the state had little option but continue running the schools.

Policy options exist to mitigate the potential harm to non-choosers. Public schools in districts offering open enrollment and other forms of school choice have developed several strategies for convincing parents to "choose" public

**Table 1: Financial Impact of Interdistrict Choice in Massachusetts for Largest Senders and Receivers - 1997-98**

District	Net Change as % of Expenditure
SENDING DISTRICTS (MORE THAN 100 CHOICE TRANSFERS OUT)	
Douglas	-6.2
Clinton	-3.3
Leominster	-3.1
Triton	-2.8
Gloucester	-2.3
Amesbury	-1.6
Pittsfield	-1.0
Brockton	-0.8
Haverhill	-0.8
Springfield	-0.7
Lawrence	-0.6
Fitchburg	-0.5
Worcester	-0.4
Lowell	-0.4
Milford	-0.2
Northbridge	0.7
RECEIVING DISTRICTS (MORE THAN 100 CHOICE TRANSFERS IN)	
Avon	20.0
Manchester	13.5
Harvard	8.6
Lenox	6.1
Acton-Boxborough	6.0
Holliston	6.0
Newburyport	5.7
Hamilton-Wenham	5.6
Granby	5.5
Ayer	4.6
Nashoba	4.2
Southwick-Tolland	3.8
Uxbridge	2.8
Quabbin	2.4
Southern Berkshire	2.1
Pentucket	1.4
Berkshire Hills	1.3
Lunenburg	1.2
Northbridge	0.7
Hudson	0.5
Mendon-Upton	0.4
Milford	-0.2
Fitchburg	-0.5
Amesbury	-1.6
Triton	-2.8

Source: Pioneer Institute for Public Policy Research

education: in Milwaukee, public schools promised parents individual tutors if a child is not reading at grade level by third grade; in Florida, public schools have added teachers, reduced class sizes, and offered after-school and weekend tutoring at schools affected by the state's choice program.

In Portland, which operates an intradistrict open enrollment, Roosevelt, Madison, and Marshall high schools are attempting to hold onto students by creating smaller "schools within schools." The Meyer Memorial Trust and the Bill and Melinda Gates Foundation have provided financial support for the small school efforts.

### Segregation

Concerns around segregation are common to all school choice plans. Here, the evidence is inconclusive. The current structure of our public education system includes incentives that create largely racially homogeneous schools that are already stratified by socioeconomic status. Because a student's school, in most cases, is determined by their residence, a given school's composition will reflect the neighborhood's composition. And because poor families lack the economic resources to move to affluent neighborhoods, schools have already stratified themselves by socioeconomic status. Given the structure of the current public education system, which largely permits racial and socioeconomic segregation in most urban schools, an interdistrict open enrollment system is unlikely to make segregation worse.

States with interdistrict open enrollment typically address segregation explicitly in their regulations. Many states give districts the authority to prohibit a transfer if it works against a district's court-ordered or voluntary desegregation plan. Other states do not refer to formal desegregation plans but do call on districts to develop policies that maintain an appropriate racial balance in schools.

**Table 2: Racial/Ethnic Impact of Interdistrict Choice in Massachusetts for Largest Senders and Receivers 1997/98**

District	Percentage Change in Enrollment of African American and Hispanic Students
SENDING DISTRICTS (MORE THAN 100 TRANSFERS OUT)	
Leominster	0.0
Springfield	0.7
Triton	0.0
Fitchburg	0.4
Amesbury	0.1
Brockton	0.2
Pittsfield	0.1
Milford	0.3
Worcester	0.2
Haverhill	0.1
Gloucester	0.0
Lowell	0.2
Douglas	-0.2
Clinton	1.0
Lawrence	0.7
Northbridge	-0.2
RECEIVING DISTRICTS (MORE THAN 100 TRANSFERS IN)	
Newburyport	-0.1
Acton-Boxborough	0.0
Avon	-0.1
Nashoba	7.2
Fitchburg	-0.3
Triton	0.0
Hamilton-Wenham	-0.2
Harvard	0.2
Ayer	0.8
Manchester	0.4
Quabbin	0.1
Uxbridge	0.0
Pentucket	0.0
Berkshire Hills	-0.6
Northbridge	-0.2
Hudson	0.0
Milford	0.3
Southwick-Tolland	0.0
Southern Berkshire	0.4
Amesbury	0.1
Lunenburg	-0.1
Granby	-0.1
Lenox	-0.2

Source: Pioneer Institute for Public Policy Research

An analysis of inter-district transfers in Massachusetts suggests open enrollment had a negligible effect on racial/ethnic diversity in that setting (see Table 2). The racial/ethnic impact on sending districts was small while open enrollment tended to increase racial/ethnic diversity in receiving districts.

In developing an interdistrict open enrollment plan, Oregon policymakers could:

1. Prohibit transfers in cases in which the transfer would work against a district's desegregation goals and/or
2. Establish fair and transparent lotteries to ensure students of different races, ethnicities and economic backgrounds have an equal opportunity to transfer.

For example, Orange (California) Unified School District's selection policy states that "for any school that receives requests for admission in excess of the capacity of the school that ensures that selection of pupils to enroll in the school is made through a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance."

### ***Inadequate Transportation Options***

Interdistrict open enrollment is effective only to the extent that a student can secure transportation to the school of his or her choice. Most states with interdistrict open enrollment hold the parent or guardian financially responsible for transportation. A number of states, including Iowa, Massachusetts, Minnesota and Nebraska, require that the state or local school district reimburse low-income students (e.g., students eligible for free or reduced price lunches) for some fraction of actual transportation costs. Reimbursement levels typically do not exceed the average cost of transportation in the sending or receiving district.

## **Implementation Language**

In the 2001 and 2003 legislative sessions, several bills were introduced related to interdistrict transfers, most with language similar to that provided below.<sup>5</sup> None of the bills came to the floor for a vote.

The proposed language permits pupils to transfer to any district in the state, so long as the district to which the student would like to transfer has space available. High school students must provide an academic reason for the transfer.

A district charging tuition to student transferring from another district would not receive the state school funds associated with the transfer student. Thus districts that currently charge tuition that exceeds the amount of the state school fund would not be adversely affect by the proposed legislation.

### ***Unilateral Transfers***

#### **Oregon Revised Statutes 339.115**

Admission of students; waiver; denial.

(1)

(a) Except as provided in ORS 339.141, authorizing tuition for courses not part of the regular school program, the district school board shall admit free of charge to the schools of the district:

(A) All persons between the ages of 5 and 19 residing therein. The person whose 19th birthday occurs during the school year shall continue to be eligible for a free and appropriate public education for the remainder of the school year.

(B) Any nonresident person who applies to the district school board for admission in grades K through 8 in the school district if the person is otherwise eligible and if the school district has space available.

(C) Any non resident person who applies and provides academic reasons to attend grades 9 through

12 in the school district if the person is otherwise eligible and if the school district has space available. The State Board of Education shall adopt by rule a definition of 'academic reasons' as used in this subparagraph. A person who is denied admission by a district school board under this subparagraph may appeal to the State Board of Education. The decision of the state board is final and not subject to appeal.

(b) ~~However,~~ A district school board may admit other nonresident persons, determine who is not a resident of the district and may fix rates of tuition for other nonresidents.

(2)

(a) The resident school district of a student attending a school under subsections (1)(a)(B) or (1)(a)(C) of this section shall be responsible for providing any required special education and related services to the student. A student who requires special education and related services shall be considered

a resident for school purposes in the school district in which the student's parent, guardian or person in parental relationship to the student resides pursuant to ORS 339.133 and 339.134.

(b) The resident school district shall contract with the admitting school district for the provision of the special education and related services. The contract shall include provisions for payment for any special education and related services provided by the admitting school district.

**Funding of Transfers**

**Oregon Revised Statutes 339.133 (6)**

Except as provided in ORS 327.006 (7) and 335.090, persons whose legal residence is not within the district but who attend school in the district ~~with the written consent of the affected district school boards as provided in ORS 339.115 (1)(a)(B) and ORS 339.115 (1)(a)(C)~~ shall be considered to be residents of the district in which the person attends school for purposes of the receipt by that district of State School Fund moneys for the person.

**CHARTER SCHOOLS**

**Background**

Charter schools allow groups of parents, educators, and community members to create publicly funded schools that are free of many, but not all, state and local regulations and labor-management agreements. Like other forms of school choice, charter schools have the goal of increasing educational options available to students and ceding increased authority over enrollment decisions to students and their parents.

Enrollment in charter schools has climbed steadily since Minnesota became the first state to pass

**Table 3: Minnesota Voter Perceptions of Key Characteristics of Charter Schools, Percent who Approve of the Characteristic, 2003**

Characteristics	All Likely Voters	Likely Voters with Children in School
More control over hiring and firing employees, including teachers	63%	67%
Schools can be started by groups of teachers or parents in a local area	59%	67%
Schools often focus on a special theme, such as science or art	57%	71%

Source: Mason-Dixon Polling and Research, Inc.

a charter school law in 1991. Today, roughly 2,700 charter schools serve over half a million American students. The volume of research has expanded with the growth of charter school legislation, studying the various effects of charters on academic achievement, charter student demographics, and how competition affects traditional public schools located near functioning charter schools.

The very causes that motivate communities to establish charter schools confound researchers' ability to draw statistically significant conclusions about charter schools' performance. In many instances, the low performance of charter schools can be attributed to the fact these schools were created to serve particularly disadvantaged students in districts with poor public schools; conversely, the sometimes-high performance of charters can be explained by their establishment in communities with many parents focused on creating high-quality educational options for their children. The result is that it is not yet possible to draw broad and meaningful

conclusions about the effects of charter school proliferation.

While researchers have not definitively linked charter schools with changes in achievement—either positive or negative—polling suggests the concept is popular with voters and parents of school-aged children. Table 3 reports findings from a 2003 Minnesota poll and illustrates approval of three key features of charters: 1) charters' increased discretion in hiring and firing staff; 2) ability of teachers and parents to start schools; and 3) the creation of thematic schools.

### *Charter Schools in Oregon*

In 2002, only 0.2 percent of Oregon's K-12 students attended public elementary and secondary charter schools.

*Improving Quality and Strengthening Accountability in Oregon's Schools* (2005) recommended that the Oregon charter school laws be amended to (a) increase the number of chartering authorities (called sponsors in Oregon) and (b) increase the

**Table 4: Report Card of Charter School Laws for "A" States and Oregon (2004)**

	AZ	MN	DC	DE	MI	MA	Avg.	OR	OR Rel. to Avg.
Year Law Passed	1994	1991	1996	1995	1993	1993	1994	1999	5
Number of schools allowed	5	5	5	5	5	3	5	5	1
Multiple chartering authorities	4	5	4	4	5	4	4	2	(3)
Eligible charter applicants	5	5	5	5	5	4	5	5	0
New starts allowed	5	5	5	5	5	5	5	4	(1)
No evidence of local support	5	4	3	4	5	4	4	5	1
Automatic waiver from state and local laws	5	5	5	4	3	3	4	3	(1)
Legal/Operating Autonomy	5	5	5	4	5	5	5	3	(2)
Guaranteed Full Funding	4	4	5	5	5	5	4	3	(2)
Fiscal Autonomy	5	5	5	5	5	5	5	3	(2)
Exempt From Collective Bargaining	5	5	5	5	3	3	4	4	0
Total	46	45	45	45	45	40	44	35	(10)
Number of Charters	491	95	43	13	210	50		43	
Closure Rate	11%	14%	16%	13%	8%	7%		4%	

Source: Center for Education Reform (2004)

**Table 5: Chartering Authorities of Selected States (2004)**

	Oregon	Minnesota	Michigan	Indiana	Ohio
District where proposed school will be located	Yes	Yes	Yes	Yes	Yes
Other school district	No	Yes	No	Yes	Yes <sup>3</sup>
State department of education	Yes <sup>1</sup>	No	No	No	No <sup>4</sup>
Public university	No	Yes	Yes	Yes	Yes
Private college/university	No	Yes	No	No	No <sup>5</sup>
Community college	No	Yes	Yes <sup>2</sup>	No	No
Nonprofit	No	Yes	No	No	Yes
Other					county board of commissioners, mayors, superintendents, or the chief executive officers of any other political subdivisions may be sponsors

## Notes:

1. If a school district board does not approve a proposal to start a public charter school, the applicant may request that the State Board of Education review the decision of the school district board. If the State Board of Education does not approve the proposal, an applicant may seek judicial review; if the court finds that the decision of the State Board of Education is not supported by substantial evidence in the record, the court can enter a judgment directing the State Board of Education to sponsor the public charter school.
2. The board of a community college cannot issue a contract for a charter school to operate outside the boundaries of the community college district.
3. The other district must have territory in the same county where the district in which the school is proposed to be located has the major portion of its territory.
4. Repealed and replaced with nonprofits.
5. Private colleges may qualify under nonprofit criteria.

per-pupil funding of charter schools.

Oregon's current charter school laws are considered to be fairly strong, meaning that they tend to foster, rather than restrict charter school activity. Oregon ranks 16 out of 41 states and receives a "B" from the Center for Education Reform on its state-by-state report card of the strength of charter school laws (Table 4).<sup>6</sup> Increasing the number of charter school sponsors, increasing the amount of per-pupil funding, and providing greater fiscal autonomy to charter schools would transform Oregon from a "B" state to an "A" state.

### **Recommendation 1: Increase the Number of Chartering Authorities**

There are three broad categories of laws regarding the number of chartering

authorities:

1. Single authority, usually the district in which the charter school will be located;
2. Single authority with appeal, usually to a state-level institution such as the state board for education or charter school board; or
3. Multiple authorities.

Oregon is in the second category. Charter school organizers must apply for sponsorship to the school district in which the proposed charter school will be located (which hereafter will be called the *local district*). If the local district denies the application to sponsor the charter, the organizers may appeal to the State Board of Education. If the State Board denies the application, the organizers may seek judicial review in state court, which has the authority to direct the State Board

to sponsor the proposed charter school. Although the appeals process provides some recourse to charter school organizers, such appeals may be costly and lengthy.

With multiple chartering authorities, an appeals process is not necessary. Charter school organizers can seek out a sponsor that best fits their needs and would foster the establishment of the proposed charter, thereby obviating the need for appeal. In those circumstances in which an authority will not sponsor the charter school, the organizers may “appeal” by seeking sponsorship from another authority.

Table 5 summarizes the chartering authorities of Oregon and several other states. Each of the states listed, other than Oregon, provide for multiple chartering authorities. Each state in the table allows the local district to sponsor a charter school. Minnesota, Indiana, and Ohio, however, allow other school districts in the state to sponsor charter schools outside of their district boundaries. Such provision in Oregon would permit, for example, Lake Oswego School District to sponsor a charter school within the Portland School District.

Each of the states in Table 5 allows public universities to sponsor charter schools. Minnesota and Michigan allow community colleges to sponsor charter schools. Minnesota and Ohio permit private colleges and universities to sponsor charter schools. In some places, this has led to some higher education institutions to specialize in sponsoring charter schools. For example, Central Michigan State University has established a center for charter schools that has issued charter contracts to 57 charter schools, as of the 2002/2003 school year, serving approximately 26,000 of Michigan’s 1.7 million school children.<sup>7</sup>

Minnesota and Michigan provide nonprofits the authority to sponsor charter schools. For example in Minnesota, Volunteers of America and the University of St. Thomas each sponsors three charter schools.

Current law prohibits the local school district or the State Board of Education from charging a fee to the applicant for the costs they incur during the application process. Local school districts recoup these costs—and others—via the 5-20 percent of per-student state funding they retain. If Oregon expands current law to permit multiple chartering authorities and/or provides full per-student funding to charter schools, then putative sponsors would need some means to recoup their expenses associated with shepherding the application through the approval process. Michigan allows sponsors to charge a fee of no more than three percent of the state funds the charter school receives in the year the application is approved.

## Implementation Language

The proposed legislative language would allow for the following chartering authorities in addition to the local district:

1. Any school district in the state;
2. Any state university;
3. Any community college;
4. Any county or city; or
5. Any qualified nonprofit.
6. State Board of Education.

If reforms to existing law fail to provide full per-student funding to charter schools, then the legislative language would allow the sponsor to charge a fee to the school for the application process.

## Multiple Sponsors

### Oregon Revised Statutes 338.005(3)

“Sponsor” means:

(a) The board of ~~the~~ *a* common school district or ~~the~~ *a* union high school district in which the public charter school is located that has developed a written charter with an applicant to create a public charter school;

(b) The State Board of Education pursuant to ORS 338.075.

(c) *The governing board of a state public university that has developed a written charter with an applicant to create a public charter school;*

(d) *The board of a community college that has developed a written charter with an applicant to create a public charter school;*

(e) *A board of commissioners of a county that has developed a written charter with an applicant to create a public charter school;*

(f) *The city commissioners or city council of a city that has developed a written charter with an applicant to create a public charter school; or*

(g) *Any qualified tax-exempt entity under section 501(c)(3) of the Internal Revenue Code that has been in operation for at least five years prior to applying to be a sponsor and has assets of at least five hundred thousand dollars that has developed a written charter with an applicant to create a public charter school.*

### **Fee Charged for Application Process Oregon Revised Statutes 338.055(7)**

~~The school district board or the State Board of Education~~ sponsor shall not charge any fee to applicants for the application process *in an amount that exceeds \_\_\_ percent of the amount of the school district's General Purpose Grant received by the public charter school in the school year in which the fees or expenses are charged.*

### **State-Level Cost Impacts**

Inasmuch as the State department of education would not handle appeals or sponsor charter schools itself, the department would no longer incur the costs associated with sponsorship and appeals. This would likely provide a small cost saving to the State.

### **Effects on Governance and Accountability**

Charter schools would gain greater control over the governance and operation of their schools as they could seek out

sponsors with similar educational objectives and approaches. The school would be accountable to its sponsor and, more directly, to parents of students and potential students. With the ability to introduce approaches that may differ from the local districts, parents would like demand evidence that the approach is effective vis-à-vis the local district. In the absence of such evidence, the school would face declining enrollment and ultimately close or fail to have its charter renewed.

### **Strategies to Mitigate Shocks to Adversely-Affected Districts or Schools**

There would be no “shocks” associated with allowing for multiple chartering authorities and no districts would be directly financially affected.

### **Recommendation 2: Fiscal Autonomy and Full Funding Per Pupil**

From state to state, charter schools have varying degrees of discretion over their governance and use of funds. Generally, states with stronger charter school laws allow the charter schools complete discretion in the use of funds. Evaluating fiscal autonomy is necessarily subjective in that there is no metric by measure a charter school's discretion over its funds. In many cases several factors, such as the availability of alternative sponsors or the scope of sponsor oversight, determine how autonomous charter schools are in a given state. In Oregon's case, while the law is silent on a charter school's fiscal autonomy, the law tacitly provides the local district-cum-sponsor a large measure of control over a charter school's budget and operations, thus Oregon is considered a “low fiscal autonomy” state.

In the states with the strongest charter school laws, charter schools receive the same level of funding per pupil as the local

district (“full funding”). In some states, funds flow directly to the charter school. In other states, funds flow first to the sponsor, which then forwards the funds to the charter school. In Oregon, funds flow to the sponsor, which then forwards 80-95 percent to the charter school.

Oregon law provides no explicit description of a charter school’s fiscal autonomy. However, an Oregon charter school’s application must be submitted to and approved by the local school district. Because many terms of the application must be negotiated with and approved by the local school district, Oregon charter schools have much less autonomy than in states with more liberal charter school laws. Some of the items requiring school district approval include:

1. The name of the charter school;
2. The philosophy, mission, and curriculum of the charter school;
3. The governance structure of the charter school;
4. The proposed budget and financial plan for the charter school;
5. The proposed school calendar for the charter school, including the length of the school day and school year; and
6. A description of the proposed staff members and required qualifications of teachers at the charter school.

In fact, compared with states that were assigned grades of “A” by the Center for Education Reform, Oregon receives low marks for the fiscal autonomy (Table 4).

In addition to limited fiscal autonomy, Oregon charter schools receive 5-20 percent less than the average per-pupil allocation for the schools in the local district.<sup>8</sup> Elementary level charter schools receive 80 percent of the per-student allotment given to traditional public schools in the district, and secondary level receive 95 percent of the district per-pupil allotment.

As noted in *Improving Quality and Strengthening Accountability in Oregon’s*

*Schools* (2005), policymakers justified providing schools with less than full funding to reimburse the district for transportation costs, because charters are not obligated to provide transportation for all their students.<sup>9</sup> However, individual charters themselves must defray many real estate costs not charged to traditional public school operating budgets. Indeed, Oregon is not unique providing less than full funding to charter schools. The General Accounting Office noted that per-pupil funds to charter schools may not be adequate to fully cover costs associated with obtaining a facility, especially for small charter schools or schools in high-cost areas because, in many jurisdictions, charter schools use per-pupil funds to cover teachers’ salaries, books, and supplies.<sup>10</sup>

Oregon’s charter school laws require school districts and education services districts to provide a list of vacant and unused public and private buildings or portions of buildings and unused or underutilized buildings that may be suitable for the operation of a public charter school. The law is explicit in stating that building owner is under no obligation to sell or lease to a building or any portion of a building to the charter school.

In contrast to Oregon, Delaware charter schools receive full funding from the state, flowing directly to the charter school. No state funds are allotted for start-up costs, though federal funds may be used for that purpose. The Delaware Department of Education must publish an annual list of facilities available for charter school use. Delaware charter schools have preference in leasing public buildings and districts are obligated to make unused buildings or space in buildings available to a charter school. Districts must bargain in good faith over the cost of rent, services and maintenance related to such space.

Michigan charter schools receive full funding from the state, but have an obligation to provide transportation to their students. The funds flow to a charter

school's sponsor, which then forwards the payment to the charter school. Michigan allows sponsors to charge a fee of no more than three percent of the state funds the charter school receives in the year the application is approved. To acquire facilities, Michigan charter schools are permitted, among other options, to condemn property—after paying just compensation—for its use.

## Implementation Language

The proposed legislative language would provide full per-pupil state funding (that is, equal to the funding for school districts) and allow charter school and school districts to negotiate larger payments to charter schools. This allow for areas with local option levies or other revenues sources, such as Multnomah County's temporary personal income tax, to transmit funds to public charter schools.

With 100 percent of the State's General Purpose grant going to the school, the legislative language would remove the current prescription for the use of funds that are not transmitted to the charter school.

As noted above, the proposed legislative language would allow the sponsor to charge a fee to the school for the application process.

To reduce the financial and bureaucratic barriers to finding and using unused or underutilized facilities, the proposed legislative language would require school districts and educational service districts make unused or underutilized space available and to negotiate in good faith over the terms of providing the space at a cost not to exceed the incremental costs associated with the charter school's use of the facilities.

### **Sample Language to Establish Full Funding Oregon Revised Statutes 338.155**

Minimum amount required; grants available to charter schools.

~~(1) Students of a public charter school shall be considered to be residents of the school district in which the public charter~~

~~school is located for purposes of distribution of the State School Fund.~~

~~(2) A school district shall contractually establish, with any public charter school that is sponsored by the board of the school district, payment for provision of educational services to the public charter school's students. The payment shall equal an amount per weighted average daily membership (ADMw) of the public charter school that is at least equal to:~~

~~(a) Eighty percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in kindergarten through grade eight; and~~

~~(b) Ninety-five percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in grades 9 through 12.~~

(3) A school district shall contractually establish, with any public charter school that is sponsored by the State Board of Education and within the boundaries of the school district, payment for provision of educational services to the public charter school's students. The payment shall equal an amount per weighted average daily membership (ADMw) of the public charter school that is at least equal to *the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013.*

~~(a) Ninety percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in kindergarten through grade eight; and~~

~~(b) Ninety-five percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 for students who are enrolled in grades 9 through 12.~~

(4) The estimated amount of each school district's General Purpose Grant per ADMw shall be determined each year by the Department of Education and made

available to all school districts.

~~(5) The school district in which the public charter school is located shall transfer an amount per weighted average daily membership (ADMw) of the public charter school that is equal to 50 percent of the amount of the school district's General Purpose Grant per ADMw as calculated under ORS 327.013 that is not paid to the public charter school through a contract created pursuant to subsections (2) or (3) of this section to:~~

~~(a) Any school district in which the parent or guardian of or person in parental relationship to a student of a public charter school resides pursuant to ORS 339.133 and 339.134; or~~

~~(b) The Department of Education if the State Board of Education is the sponsor of the public charter school.~~

~~(6) The department may use any money received under this section for activities related to public charter schools.~~

(7) A school district and a public charter school may negotiate to establish a payment for the provision of educational services to the public charter school's students that is more than the minimum amounts specified in subsection (2) or (3) of this section.

(8) A school district shall send payment to a public charter school based on a contract negotiated under this section within 10 days after receiving payments from the State School Fund pursuant to ORS 327.095.

(9)

(a) A public charter school may apply for any grant that is available to school districts or nonchartered public schools from the Department of Education. The department shall consider the application of the public charter school in the same manner as an application from a school district or nonchartered public school.

(b) The department shall award any grant that is available to school districts

based solely on the weighted average daily membership (ADMw) of the school district directly to the public charter school. This paragraph does not apply to any grant from the State School Fund.

### **Sample Language Regarding Fee Charged for Application Process**

#### **Oregon Revised Statutes 338.055(7)**

The school district board or the State Board of Education *sponsor* shall not charge any fee to applicants for the application process *in an amount that exceeds \_\_\_ percent of the amount of the school district's General Purpose Grant received by the public charter school in the school year in which the fees or expenses are charged.*

### **Sample Language to Make Unused or Underutilize Facilities Available**

#### **Oregon Revised Statutes 338.045(5)**

To the extent such information is reasonably available, education service districts shall make available to the public lists of vacant and unused public and private buildings or portions of buildings that may be suitable for the operation of a public charter school. School districts shall provide to the public and to their education service districts lists of unused or underutilized buildings that are owned by the school districts. ~~Nothing in this subsection requires the owner of a building on the list to sell or lease to a public charter school a building or any portion of a building.~~

*(a) An education service district or school district shall make available to any public charter school within its boundaries such buildings or portions of buildings suitable for the operation of a public charter school.*

*(b) An education service district or school district shall bargain in good faith over the availability, cost of rent, services and maintenance related to such buildings or portions of buildings suitable for the operation of a public charter school.*

## Technical Issues and Barriers to Implementation

Technically, establishing full-funding for charter schools would be relatively straightforward. To facilitate consistency with existing language, however, the proposed language would have state school funds flow from the state to the local district to the charter school. States with the strongest support for charter schools allow for funds to flow directly to the charter school. Others have funds flow through the sponsor (which could be a local district only one of several other options). With full-funding, there is no obvious reason why funds should flow through local districts.

There may be some implementation difficulties associated with the language regarding the availability and use of unused or underutilized facilities. Districts and charter schools may have differences of opinion regarding what constitutes unused or underutilized facilities and may differ on what constitutes a good faith bargaining over the terms of use. Such differences may lead to protracted negotiations or even litigation. However, the limited resources usually available to start-up charter schools would likely circumscribe their use of the legal system to resolve disputes.

## State-Level Cost Impacts

On its face, establishing full funding

of charter schools has no impact on state support of public school students. However, under existing law, the State department of education receives half of the per pupil state school funds that are not provided to the charter school for every charter school it sponsors. Establishing full funding (and removing the State department of education as a potential sponsor), removes the source of funds to the department.

## Effects on Governance and Accountability

The availability of multiple chartering authorities provides the charter school with greater accountability. The school, rather than the local district sponsor, would be accountable to parents. With the transfers of accountability to the charter, local district no longer need to extract a share of the charter school's per pupil state school funds.

## Strategies to Mitigate Shocks to Adversely-Affected Districts or Schools

Districts currently sponsoring charter schools would see a decline in revenues because of the loss of per pupil state school funds. One strategy to mitigate these impacts would be to phase-in full funding for existing charter schools over two years. This would give districts time to adjust to the reduced revenues. §

## Endnotes

<sup>1</sup> Oregon Revised Statutes 339.115.

<sup>2</sup> Oregon Revised Statutes 339.133(6).

<sup>3</sup> Crombie, Noelle, "Switching Schools, at a Price," *Oregonian*, May 12, 2002.

<sup>4</sup> Aud, Susan L., *Competition in Education: A 1999 Update on School Choice in Massachusetts*, Pioneer Institute for Public Policy, Boston, MA, September 1999.

<sup>5</sup> House Bills 2751 and 3428, Senate Bills 748, 476, and 197 in the 2001 legislative session; House Bill 2951 and Senate Bill 282 in the 2003 legislative session.

<sup>6</sup> Center for Education Reform, *Charter School Laws Across the States: Ranking and Scorecard*, 8th ed., 2004.

<sup>7</sup> CMU Charter Schools, <http://www.cmucso.org/charter.asp?Link=schools/index.htm&Menu=a=2>, accessed January 28, 2005.

<sup>8</sup> Oregon Revised Statutes 338.155.

<sup>9</sup> Some involved in the discussion of the current funding laws have noted that the formulas have no cost basis and were simply concessions necessary to get the law passed.

<sup>10</sup> U.S. General Accounting Office, *Charter Schools: Limited Access to Facility Financing*, September 2000.