

# Colorado's Charter School Policy: Exploring the "Domain of Application"

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## Abstract

*This paper recognizes the need for applied anthropology to become more involved in school reform. A first step is taken in this direction by exploring the "domain of application" concerning Colorado's charter school policy (Van Willigan 1993). The players, networks and relationships, the issues, points of contention, and areas for further research are identified. The study utilizes two field sites, the legislatively sponsored Charter School Commission Meetings and the school-oriented Colorado League of Charter Schools Conference, as well as a guest opinion provided by William T. Randall, Colorado's Commissioner of Education. The issues presented in this study are viewed from the perspective of various stakeholders at state, district, and school levels. Issues include school reform, charter school processes, finance, teacher employment, at-risk students, and accountability.*

## Introduction

The field of applied anthropology is unique. It utilizes the theories and methods of academic disciplines in the service of "real world" problems, typically in non-academic settings. Being a newcomer to the field, I thought it helpful to take a closer look at just how an applied project is undertaken. Since my professional interests are in school reform, specifically charter schools,<sup>2</sup> I had hoped to spend some time working with an applied anthropologist in this area. To the best of my knowledge, as well as to my surprise, there were no applied anthropologists conducting research on charter schools in the state of Colorado. I found this puzzling for a number of reasons. First, school reform has been a growing concern in public policy ever since *A Nation at Risk* (1983) was published, the authors of which claim that our country's economic preeminence is at risk due to the crisis of underachievement in our public schools. Second, many of the reforms that have been tried since then have done little to improve student achievement because they often fail to address the culture and power relationships operating in schools (see Meier 1992; Sarason 1990; Sizer 1992). Third, charter schools are an increasingly high-profile reform with an organizational structure that has the potential to alter school cultures and power relationships. To my novice understanding, it seems these educational issues are within the purview of applied anthropology. Solutions for this "real world" educational problem seem to rest in the culture and power relationships of schools.

Given the importance of this issue, I set out to do my own research on charter schools. Following the

advice of Van Willigan (1993), I begin by identifying the "domain of application," that is, the players, related networks and organizations, relationships between entities, points of contention, and areas for future research, in order to develop my working knowledge of Colorado's charter school policy and its most pressing issues.

## Data Sources

Data derive from two field sites and a document. The field sites are the Charter School Commission Meetings and the Colorado League of Charter Schools Conference. A variety of stakeholders are represented at each of these venues including policy makers, school board members, parents, teachers, and administrators, as well as the State Board of Education and the Commissioner of Education. These groups all have a stake in Colorado's charter school policy and span school level, district level, and state level interests. Field notes were taken and artifacts collected at each of these sites. The document, a public statement by William T. Randall, Commissioner of Education, is used as a supplementary data source for state level interests.

### *Charter School Commission Meetings*

The Charter School Commission meetings were held twice monthly from August to November 1995 in different locations in downtown Denver. There were seven meetings total. I attended three as an observer and secured the minutes from another two. The commission was created by Peggy Kerns (Colorado

State Representative) and Bill Owens (ex-Senator and now State Treasurer), co-authors of the Colorado Charter Schools Act (Senate Bill 93-183), for the purpose of studying the legislation and making recommendations for its improvement.

The commission consisted of a variety of individuals from state, district, and school levels. Expressing state level interests were Representative Kerns, Pat Hayes (State Board of Education), Deborah Lynch (Governor's Office), and Bill Windler (Colorado Department of Education - CDE), as well as other occasional visitors from CDE. Also at the state level, but not affiliated with state government, were Peter Huidekoper (Gates Foundation) and a teacher union representative from the Colorado Education Association. District level interests were expressed by local school board members from Colorado Springs, Jefferson County, and Douglas County, and by a school district attorney. Advocating for school level concerns were a few charter school teachers and administrators and Jim Griffin (Colorado League of Charter Schools). All told, there were approximately twenty people at each meeting, ten from the state level, five from the district level, and four from the school level. Additionally, there were some individuals who attended periodically but were not affiliated with any of these groups: e.g., a children's rights activist and a deaf person's activist.

#### *Colorado League of Charter Schools Conference.*

The second field site was a two-day charter school conference in Dillon, Colorado (October 20 & 21, 1995) which I attended as a participant. The conference was hosted by the Colorado League of Charter Schools and was oriented toward those in the process of either developing or actually running a charter school. Over half of the twenty-four then-currently approved Colorado charter schools were represented at the conference. Most of the people in attendance were charter school parents, teachers, and administrators, representing school level interests. Some of these individuals conducted seminars, although most attended as participants. There were also representatives from state and district level organizations. At the state level there was the Colorado Department of Education, the Association of Colorado Independent Schools, Governor Romer's Office, Colorado Division of Employment and Labor, State Treasurer (Bill Owens), Assistant Attorney

General (Bill Thro), and the Gates Foundation (Peter Huidekoper). At the district level various school boards were represented. In addition, there were non-affiliated experts on finance and legal issues. Individuals from state and district level organizations conducted most of the seminars.

Over the course of the two-day conference, thirty different seminars were offered. Since it was impossible to attend them all, I had to make some difficult choices among those that interested me. The six seminars that I attended were: 1) Professional Development Strategies for the League; 2) The Charter School Process from the School Board Perspective; 3) Charter School Accountability; 4) Assessment in both Traditional and Non-traditional Schools; 5) Employment Law Issues for Charter Schools; and 6) Developing Effective Parent/Board Relations.

#### *Documentary Data*

A guest opinion by William T. Randall (1995), Colorado Commissioner of Education, was distributed at the November 7th Charter School Commission meeting. This document was a reprint from an article titled, "Charter Schools: What We Learned in Colorado."

#### **Discussion of Issues**

To assist in conceptualizing the many issues and interests surrounding charter schools, I have devised a graph (see Appendix A). The graph represents data from the two field sites as well as from the guest opinion of William T. Randall, Colorado Commissioner of Education. A quick glance at the graph indicates that close to half of the issues addressed are of concern to more than one stakeholder and span state, district, and school level interests. For instance, at least two different stakeholders have a vested interest in school reform, teacher employment, at-risk students, special education, and facilities. In some cases, the Colorado League of Charter Schools and the Charter School Commission share concerns such as at-risk students and special education. In other cases, the Charter School Commission and the Commissioner of Education share concerns such as school reform and facilities.<sup>3</sup> Of greatest and most sweeping concern to all stakeholders are those issues concerning charter school processes and finance. Furthermore, the graph also illustrates that stakeholders focus on different

aspects of charter schools. For instance, the Colorado League of Charter Schools Conference stresses issues germane to the operation and functioning of individual charter schools. The Charter School Commission meetings tend to focus on equity issues and broader policy concerns pertaining to the creation of charter schools and their impact on districts as a whole. The Colorado Commissioner of Education emphasizes both operational and policy issues, such as charter school processes and school reform.

Since there are so many possibilities, I will limit my exploration to those issues which cross multiple stakeholders and levels of operation. There are three advantages to this approach. First, such issues are clearly of greater concern as they affect multiple constituencies. Second, these issues help to clarify the differing perspectives, or at least better illuminate the points of contention than a tangential issue relevant to only a single group or level. Third, the study becomes more manageable without unduly neglecting any particular constituency. What follows is a discussion of these multiple-sided issues surrounding charter schools. The specific issues included are school reform, the charter school process, finance, teacher employment, at-risk students, and accountability. Particular emphasis is given to how these issues affect the relationships between groups of stakeholders, as well as the relationships between knowledge, policy, and action.<sup>4</sup>

#### *School reform*

Charter schools are a recent and popular policy instrument for school reform. The first charter school law was approved in the state of Minnesota in 1991 (Bierlein 1994). Today, twenty-eight states and the District of Columbia currently have charter school legislation on their books (Wohlstetter and Griffin 1997). When the *Colorado Charter Schools Act* (Senate Bill 93-183) was first approved in 1993, the public had been clamoring for new directions in K-12 public education.<sup>5</sup> The debate centered on the inability of state education policy to recognize the diverse conditions and circumstances of school districts. In a study of this issue, Jones and Anderson (1994) found that Colorado's local education environments were not typically places where people were supported and motivated to try radical new approaches and that local districts became adept at dealing with the letter of the law instead of its spirit. The study also recommended

the establishment of a governance system that reduces bureaucracy and places major decisions in the hands of school-community councils, as well as creates, supports and provides visibility to alternative forms of learning, teaching, and school management and leadership. Charter schools were established to address this need.

As noted in the graph, the issue of school reform was explicitly addressed by both the Commissioner of Education and the Charter School Commission. The central consideration is not whether school reform should take place, but rather how. Distinctions are drawn along three lines: 1) does school reform come as a mandates or as an incentive; 2) are school board/charter school relationships adversarial or cooperative; and 3) is there reckless experimentation or innovative and responsible risk? These distinctions are clarified in the following discussion.

The first distinction is best stated by metaphor. An insightful member of the Charter School Commission commented that existing charter school legislation was more like a "gun, as opposed to a carrot, prompting school reform." Charter schools are mandated by the state, but individual school districts are ultimately responsible for carrying out this mandate. This responsibility entails working endless hours with novice applicants, securing facilities and funds for the school, and in some cases litigating appeals to the State Board of Education. A lot of time and money is spent by a district to get a single charter school off the ground. Although innovation to increase student achievement is the goal, few incentives are provided to school districts.

The second distinction was addressed in a public statement by Commissioner Randall. Instead of school boards viewing charter schools as adversaries, Commissioner Randall stressed the need for district boards to recognize charter schools as part of the public school system, not as "an attack on public education." Moreover, he noted that those school boards who willingly "[took] the opportunity to enhance public education and establish a charter . . . garner more community support for the entire education system." A similar sentiment was expressed by Representative Kerns at one of the commission meetings. She noted that those school districts which had cooperative relationships with their constituencies tended to get tax increases approved by voters, and vice versa.

Besides wanting a more positive attitude from school districts, Commissioner Randall also encouraged a "consortium approach" in order to develop more solidly planned and community-supported charter schools capable of high success rates. Acknowledging this perspective, one school board member on the commission concurred that charter schools are a way of getting new ideas into the system, and the question was simply how best to promote and implement these reforms. Nevertheless, she also mentioned the unavoidably antagonistic relationship that is initially established between charter school applicants and school boards. Simply by offering up a proposal, the implicit message is that the status quo is not good enough, and that is threatening.

The third distinction is whether charter schools are viable vehicles for educational innovation or simply reckless attempts at school reform. The language of the legislation reads:

. . . in authorizing charter schools, it is the intent of the general assembly to create a legitimate avenue for parents, teachers, and community members to take *responsible risks* and create new, innovative, and more flexible ways of educating all children within the public school system . . . [and] where *research and development* in developing different learning opportunities is actively pursued. (Colorado Senate Bill 93-183, 22-30.5-102 (3)) [italics added].

Interpretation of the Charter School Act varies according to the interpreter. One school board member from the Charter School Commission described charter schools as "testing sites" for the district, and if successful, the ideas can be implemented in other schools. In contrast, a public statement by Leonard Fox, President of the Denver Classroom Teachers Association, indicated that "a lot of charter schools are just experiments, and we shouldn't be supporting experiments at the expense of the other students" (October 4, 1995). Clearly, there are disputes as to the role and purpose of charter schools, as well as to what constitutes *responsible risk* and *research and development*. In both the letter and spirit of the legislation, however, charter schools are precisely for research and development. They are supposed to be "testing sites" or "experiments" undertaken in a responsible manner for the purpose of bringing innovation and greater effectiveness into the public

school system so as to improve the academic achievement of all students.

Under the banner of school reform, then, it seems stakeholders are often at odds with one another. Acting on good intentions, the State Legislature passed the Charter School Act as a way of encouraging school reform that remains under local district control. School districts, however appreciative, are nonetheless forced to address change whenever a group of charter applicants steps forward. Parents and teachers sometimes find themselves pitted against an unwilling school board, often because little outside support is available to either party. Add local and state teacher unions, which are typically suspicious of charter schools because of their legal right to waive teacher certification requirements, and the mix becomes even more volatile.

Overall, it is clear that both those within and outside the public education system desire improvements, hence the authorization of many different kinds of school reform policies. State level standards and assessment policies, new requirements for teacher licensure, and the establishment of charter schools are among them. What seems to be missing is an understanding of the working knowledge necessary to effectively implement charter school policy. Although the legal actions that stakeholders may take are more or less spelled out in the legislation, (e.g., making appeals, requesting waivers, denying applications) knowledge about how to actually implement the policy on a day-to-day basis is not readily available to those who need it. Essentially, a mandate for reform has been made without the knowledge, guidance or incentives to enact it. Similarly, varying interpretations of the Charter School Act (e.g., reckless experimentation versus innovative and responsible risk) highlight a lack of communication regarding the intent of the reform as well as its manner of implementation. Thus, school boards and charter applicants, as well as teacher unions, often find themselves in adversarial relationships, trying to sort out responsibilities about who is supposed to do what.

As with any new endeavor, knowledge and understanding grows with experience. Many aspects of the working knowledge required to effectively implement charter schools are still being formulated. This is one area where applied anthropology can be useful. Applied anthropologists can expose the gaps

in knowledge, compile information and resources for various stakeholders, and open communication channels between groups in order to allay fears and generally inform and facilitate the worthy process of school reform.

#### *Charter school processes*

There are many sub-issues which arise under the umbrella of charter school processes. Of particular interest are: the application process; the appeals process; the conversion process; and the process of start-up and implementation. Questions and concerns about charter school processes were voiced by many different constituencies, from Commissioner Randall to members of the Charter School Commission to practitioners in the field. I will discuss each of these sub-issues in turn, making sure to address the perspectives of various stakeholders and levels of operation.

As previously mentioned, Commissioner Randall stressed the need for cooperative relationships between school boards and charter school applicants. The first and most important step in a cooperative relationship occurs during the application process. However, there are differing conceptions of who should cooperate with whom and to what degree. From the perspective of school board members, it is the charter school which bears the burden of proof. The applicants must demonstrate that the charter school they are proposing is unique and that it will enable a greater diversity of students to succeed. One school board member at the League Conference recommended that charter school applicants "market" their schools to the school board and use a "friendly approach" with the district. Like it or not, he added, applicants must even become "politicians" at times. Another school board member commented that charter schools which bring money (e.g., the return of private school students into public schools) or resources (e.g., computers, facilities) into the district are looked upon favorably.

In contrast, charter school representatives at the Commission meetings suggested that school districts be more willing to assist charter school applicants in the application process. On this note, specific recommendations were made to streamline the process, which in and of itself would provide considerable assistance. Some suggestions were to include waivers as part of the application contract, to grant "super

waivers," and to eliminate application fees. Currently, charter school applicants are required to prepare an application and then separately request waivers from state and district regulations. Waivers range from eliminating the principal position to hiring non-certified teachers, from providing planning time for teachers during the school week to having extended school hours. A recommendation was made to include waivers in the application, with appropriate justifications for seeking the waivers and alternate ways of providing for the issues that waivers address provided therein. This recommendation was supported by the League of Charter Schools.

Another possibility for streamlining the application process was for a district to grant a "super waiver." Under such conditions, a district would simply issue a package of the most commonly requested waivers, such as for teacher certification requirements, salary scales, benefits, curriculum & texts, and governance structures. Since most charter schools tend to request the same handful of waivers, this seems a plausible recommendation for all concerned. After all, the rationale behind granting waivers is to encourage innovation and allow greater flexibility with budgeting and financial concerns. By removing many of the rules and regulations via a super waiver, such flexibility is quickly and easily achieved.

The elimination of application fees was another area suggested wherein districts can assist charter schools. Currently, three districts in Colorado have been charging fees, anywhere from \$1,000 - \$1,500, for processing and administrating charter applications. The purposes behind these fees are to discourage frivolous applications and to recoup associated costs, though the amount charged is actually only about 10 percent of actual costs incurred. Charter School Commission members from various perspectives agreed that the practice of charging fees was unequitable. They recommended utilizing screening committees to ensure thoughtful, complete applications which would save districts a lot of time and money. They also recommended that the updated charter school legislation specify that school districts cannot charge fees to charter applicants.

Although originally at opposing ends of a continuum, district level school board members and building level practitioners at the Charter School Commission meetings eventually agreed that it is in the

best interests of all concerned to have greater cooperation between groups. Moreover, the suggestions made by charter school developers, which were also supported by the Colorado League of Charter Schools, made sense to district board members. Over the course of many discussions, the general consensus of the commission was that streamlining might be advisable not only to assist charter schools in the application process, but also to reduce the number of appeals, which is a costly process in itself.

Another sub-issue under charter school processes is appeals. The legislation allows charter school applicants to appeal an unfavorable decision by a local school board. The charter school has 30 days to file a notice of appeal with both the Colorado State Board of Education and the local school board. *Conditional* approval by the district cannot be appealed. Moreover, only two appeals can be made, and then the decision of the State Board is final. The State Board of Education bases its decision to approve a charter school on the following policy: if [the charter school] does *not* violate federal or state laws concerning civil rights, any court order, and the number and equitable distribution of charter schools permissible according to section 22-30.5-109(2) of the Charter School Act; if [the charter school] does *not* threaten the health and safety of pupils; and if the local school board did *not* act in an arbitrary or capricious manner (Colorado State Board of Education Revised Administrative Policy on Charter Schools, adopted August 11, 1994). The State Board of Education can also require a local board to reconsider its denial or revocation of a charter if the State Board has determined that the district's decision was "contrary to the best interests of the pupils, school district, or community" (Charter School Act, 22-30.5-108 (3)(a)).

Even though appeals are a necessary provision in the legislation, the process can be time consuming and costly. Hence, a member of the State Board of Education suggested that instead of allowing two appeals there should be only one appeal, preceded by mediation. It was hoped that formal mediation could resolve most disputes, making fewer appeals to the State Board necessary. If after mediation a district and charter school still find themselves at an impasse, and an agreement cannot be reached, then an appeal would be in order. The benefit of mediation then is that specific areas of contention would be clarified and relevant supporting documents would have been

compiled. If an appeal is still necessary, the relevant documents are already in place, thereby reducing the overall time and money required for the hearing.

A related suggestion for reducing appeal costs concerned streamlining the process. It was suggested that the appeals process could be simplified by having the district do a preliminary review of an application. If an application is not in order and likely to be denied, the applicants can be informed of the particular weaknesses, correct them, and resubmit their application. When an application is eventually submitted for formal review, districts should be very specific about why an application is denied. In the past, denials were made for vague reasons or were prompted by political motivations rather than educational concerns, often resulting in long, costly, drawn-out hearings.

Despite the varied suggestions for reducing costs, the entire appeals process is highly suspect in the eyes of certain school board members. The legislation's policy on appeals gives ultimate control over local educational matters to the state. One school board member on the commission reminded the group that school boards are there to represent the taxpayers. Parents of school-aged children comprise only 20 percent of all taxpayers, and parents who propose charter schools are even fewer in number. Thus, the State Board's ruling that a district approve a particular charter school seriously undermines the authority of the local school board. It also goes against the wishes of the majority of taxpayers as represented by the local board. Moreover, such mandates by the State Board of Education often require school districts to re-prioritize their financial obligations in ways other than intended or desired.

The above concern highlights a key point of contention about charter schools. That is, the policy inadvertently pits state, district, and building level players against each other. As similarly expressed in the school reform issue, a state level policy was enacted that has the power to override local school board decisions. The underlying assumptions are that the state knows best and that true school reform occurs at the building level. When confronted with such a reality, it is no wonder local districts take offense. They are essentially left out of the loop.

Colorado's charter school policy in many ways exemplifies what Fuhrman (1993) refers to as "systemic

reform:" simultaneous top-down, centralized leadership around outcome combined with bottom-up, decentralized decision-making about practices. In the case of Colorado charter schools, the legislation and the State Board, in approving charters, is the top-down component. The state has provided leadership by enacting the charter school legislation, with the outcome being increased student achievement. Charter school applicants embody the bottom-up, decentralized decision making component. The decision to create a charter school and determine the specific philosophy and practices it will follow is a decentralized decision left in the hands of charter applicants. The district has a seemingly token position somewhere in between, namely, to accommodate. One district is not taking this reduced role lightly. Currently there is a court case underway whereby Denver Public Schools is challenging the authority of Colorado's State Board of Education to overturn local decisions concerning charter schools. The outcome of this case will be significant in determining the future of both systemic reforms and the role of school district boards.

Another thorny sub-issue within charter school processes is conversions. When an existing regular public school chooses to become more autonomous and submits an application to become chartered, the school would go through what is called a conversion process. Converting from regular to chartered status entails a few challenges. Of immediate concern is what constitutes a "majority" of community support for such an action. One member of the Charter School Commission noted that whatever percentage may be decided upon, whether 51 percent, 85 percent, or even 100 percent, there will still be some dissenters. What happens to those teachers, students, and parents who do not want their school to convert? Commission members decided that the existing legislation allows for case-by-case decisions on the matter. For instance, those opposing the conversion could be transferred to another school, or those in favor of converting to charter status could open a school-within-a-school. Other scenarios are also possible.

Another challenge arising from the conversion process concerns bond money. At one commission meeting the legality of bond money, or funding approved by public vote, being designated for a school that has recently converted to charter status was questioned. After some debate it was confirmed that if a regular public school converts and becomes a charter

school, then existing bond money could still go to that school. The reasoning was that charter schools are still public schools and the distribution of bond monies is a district decision. The potential problem, however, lies in whether or not the school district will continue to divert its bond money to the charter school, as they decide how and where to utilize public funds. It is possible that after a school converts to charter status, its funding could be reduced to 80 percent of per pupil operating revenue (ppor).<sup>7</sup> As one commission member quipped, "It boils down to competing interests, and that is a political issue." Thus, the challenge of determining how bond monies are distributed, whether they go to a regular school or to a charter school, remains a political rather than legal concern.

The above discussion on conversions points to some interesting relationships between stakeholders, as well as between policy, knowledge, and action. Charter schools have been authorized by state level policy. Charter schools, however, are enacted at the building level. If a district finds state policy on charter schools unfavorable, it can create its own counter policy to discourage the development of charter schools. Knowledge of the legislation allows districts to legally take action to reduce funding to a school that has been converted to charter status. For instance, regular public schools typically receive 100 percent of ppor. If such a school were to convert to charter status, it could legally receive only 80 percent of ppor. In effect, the district has retaliated against an unfavorable state policy. Its actions, however, effect those at the school level. State, district, and school-level players are precariously positioned as regards action based on knowledge and policy.

The final sub-issue under the umbrella issue of charter school processes is start-up and implementation. Of greatest concern in this area is the legislative requirement for a periodic renewal of charter applications. In other words, school districts can only approve a charter school for a maximum of 5 years, after which time it goes up for review. Under such a policy, charter schools are hindered in their ability to negotiate long-term leases and other business contracts. Since charter schools often require additional facilities, they are at a distinct disadvantage in negotiating for commercial space. Essentially, charter schools are forced into short-term planning which does not make for the best and most sound business decisions. Here is another instance where state level policy sets the

parameters and limits the actions of those at the school level.

### *Finance*

The broad area of school finance can be a rather complicated morass, and the financial issues surrounding charter schools are no different. Though the legislation seems fairly straightforward as regards the minimum amount of funding a charter school must receive (80 percent of ppor), there is much left to interpretation. What seems to evoke the most conflict concerning the financing of charter schools is facilities and special education. This discussion will focus primarily on these two sub-issues, as well as a few fine points as they present themselves. Before commencing, I will provide a brief overview of the general terms concerning the financing of charter schools as outlined in the *Colorado Charter Schools Act*.

The law states that "the charter school and the school district shall begin discussions on the contract using 80 percent of the district ppor" (22-30.5-112 (2)(a).) Moreover, "funding and service agreements . . . shall be neither a financial incentive nor financial disincentive to the establishment of a charter school" (22-30.5-112 (2)(d)). These particular stipulations have been given a lot of consideration because some districts offer the minimum amount of ppor required by law (80 percent), whereas other districts begin with 100 percent ppor and charge back costs for administration. When one includes funding for special education or facilities, such discrepancies can quickly become financial incentives or disincentives. These circumstances are discussed later.

What is evident is that large variations exist in charter school contracts across districts. As expressed at a Commission meeting, what charter school applicants desire most is a level playing field between districts and charter schools during financial negotiations. As the policy is currently enacted, the district has the upper hand. The Charter School Commission tackled this issue head on. One suggestion was to determine the *average* ppor at different educational levels (elementary, middle, high school), all of which have different spending needs. These averages could then be used outright to determine the level of funding for a particular charter school. This would help create both a more equitable

and realistic arrangement between different levels of schools instead of negotiating up from 80 percent of ppor as is the current practice. In response to this discussion, it was later noted that in some instances charter schools are receiving more than 100 percent of ppor. The concern was that in such cases charter school students are being privileged. The specific circumstances surrounding such arrangements were left unclear, but it is likely they had something to do with facilities or special education funding.

When a charter school is approved, the need for a separate space is immediately created. Only in instances where an existing school has converted into a charter school is a new building *not* required. There is currently only one conversion charter school in Colorado. Since vacant facilities within a district are rare, many charter schools find themselves paying rent for commercial buildings, an expense that regular schools do not incur. In 1995, Colorado charter schools paid an average rent of \$79,000 per year, almost 10 percent of their budget. In most cases when a charter school is approved, the additional funding needed for extra facilities comes from "clipping" dollars from the ppor of students district wide, thereby lowering the overall ppor. Many school board members have a difficult time with this because they feel it short-changes the students in regular district schools.

One option for alleviating this added financial burden for facilities was suggested at a Charter School Commission meeting. The idea was to have the state of Colorado establish a fund solely for start-up and site costs above ppor. Such a fund would be akin to a loan arrangement and would assist both districts and charter schools in two ways. First, it would remove the financial disincentive for local school districts of approving charter schools which require siphoning funds from the district as a whole. Second, it would allow charter schools to plan long-term, repaying a finite number of mortgage payments instead of perpetual rental payments as is often the case. Additionally, such a fund would assist in implementing the state's school reform policy.

Without a state fund for start-up and facilities costs, the likely outcome is that some charter schools may not open due to a lack of space. If a district has no space available and cannot, or refuses to, provide excess funding to cover rental costs, but must nevertheless



approve a charter school based on legislative requirements, then a stalemate often occurs. The opening of a charter school comes to a halt due to *de facto* circumstances. There have been instances where a district approved charter school has simply folded because facilities were not forthcoming.

Funds for special education are above and beyond the established ppor. The amount of money a school receives is based on the number of special education students enrolled. Districts are responsible for providing 60 percent of the cost of special education services including an IEP (individualized education plan) regardless of where the student attends school. Since the costs to comply with an IEP vary widely, some will be below and some will be above the 60 percent funding allotment. In the latter case, the balance above 60 percent must be paid for by either the district or the individual school. If the district refuses to pay the excess and the charter school cannot afford it either, then the charter school can essentially deny the application of that special needs student. Such actions may be discriminatory, however it is unclear whether the charter school or the school district would be held accountable. It should be noted that most charter schools in Colorado have about 10 percent special education students enrolled, with some enrollments being up to 20 percent.

Considering the previous concern that some charter schools are getting more than 100 percent of ppor, it is feasible that such circumstances arise when large numbers of special education students attend the same school. Especially in districts which have excess special education funding, it would be easy to conceive of a charter school with up to 20 percent special education students receiving over 100 percent of ppor. In the case of facilities, however, the situation is likely opposite. Charter schools which are required to pay rent will probably net closer to 80 percent of ppor.

Despite the variances in funding between charter schools, there is an overall similarity. It was determined that the average cash operating revenue of most charter schools in Colorado is about 92 percent of ppor, with a moderate level of administrative services provided. Thus, charter schools seem to be getting close to what regular schools are getting, although this is certainly not the case for all of them. One of the greatest challenges charter schools face is managing their budgets. When additional expenses are incurred

in areas such as rent, then costs must be reduced in other areas. The most common category for savings is in teacher salaries because charter schools usually set their own pay scales, which tend to be lower than that of the district.

The financial issues surrounding charter schools seem to be taking place mostly between school districts and individual charter schools. It is the negotiation process which is most contentious. Even though state level policy establishes the general parameters of these negotiations, the state has little else to do with it, except in the case of appeals. Furthermore, there seems to be a strong push for changing existing policy to include issues more directly related to the development and operation of charter schools. For instance, suggesting a state level fund to support the cost of facilities and modifying the funding formula to use average ppor at different educational levels are two examples. If such changes are instituted, they illustrate how day-to-day working knowledge can inform policy which can then support further action.

#### *Teacher employment*

One of the most interesting issues surrounding charter schools is that of teacher employment. Many of the other issues seem to converge on this area. For instance, waivers from teacher certification requirements are a standard request from charter schools, yet over 90 percent of the teachers employed are state certified (Finn, Manno & Bierlein 1996). It should be noted that waivers from special education certification cannot be granted. Legal issues concerning job security and promotion are also highly entangled with teacher employment. Uncooperative relationships between charter schools and district boards, and a lack of facilities are other issues which bear indirectly upon teacher employment. The employment of teachers at charter schools poses a thorny issue for districts. Under the existing legislation, a district teacher who opts to work in a charter school is "considered to be on a one-year leave of absence from the school district" (22-30.5-111(1)). Such yearly leaves of absence can be renegotiated with the district for up to three years. After that time the options for teachers are to either return to a regular district school or forfeit their tenure in the district. The final outcome can be up to the district. Moreover, during this three-year time frame, school districts are put into a precarious financial position. Bound by legal

contract, they must hold a permanent position for a tenured teacher, hiring temporary replacements. After three years, however, the temporary replacements also become tenured, thereby obligating the district to provide them with permanent positions as well. What eventually happens is that a district is obligated to more teachers than it needs or can afford, which becomes both a logistical and financial concern.

The Charter School Commission offered some recommendations to address this problem. First, they suggested that negotiations between teachers and school districts for leaves of absence of more than one year should be mutual decisions, not primarily under the control of districts as is the current policy. Second, teachers should decide when they move to a charter school whether or not they will be opting out of the district and forfeiting their professional safety net. This decision should be made prior to the end of their third year at the charter school so that districts can better determine budgets and financial obligations. Third, as regards benefits, sick leave should transfer with district teachers.

A quick analysis indicates the first two recommendations address only procedural issues, not the structural relationship between districts and school level employees. The last suggestion is the only one that would have any real effect on current policy. Not only is the transferrance of benefits more equitable, but charter schools are still technically district schools so teachers working therein are still district teachers. Aside from these recommendations, if teachers were to gain their professional status and benefits from an entity outside the school district, then both parties would likely find themselves in better positions to manage their day-to-day affairs.

Where the above discussion focuses on the relationship between districts and teachers, this discussion takes a closer look at the relationship between teachers and charter schools, especially as regards employment contracts. Charter school administrators desire more authority over their employees, especially teachers who they would like to hire and fire at will in order to ensure teaching excellence. From the perspective of teaching excellence, however, this could be a problem because attracting the most qualified teachers often requires providing some sort of job security.

To address this conundrum, the benefits and drawbacks of varied employment contracts were discussed at the League conference. For example, an "employment at will" contract gives the administration complete control over hiring and firing, yet puts them at a higher level of legal liability. It may also discourage talented district teachers from applying as they would be putting their tenure with the district at risk. Conversely, working from a "covenant of good faith and fair dealing" diminishes legal liability for a charter school, yet restricts the administration's freedom to make placement changes. Whatever course a charter school chooses, it was recommended that separate contracts be written for certified teachers and for non-certified staff. A distinction was also made between an employee and an independent contractor. Despite greater autonomy, charter school teachers are still legally considered employees because they do not set their own hours, nor bring their own tools or expertise to the workplace. Some of these points are debatable (as in the case of a music teacher who works with different schools and brings her own instruments), but a typical charter school teacher does not determine where, when, or how to work. I found this somewhat surprising as many teachers who opt to work in charter schools do so for the greater degree of autonomy and control they have over daily educational matters. This would certainly be an interesting area for further research, as it touches upon issues of professionalism, identity, and the legal structures of employment.

One other area to consider in the realm of teacher employment is the relationship between charter schools and districts. In this instance, teachers are sometimes caught in the middle. Teachers see the quality of the charter school's relationship with the district as strongly affecting them. There is clearly a lot more work involved in running a charter school, and teachers greatly need the districts' support and assistance. Many teachers are willing to work harder in exchange for the greater autonomy provided by a charter school, and they are also willing to accept less pay. What teachers do not want, nor have the extra energy for, is to fight the district in the process.

#### *At-risk students*

Another issue surrounding charter schools is at-risk students. Before delving into this particular issue, it would be helpful to clarify what constitutes an "at-risk" student. There are multiple definitions of at-risk in use

today. The most common definition refers to students from low socioeconomic backgrounds: typically those students who qualify for free lunches. This measure of at-risk is used in large part because of its ease in identifying such students. The definition of at-risk given in the *Colorado Charter Schools Act* reads as follows: "At-risk pupil means a pupil who, because of physical, emotional, socioeconomic, or cultural factors, is less likely to succeed in a conventional educational environment" (22-30.5-103). Clearly, Colorado's definition of at-risk allows for much greater variety in the kinds of students who may be targeted by charter schools. It was pointed out that charter schools attract students whose needs are not being met in traditional public schools. Charter schools cater to non-mainstream students which includes at-risk, gifted, home schooled, and private schooled.

Having thus established a basic understanding of what constitutes an at-risk student, I wish to explore this term as it arose in several arenas. Because Colorado's definition of at-risk is much more inclusive of other factors besides socioeconomic level, the door was opened for a lot of discussion. Commission members considered the many scenarios in which students could likely not succeed in a conventional educational environment. These scenarios included students who spoke English as a second language, those from single parent families, those who are culturally different or below grade level, and those who are achieving less than their potential. These scenarios then translated into other possible definitions of at-risk. Except for the latter situation, which is highly problematic, the scenarios and definitions provided closely resembled many of those already specified in the legislation. In conclusion, the commission decided to leave the term "at-risk" undefined, except as it is already stated in the legislation.

Avoiding the issue of at-risk students, however, did not move the commission any closer to resolving a particularly confusing, but related, issue concerning the definition of an at-risk school. The legislation stipulates that at least 13 of Colorado's 50 charter schools must be reserved for "applications which are designed to increase the educational opportunities of at-risk pupils" (Charter School Act, 22-30.5-109 (2)(a)). The question was posed, "How do charter schools get classified as at-risk?" Thus far, self-identification in charter applications has been the primary means of designating a school as an at-risk school. There are

currently five or six charter schools which have this designation, as well as others which are not so designated but nevertheless have a greater percentage of at-risk students than regular public schools.

This brings up some interesting problems, both practical and philosophical. First, it should be noted that most charter schools, as well as most public schools, have some percentage of at-risk students. Under such conditions, then, only those schools which explicitly designate themselves as serving the needs of at-risk students should be considered at-risk schools. Second, if at-risk students convene in great numbers at particular charter schools, the costs of running those schools likely increases. This brings forth many of those contentious financial issues. Additionally, is it appropriate to segregate at-risk students in separate schools, whether chartered or not, in order to address their special needs? This is a highly problematic moral and social issue. Third, if some charter schools are specifically designed to address the needs of at-risk students, then, if successful, these students should no longer be considered "at-risk." This notion directly questions the integrity of the at-risk construct because schools which are meeting the needs of their varied students should not have any classified as at-risk.

Lastly, a problem brought up at a commission meeting considered the political and ethical ramifications of charter schools. Charter schools have been designated to serve the interests of at-risk students, but the families of these students are the least likely to organize and develop charter schools. Bringing a charter school to fruition requires a lot of time, effort, and education in order to understand the laws, write a lengthy and detailed application, and negotiate with district officials. Realistically, it is middle class and upper-middle class families that will have the necessary resources to develop a charter school.

#### *Accountability*

The final issue under consideration is accountability, although it is not directly evident from the graph that accountability crosses more than one level and has an impact on more than one stakeholder. Overall, charter schools are highly and more directly accountable to many more constituencies than are regular public schools. At the state level, Colorado charter schools must be accredited by the State Board

of Education. They must also document how they will expand educational opportunities and increase student achievement through the waivers they seek. Charter schools can gain an additional accreditation from the state through the "Colorado Schools of Excellence Program." To do so, charter schools must prove that they are meeting their stated goals every 2 years, though a 1-2 year extension beyond that is possible. At the district level, charter schools are accountable for putting together a solid, educationally sound, and legal charter application. They are also responsible for maintaining their charter by passing yearly financial and management audits, as well as periodic reviews of their students' academic achievement. At the local level, charter schools are accountable to students and parents, as well as teachers and staff, because these parties can all transfer out if they are not satisfied. Lastly, charter schools are accountable to the public at large through a system of statewide report cards, although these are currently limited in availability.<sup>8</sup>

There was some concern expressed at the League conference that charter schools might lose their uniqueness because of the many constituencies to which charter schools are accountable. After complying with all the various requirements, charter schools could eventually look just like regular district schools. Bill Windler from CDE, however, assured these folks that all the accountability and all the requirements were analogous to a picture frame, and the uniqueness of a charter school was evident in the picture itself. Although this was an insightful analogy, I am not sure it alleviated the concerns of school level participants at the conference. Here, again, is a complex interplay between state, district, and school level policies and the subsequent actions that may be taken within given parameters.

### **Conclusion**

The foregoing discussions illustrate how cultural factors and power relationships influence Colorado's charter school policy, as they do any school reform. There are differing beliefs, values, and conceptions about public education and how best to improve it. These philosophical and cultural differences about Colorado's charter school policy emerge in the conflicts between state, district, and school level interests. The policy itself prompts inadvertent power struggles between districts and charter schools, between districts and teachers, and between teachers and

charter school administrators. Given the complex nature of educational change, applied anthropology can be of great service in the area of school reform.

I have taken a first step in this direction by exploring the "domain of application" for Colorado's charter school policy. State, district, and school level players have valid concerns yet often find themselves in strained relationships due to the design of the legislation. There are numerous points of contention, especially as regards funding, facilities, and teacher employment. Organizations such as the Colorado League of Charter Schools serve as advocates for school level interests and provide networks between charter schools. The Charter School Commission created a forum where state, district, and school level interests could be expressed and was helpful in bringing many of the key issues to the fore. Many areas remain for further research, such as the terms of employment for teachers, the concept of at-risk, and ways to streamline a host of charter school processes. Taking such next steps is one way applied anthropology can assist in the important task of improving public education.

### **Notes**

1. Brigitte Boettiger is a doctoral candidate in the area of Educational Foundations, Policy, and Practice at the University of Colorado, Boulder. She can be contacted at the School of Education, Campus Box 249, University of Colorado, Boulder, CO 80309 or via email at boettige@ucsu.colorado.edu.
2. Charter schools are public schools of choice funded by local and state monies. They must be nonsectarian in nature and comply with federal mandates for health, safety, and nondiscrimination in hiring and admissions. What distinguishes them from regular public schools is that charter schools can waive many district and state level rules and regulations concerning public education. As such, they are virtually autonomous to make all school level decisions from governance and budgeting to teacher qualifications and curriculum. The primary intent of charter school legislation is to infuse innovation into the public school system in order to increase students' academic achievement. The first charter school law was authorized in 1991 in the state of Minnesota. Colorado approved similar legislation in 1993. Today, twenty-eight states and the District of Columbia have passed charter school laws.

3. It should be noted that the issue of facilities is a concern that spans state, district, and school level interests. Although not a designated topic at the Colorado League of Charter Schools Conference, it likely arose during sessions I could not attend.

4. Pelto & Pelto (1978) provide a helpful theory describing the interrelationships between information, and policy and action: components of the "methodology of application." To illustrate, information derived from theory and observation of real world events informs policy. Subsequently, policies determine particular actions. Conversely, actions or operational ideologies often prompt policies, and these, in turn, can inform theory. I am using a somewhat modified conception of these relationships between information, policy and action. In this study, policy refers to a general plan or course of action adopted by a state level government, a school district, or an individual charter school. Information refers to pertinent knowledge necessary to both understand and effectively implement a given policy at any level. Action refers to the actual behavior of different groups in response to stated policies, usually formulated at the state level. Action can also include micro-level counter policy formation. Understanding the interplay of these components helps to clarify the issues surrounding charter schools.

5. A Talmey-Drake survey conducted in the fall of 1993 indicated that 65 percent of respondents felt that Colorado's K-12 public school system was on the wrong track; 27 percent felt it was heading in the right direction, and 9 percent did not know.

6. Of particular interest to this debate is a study conducted by Jones and Anderson (1994) which examines Colorado's policies regarding elementary and secondary education. This study also establishes the rationale behind much of the support for charter schools. Most notably, the study found that state policy does little to recognize the diverse conditions and circumstances in Colorado's school districts, that "local education environments" are not typically places "where people are supported and motivated to try radical new approaches," and that "local districts become adept at dealing with the letter of the law rather than the spirit of the law." Moreover, the study also recommended the "establishment of a governance system that reduces bureaucracy [and] places major decisions in the hands of school-community councils,"

as well as "creat[ing], support[ing] and provid[ing] visibility to alternative forms of learning, teaching, and school management/leadership."

7. Per pupil operating revenue (ppor) is defined in the "Public School Finance Act of 1988" as the total cost of educational programs minus combined expenses for operations, maintenance, and buildings. Per pupil operating revenue does not include program funding for special education or Title 1 which are largely supported by federal monies. All districts in Colorado must use this financial measure for budgetary purposes.

8. The Independence Institute, affiliated with the Donner Foundation, is in the process of developing statewide report cards that comparatively rate students' academic achievement at individual schools. Some tests currently used are the ITBS, CAT, SAT, and ACT. Future schools may also be rated on environment, crime level, and other factors. For more information contact the Institute at (303) 279-6536.

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APPENDIX A

ISSUES IN THE DOMAIN OF CHARTER SCHOOLS			
	League of Charter Schools Conference	Charter School Commission Meetings	Colorado Commissioner of Education
POLITICAL VOICE	X		
SCHOOL REFORM		X	X
EQUITY		X	
LEGISLATIVE		X	
CHARTER SCHOOL PROCESSES	X	X	X
ACCOUNTABILITY	X		
GOVERNANCE	X		
LEGAL	X		
FINANCIAL	X	X	X
TEACHER EMPLOYMENT	X	X	
CURRICULAR	X		
STANDARDS & ASSESSMENT	X		
AT-RISK STUDENT	X	X	
SPECIAL EDUCATION	X	X	
DISCIPLINE	X		
TRANSPORTATION	X		
FACILITIES		X	X
SMALL & RURAL SCHOOL	X		
PROFESSIONAL DEVELOPMENT	X		

