

Education Policy Analysis Archives

Volume 10 Number 34

August 9, 2002

ISSN 1068-2341

A peer-reviewed scholarly journal

Editor: Gene V Glass

College of Education

Arizona State University

Copyright 2002, the **EDUCATION POLICY ANALYSIS ARCHIVES**.

Permission is hereby granted to copy any article if **EPAA** is credited and copies are not sold. **EPAA** is a project of the [Education Policy Studies Laboratory](#).

Articles appearing in **EPAA** are abstracted in the *Current Index to Journals in Education* by the [ERIC Clearinghouse on Assessment and Evaluation](#) and are permanently archived in *Resources in Education*.

Charter School Funding Issues

Stephen D. Sugarman

University of California, Berkeley

Citation: Sugarman, Stephen D. (2002, August 9). Charter school funding issues. *Education Policy Analysis Archives*, 10(34). Retrieved [date] from <http://epaa.asu.edu/epaa/v10n34.html>.

Abstract

Although a great deal has been written about charter schools, rather little attention has been given to their funding. The first part of this article raises four current issues in the funding of regular public schools across the U.S. and shows how these issues carry over to the funding of charter schools. The second part explores four additional issues that have arisen in the funding of charter schools that go to the core identity of charter schools and the nature of the students they enroll. In both parts, extra attention is paid to developments in California, one of the most active charter school states.

In just over a decade, charter schools have grown from an idea to something of a movement,

as more than 2000 charter schools now serve more than 250,000 in 34 states and the District of Columbia—although this remains but a tiny fraction of American school children. Observers disagree whether charter schools have so far turned out to be a positive development, although the Consortium for Policy Research in Education (CPRE) has recently released a fairly upbeat review of the literature concerning several key policy issues relating to charter schools.¹ Nevertheless, it should be emphasized that this article is not meant as a brief in support of (or against) charter schools. Rather, the central point of this article is that *if* charter schools are to become a regular part of the public school system in at least a number of states, then the charter school funding issues discussed here need further attention by both policy analysts in the political arena and school finance scholars. It is also perhaps worth emphasizing at the outset that this article does not purport to provide solutions to all of the problems examined, although several of California's solutions are presented. Instead, it offers something of an agenda of charter school funding topics in need of further policy discussion.

Part I: Four Public School Finance Issues and Their Connection to Charter School Funding

One: Inter-district inequalities

A. The issue generally

The funding of American public schools is historically based on local property taxes. Notwithstanding subventions from the state to local school districts, spending per pupil has long varied from district to district.² More specifically, ever since the 19th century, spending on public education has importantly been a function of the per pupil wealth of the local district, with low wealth districts most disadvantaged.

Because of more than thirty years of litigation that began in the late 1960s, this problem has now been substantially ameliorated in some states³—states like Kentucky, New Jersey, Texas, Wyoming and California⁴—although, even today in California, for example, some wealthy communities like Beverly Hills continue to outspend most other districts. Overall, however, inter-district spending inequalities remain significant in most states and very large in some states.⁵ (Of course, some people consider wealthier districts entitled to spend more and see "the problem" as the interference with that advantage by courts and state legislatures.)

B. Carry-over to charter school funding

Inter-district spending inequalities also create a dilemma for charter school funding.⁶ Either, charter schools will be funded (typically by their local sponsoring districts) at a level that relates to the spending level per pupil in the districts that charter them—this is the most typical solution around the country.⁷ Or, they will be funded (perhaps directly by the state) at some state average level of funding per pupil—this, for example, is increasingly the California solution.⁸ Both solutions are problematic.

If charter funding is tied to district spending per pupil, then charter schools may be very differently funded based on who they can get to charter them. This sort of inequality among

charter schools surely must seem unfair to many charter school operators, and especially so as charter schools begin to lose their connection to families living in a particular district and begin to serve children from a metropolitan area. Moreover, this arrangement gives those seeking charters special incentives to seek charters from some, but not other, districts. The disincentive applies most strongly with respect to low wealth/low spending districts, and these are the very districts that charter school supporters typically argue have the most to gain from charter schools.

On the other hand, if charter school funding is provided based on the state average per pupil spending level in public schools, then this discourages the conversion of existing public schools to charter schools in high spending districts, and it also makes it hard for new charter schools to compete in districts that have high spending. State average spending also artificially encourages conversions to charter schools in low spending districts. At the same time, regular public schools in those low spending districts would understandably feel unfairly disadvantaged as compared with charter schools with which they compete.

Because California has substantially eliminated inter-district inequalities in the core funding for public education, these inter-district problems for charter schools are far less there than in most other states. What this also shows is that if more states were to reduce their inter-district inequalities, this would arguably be good both for public schools generally and for charter school funding. Indeed, it is plausible that the reform of the funding of regular public schools could actually be effectuated through the spread of charter schools because of the tensions and inconsistencies that are so clearly exposed by the finance of charter schools.

Two: Intra-district inequalities

A. The issue generally

In many school districts, teachers (and other employee positions) are funded in this way. The school district awards each local school one teacher slot for every X number of pupils it has. Then, whatever that teacher's salary, it is fully paid for centrally.⁹ This means that schools with higher paid (in general, more experienced) teachers get more money spent per pupil on their core teaching staff than do those schools with lower paid teachers.

Because of teacher seniority rights and other factors, this often means that schools serving the lowest income pupils have the lowest spending per pupil on their core faculty.¹⁰ This is vividly apparent in a community such as Oakland, California, where the higher achieving schools in the Oakland hills generally have much better paid and more experienced teachers, and the lower achieving schools serving low income children who live in the Oakland flats tend to have large concentrations of lower paid teachers (many of whom are new to the job and working with only temporary teaching credentials).

This issue of intra-district inequalities arising from the way teacher slots are funded was supposed to have been changed in Los Angeles in response to litigation. And indeed, it appears that the Los Angeles Unified School District has now infused schools that previously spent less than the district average on core teacher salaries with substantial new money, although those schools have not generally been able to attract their share of more senior teachers and have instead used the funds for other core instructional purposes.¹¹ Despite this improvement in intra-district equity, this litigation does not appear to have been copied elsewhere, and, in any event, intra-district inequalities are widespread throughout the

nation. (Again, some people don't see this as a "problem," because they favor higher per pupil funding on core teachers in neighborhoods where wealthier families live, perhaps to offset the funding advantages that other neighborhoods have because of categorical programs aimed at children from low-income households.)

B. Carry-over to charter school funding

Charter schools, as already noted, are generally funded on a per pupil basis, at least for the core of their resources.¹² When this method is used, it eliminates the issue of intra-district spending inequalities just described—at least among charter schools. But it also creates some thorny incentives for existing public schools. For example, per pupil funding at the school level will probably make it financially quite unwise for local public schools to convert to charter schools if their teachers currently are more experienced and higher paid. By contrast, schools with low teacher salaries on average have a special, perhaps artificial, incentive to convert.

Funding charter schools on a per pupil basis but regular public schools on a teacher position basis also means that, to survive financially, charter schools will probably have to rely upon a large cadre of mainly newer and lower paid teachers as compared with the more attractive schools in the district that chartered them. This understandably seems unfair to the charter schools.

It should be clear, then, that were regular public schools (like charter schools) financed on a per pupil basis for their core funding, those schools with concentrations of higher paid teachers would probably have to make do with fewer of them (which would imply a larger average class size than today for regular public schools stocked with senior teachers). But at the same time, regular public schools with lower paid teachers would probably be able to hire more teachers and reduce class size. Such a change would both be better for the neediest schools and would mesh regular school funding with charter school funding. Hence, just as noted earlier with respect to inter-district spending inequalities, it is also plausible that financial the inconsistencies laid bare by the spread of charter schools will actually stimulate the reform of public school funding within districts.

Three: Inadequate spending

A. The issue generally

Despite its wealth and previously high level of spending on public education, California currently spends much less per pupil than do comparably wealthy states, and overall spends less than many school finance experts believe is necessary to facilitate high quality outcomes for most students.¹³ Although state-to-state comparisons are difficult (because of different accounting measures and different costs from place to place), roughly speaking California schools today tend to spend around \$6000 per pupil annually for current expenditure items, whereas the figures in places like New Jersey and Connecticut are nearly twice that number.¹⁴ Some blame this low level of spending on public schools in California on the adoption in the 1970s of Proposition 13, which both sharply reduced local property tax collections and restricted future increases;¹⁵ at least one scholar has blamed this decline in relative spending in California directly on the school finance litigation that reduced inter-district inequalities;¹⁶ still another scholar blames California's relatively low spending

on the unwillingness of state politicians to invest in education as substantial a share of the personal incomes of the people of California as are political leaders in many other states.¹⁷

Although California, given the overall wealth of its population, may be seen by some as especially miserly towards its schools, it is hardly at the bottom in terms of public school spending. Indeed, there are many much poorer states around the country—like Louisiana, Alabama and Mississippi—that also spend quite modestly on their public school pupils, even taking their relatively lower labor and other costs into account.¹⁸ (Once more, of course, some believe that too much money is already spent on public education in America and would see "the problem" more in terms of "excessive" spending in states like Connecticut and New Jersey.)

B. Carry-over to charter school funding

Given that public school budgets are seen as tight in many states, this means that many states and local school districts do not feel themselves able to provide generous funding of charter schools. This shows up in a variety of forms.

1. Start-up costs are often lacking or inadequate.¹⁹ These are the funds needed to launch the school, to hire staff, and to outfit the school with furnishings and curriculum materials in preparation for its initial enrollment of what is often an uncertain number of pupils. In some communities this issue has been reasonably well addressed because charter schools are able to tap into special funding available from the federal government, special state programs, and private foundation grants.²⁰ Nevertheless, start-up costs often remain a serious problem, especially for newly formed community groups that seek to create charter schools.
2. In some communities, the fees charged for "oversight" and for "services" provided to charter schools by their sponsoring districts have been set at quite high levels, and some charter school supporters charge that this is likely to be especially true in districts that are not all that keen to sponsor charter schools in the first place.²¹ Although this issue remains quite troubling in some states, it has been at least partly addressed in recent California statutory provisions which now both cap the oversight fee and clearly give charter schools the ability to go to outside providers for the business and other services they need.²²
3. Apart from schools that convert from existing public schools, charter schools often obtain little or no extra money to pay for their school buildings (whether those buildings are leased or bought and paid for with mortgage funding).²³ When this happens, it means that charter schools often have to redirect perhaps 20% or more of their core funding to pay for space, leaving them with what they believe to be too little to pay for the ongoing educational program.²⁴ Indeed, an inadequate supply of school facilities may be the single largest stumbling block to the growth of charter schools.²⁵

In California, however, the recently adopted Proposition 39 promises to resolve this issue starting in 2003. This initiative proposition insists that bodies approving charter schools provide those schools either with adequate school buildings or the money to rent or buy them.²⁶ Yet, it remains to be seen how charter school rights under this

new law will play out. Indeed, this new requirement might cause many districts to decide to call a halt to chartering, even though California law is supposed to make it difficult for districts to refuse a charter sought by any applicant with reasonably sensible plans for its school.²⁷ In any event, this problem remains a difficult one for charter schools in other states

4. Despite the points just noted, it should also be appreciated that sometimes charter schools have certain financial advantages. For example, in states that provide uniform per pupil funding for charter schools at all grade levels, charter schools have tended to be created to serve elementary, not high school, pupils because younger children are traditionally cheaper to educate.²⁸ (California's program resists this trend by offering charter schools more money per pupil for education at the higher grades.²⁹) A second advantage in some places is that the calculation of the per pupil allocation to charter schools includes sums that regular public schools spend on services, like transportation, that charter schools might not provide. Both of these points illustrate the importance of determining the proper spending benchmark to which charter school funding is to be tied.

Yet, as a general matter, until regular public schools are reasonably well funded, it is probably unrealistic to expect generous funding for charter schools (although some people don't consider this to be a "problem," believing that a system of charter schools is only worth the governmental effort if those schools are as good or better than regular public schools at a much lower cost to the taxpayers.)

Four: Special needs funding

A. The issue generally

Federal funding programs for educationally disadvantaged children (through the federal Title I program) and for children with disabilities (through the federal special education law—IDEA) implicitly assume that, if left to their own discretion, all too many local public schools, districts and states would choose to treat these groups of children badly. This explains why Congress decided that civil rights sorts of protections are necessary for these special needs children. One consequence, however, is that the federal restrictions attached to the distribution of these "categorical" funds burden local schools in various ways.

First, in order to make sure that schools actually spend federal funds on educationally disadvantaged children, federal regulations impose substantial reporting and accounting burdens on schools. These, in turn, have caused some schools to use the money in ways other than they believe would be best for those children (although recent federal changes have sought to reduce this problem).³⁰ Second, even though the federal government has recognized the special needs of disabled children, Congress has failed even to provide adequate extra funds to deal with those extra needs.³¹ Yet, Congress has mandated that those needs be met. As a result, there is considerable pressure on local school districts to shift money otherwise earmarked for the rest of their children to these especially needy pupils. This shift is called "encroachment" by experts and is now thought to be quite substantial in the special education area, with some observers claiming that as much as 25% of the funds intended to regular education must be siphoned off to pay for the extras needed by special education pupils—that is, required extras that are not paid for by federal and state

categorical special education funds.³² Most people would surely agree that it is good that these needy children get extra money, but it must be appreciated that, as a result, even less money is left for other children, and that is generating some backlash among parents of non-disabled pupils.

B. Carry-over to charter school funding

Many charter schools have had great difficulty getting their legally entitled share of state and federal categorical funds from the appropriate state or local funding authority through which federal and state categorical funds flow.

In California now, this issue may have been fairly well resolved with respect to most of the smaller state-funded categorical aid programs. This is because charter schools are supposed to obtain their share of those funds on a per capita basis—i.e., they receive so many extra dollars for every pupil in the charter school without having to show that they actually have enrolled pupils eligible for those extra categorical funds, without having to fill out all the otherwise required forms, and without having to show how they have spent those extra funds.³³ This is very desirable for charter schools, both because the cash is much more likely to be received in a timely matter and because the charter school can avoid the red tape tied up in claiming and receiving funds from a large number of small categorical programs.

But the receipt by charter schools of their share of federal Title I funds and funds for special education pupils remain substantial issues. One key factor to appreciate here is that some charter schools either avoid enrolling, or don't really know much about teaching, special education pupils with anything more than very modest disabilities. Those schools are viewed in some quarters as shirking their fair share of these pupils. At the other extreme, it must also be understood that other charter schools deliberately specialize in, or simply wind up as magnets for, children with disabilities.³⁴ The upshot is that there tends to be a very uneven distribution of special education children in individual charter schools as compared with the state average.³⁵

As a result, especially for high cost special education children, it is essential that extra funding is provided to charter schools on an individual pupil basis. That is, simply increasing the charter school's per capita allocation based on the total number of children in the school—as has been done in California for small categorical programs—would clearly give too little money to some charter schools and too much to others. Moreover, many advocates on behalf of children with special needs remain skeptical about the good faith of many charter schools in enrolling and fairly treating such children. Hence, they are no more willing to surrender regulatory controls over categorical funding for charter schools than they are for regular public schools, even though such children only enroll in charter schools "by choice."³⁶

But actually arranging for the receipt by charter schools of extra funding for those needy pupils has been difficult in many places and has tended to immerse charter schools in bureaucratic controls from which they are, as a general matter, supposed to be free. Moreover, charter schools are new in many places and the necessary bureaucratic linkages are just getting formed. Furthermore, charter school operators are often unsophisticated in timely completing forms and carrying out procedural activities that it has taken local public schools years to master. In addition, one suspects that some local districts are not all that

eager to spread categorical funds to charter schools (just as they have been slow to pay over federal categorical funds to eligible private schools), especially at a time when, as noted, they receive inadequate amounts of these funds to serve the pupils enrolled in their own regular public schools. Indeed, the encroachment problem has caused some districts to want to cut the basic funds they provide to charter schools (before adding back categorical funds) on the ground that the district's own regular public schools are suffering from this problem. Needless to say, many charter school operators find this cutback in the funds they think they should receive hard to accept, or even understand. Until these matters are better resolved, some charter schools will view themselves as mistreated whereas others will continue to shun the neediest children.

Part II. Four Special Issues of Charter School Funding

One: How to Count Charter School Pupils

As already explained, chartering bodies generally fund charter schools on a per pupil basis. This makes it essential for there to be a fair, and fairly run, system for counting how many pupils the charter school actually serves. But several issues have arisen, both because of fraud committed by some charter schools and, arguably, unduly harsh counting mechanisms imposed by some chartering bodies.

Conceptually, the first decision is whether to count pupils on the basis of ADA (average daily attendance), or ADM/ADE (average daily membership or enrollment), or yet some other pupil-counting measure.³⁷ This, of course, is an issue for regular public schools as well as for charter schools. The difference is important. For example, a school will have more pupils enrolled than attend on any given day, and hence ADM/ADE counts, other things equal, will bring in more money. But in addition, notice that if ADM/ADE is used, schools with high absentee rates, in effect, get extra funds that can be used to help them track down pupils who are not attending regularly and to support efforts designed to coax those pupils back into school full time.

For charter schools, an ADM/ADE pupil count may create an incentive both to manufacture enrollment numbers on the days ADM/ADE is counted and to treat as enrolled, but then later ignore, regular truants. On the other hand, if ADA is used, then charter schools have an incentive to discourage the enrollment in the first place of those students who are likely to have high absentee rates.³⁸ This problem of perverse incentives is likely to be especially troublesome for charter schools, as compared with regular public schools, because the former inevitably will have more control over who their pupils are.

One possible solution to this problem is to use an ADM/ADE count in the funding of charter schools, but then to make sure that all enrollees are counted when assessing student achievement at the school, thereby making it undesirable for charter schools to ignore enrollees who become truant. The bottom line is that, absent a well-crafted solution to this issue, the charter school funding mechanism can wind up having an unintentionally large impact on which pupils charter schools seek to attract.

Two: Schools that seek to enroll distance learners/home schoolers

Nationwide it is now estimated that perhaps as many as 2% of children are home schooled

by their parents.³⁹ Should those parents who home school their children be able to group together as a charter school in order to obtain financial support from the government? This is not really an issue for regular public schools, because these children conventionally are simply not enrolled in "school" (although some enterprising public school officials, as a way of garnering more state funding for the district, have figured out how to enroll in their "independent study" programs some children who are, in effect, home schooled).

If home schoolers are permitted to join charter schools, this will increase the cost of public education. This new cost alone will make some state officials want to resist funding charter schools established to serve these sorts of children.

Nonetheless, in some states, including California, home-schooled children may be served by charter schools. This has created several problems, however. Part of the problem stems from the fact that many have come to the conclusion that these children can be served at a public cost level much below that of other children and, in turn, below the per pupil allocation normally made for children enrolled in charter schools (assuming that the teacher/parents will not be paid for their work).

Consider this example. Suppose that the state is prepared to provide \$5,000 annually for each pupil enrolled in a charter school, whether home schooled or not. But suppose that reasonably good educational support for the home schooling family can be provided at a cost of, say, \$3000 per pupil per year. That leaves \$2000 left over, and some have seized upon this difference, concluding that there is money to be made. That "profit" might be skimmed off by the chartering school district, at least if it can get its hands on the \$5000 per pupil from the state and then provide only \$3000 per pupil to the charter school serving home schoolers. Alternatively, the \$2000 profit might be skimmed off by the charter school operator (which itself might be a "for-profit" educational management organization). In this scenario, the charter school gets the full \$5000, but only spends \$3000 on the pupil.

Beyond the matter of educating home schoolers "on the cheap," it has turned out, in California at least, that some districts have chartered schools to serve home schoolers who live at a great distance from the charter school, and furthermore, in several instances, the distance-learning-based charter school's center of operations itself has been located far from the sponsoring district.⁴⁰ This scenario causes at least two worries. One is that pupils will be claimed as enrolled in a charter school when they in fact are not in any way connected with the charter school. In California recently, a variation on this theme apparently happened, when the same children were claimed as enrollees of two different charter schools, both of whom claimed to manage their education from afar.⁴¹ A second problem is that the sponsoring district's oversight of the charter school may be minimal.

These various concerns, fueled in part by scandals linked to home-schooling-based charter schools, have caused some in California to want to eliminate the participation of home schoolers in charter schools and others to favor providing a lower per pupil payment to charter schools serving such pupils.⁴² And yet, the argument on the other side is that these children, like all other children, are supposed to be entitled to free public education. Moreover, many home-schooled children seem to be learning reasonably well, and hence it seems unfair to some to target them for worse treatment, especially when lots of those children who are home-schooled might actually benefit substantially from public spending on their behalf. This spending could, for example, be for curriculum development and

curriculum materials, training and supervision of their parents, computer technology, and the like. Yet, even some strong charter school supporters who abstractly identify with families who home-school their children are conflicted, fearing that scandals involving these schools put the charter school movement at risk. As a result, the place of these children in the charter school system remains a difficult issue.

Three: Monitoring charter school spending, budgeting, auditing, etc.

The basic idea behind charter schools is that they are supposed to be autonomous. That is, it is broadly agreed that the core principle defining charter schools is that they are generally to be free from regulation in order to be able to experiment, to be flexible in the way they manage their operations, to respond quickly to their customers, and so on.⁴³ In return for this autonomy, charter schools usually are asked to demonstrate academic outcome results for their children, but that too is supposed to be measured without too much interference with the school's independence.⁴⁴ And yet, there is at the same time understandable concern that some charter schools will be financial rip-offs. They might not properly spend on their pupils the public money they get; they may go broke in the middle of the term and leave children and families in the lurch; and so on. These fears have led to auditing, monitoring, reporting, and other requirements.

Principals and teachers in regular public schools, of course, may also complain about these same controls. But, in contrast to charter schools, freedom from regulation is not traditionally so centrally part of their school's identity (although school site control, of course, has long been a goal of some reformers of regular public schools). In any event, some charter school advocates believe that excessive financial controls are becoming the back door way that the charter school movement is undermined.⁴⁵ Indeed, the history of public school funding may provide a revealing lesson here, since increased state funding has generally brought with it more regulation of local school district operations.

Four: Supplemental funding of charter schools

Some charter schools are required to live off the basic funding they get from their chartering body. As noted already, many have to devote too much of that to pay for their building. Other charter schools, as noted, have the advantage of operating in a building that has been given to them, or loaned to them, for free. This creates "haves" and "have-nots" among charter schools. But this general problem of financially better and worse off charter schools is not limited to buildings.

For both start-up costs (mentioned earlier) and for ongoing operations, some charter schools have substantial supplemental funding and others do not. To the extent that this extra funding comes from government grants, one can at least hope that the funds will be fairly awarded to the most deserving charter schools. But much of this supplemental funding comes from private donors. Perhaps one should not begrudge a charter school that is able to obtain this extra funding. And the availability of this supplemental funding may provide charter schools with a healthy incentive to convince private donors that they have a high quality program deserving of their support.

Yet, the uneven distribution of outside funding creates inequalities of the sort that are also created among regular public schools when, for example, some obtain extra funding from

local privately-financed public school foundations and others do not. At least for regular public schools, however, those foundations currently make a relatively small difference for a relatively few school districts.

But for charter schools, there is a much greater concern that no charter school will have much of a chance to succeed unless it has substantial extra outside funding, at least in its early years. This, in turn, means that certain sort of charter school initiators are far more likely to survive than others, with local grass roots groups most likely to be in the worse off category. For many who envisioned that charter schools would be a kind of democratic, local community response to regular public schools, this is likely to be disheartening.

Conclusion

Several of the funding issues facing charter schools stem from broader issues underlying the funding of public schools generally. Oddly enough, if the charter school system grows and legislatures struggle to rationalize the charter school funding mechanism, there is at some chance that these changes will, in turn, force attention to, and changes in, the funding of regular public schools. Other charter school funding issues that go to the heart of what autonomy charter schools will truly have and what sorts of pupils charter schools will serve. This overview shows that charter school funding is far too important a topic to leave to technical experts and deserves the careful attention of the wider school reform community.

Notes

Karis Chi (Boalt Hall 2002) provided invaluable research assistance in the preparation of this article.

¹ Katrina Bulkley and Jennifer Fidler, *A Decade of Charter Schools: From Theory to Practice*, CPRE Policy Briefs (April 2002) RB-35.

² See generally, *Making Money Matter: Financing America's Schools* (National Academy Press, 1999). For a more historical perspective, see John E. Coons, William H. Clune and Stephen D. Sugarman, *Private Wealth and Public Education* (Harvard University Press, 1970).

³ See Paul Minorini and Stephen D. Sugarman, *School Finance Litigation in the Name of Educational Equity*, and *Educational Adequacy and the Courts: The Promise and Problems of Moving to a New Paradigm*, in *Equity and Adequacy in Education Finance* (National Academy Press, 1999).

⁴ Id. See, e.g., *Serrano v. Priest* ("Serrano II"), 557 P.2d 929 (Cal. 1976); *Serrano v. Priest* ("Serrano I"), 487 P.2d 1241 (Cal. 1971); *Abbott v. Burke* ("Abbott II"), 575 A.D.2d 359 (N.J. 1990); *Abbott v. Burke* ("Abbott I"), 495 A.D.2d 396 (N.J. 1990); *Edgewood Indep. Sch. Dist. v. Kirby* ("Edgewood III"), 826 S.W.2d 489 (Tex. 1992); *Edgewood Indep. Sch. Dist. v. Kirby* ("Edgewood II"), 804 S.W.2d 491 (Tex. 1991); *Edgewood Indep. Sch. Dist. v. Kirby* ("Edgewood I"), 777 S.W.2d 391 (Tex. 1989); *Lincoln County Sch. Dist. No. 1 v. State*, 985 P.2d 964 (Wyo. 1999); *Campbell County Sch. Dist. v. State*, 907 P.2d 1238 (Wyo. 1995); *Washakie County Sch. Dist. No. 1 v. Herchler*, 606 P.2d 310 (Wyo. 1980). For a list of state cases addressing school funding in general, see Kelly Thompson Cochran, Comment,

Beyond School Financing: Defining the Constitutional Right to an Adequate Education, 78 N.C. L. Rev. 399, 400 n.22 (2000).

⁵See, *Making Money Matter*, *supra note 2*, at 65-100.

⁶See generally, Stephen D. Sugarman, *School Choice and Public Funding* in *School Choice and Social Controversy* (Sugarman, S. and Kemerer, F. eds., Brookings Institution Press, 1999) at 121-123.

⁷F. Howard Nelson, et. al., *Venturesome Capital: State Charter School Finance Systems* (December 2000)(National Charter School Finance Study), at 30-31.

⁸Eric Premack, *California Charter School Finance: A Guide for Charter Schools and Charter-Granting Agencies* (2000-01 Edition), at 26.

⁹Sugarman, *supra note 6*, at 116.

¹⁰*Id.*

¹¹The Los Angeles case, titled *Rodriguez v. LAUSD*, was filed in 1986 and settled in 1992, and the consent decree is still being monitored annually. Information provided here is based on the author's interview of co-lead counsel Lew Hollman of CLIPI (Center for Law in the Public Interest) on April 16, 2002.

¹²Premack, *supra note 8*, at 26.

¹³See W. Lance Conn, *Funding Fundamentals: The Cost/Quality Debate in School Finance Reform*, 94 Ed. Law Rep. 9, 17-18 (1994) (describing California's low-level spending relative to other states, observing "one of the wealthiest states in the country now ranks 25th in per pupil expenditures").

¹⁴See United States Department of Education, *Digest of Education Statistics, 2000*, Table 168, available at <http://nces.ed.gov/pubs2001/digest/dt168.html> (showing California's per-pupil spending level at \$5,795, New Jersey's at \$10,233, and Connecticut's at \$9,221).

¹⁵Proposition 13 was passed in California in 1978. This measure "rolled back" most real property assessments to their 1975-76 levels and limited the property tax rate to one percent of full cash value. It also required a two-thirds vote of the state legislature to enact any new state taxes and a two-thirds vote of the electorate of a locality for any new local taxes. See Richard J. Stark, *Education Reform: Judicial Interpretation of State Constitutions' Education Finance Provisions—Adequacy vs. Equality*, 1991 Ann. Surv. Am. L. 609, 621, nt 27.

¹⁶William A. Fischel, *How Serrano Caused Proposition 13*, 12 J. of Law & Politics, 607-645 (1996).

¹⁷D. Roderick Kiewiet, *Californians Can't Blame Everything on Proposition 13*, 40:6

Public Affairs Report (Nov. 1999), *available at* <http://www.igs.berkeley.edu/publications/par/Nov1999/Kiewiet.html>.

¹⁸ See United States Department of Education, *Digest of Education Statistics, 2000*, Table 168, *available at* <http://nces.ed.gov/pubs2001/digest/dt168.html> (showing Alabama's per-pupil spending level at \$5,166, Louisiana's at \$5,645, and Mississippi's at \$4,575).

¹⁹ *Budget, Finance, and Fundraising*, *available at* www.uscharterschools.org/lpt/uscs_docs/23 (describing funding sources available to charter schools)(last visited 9/11/2001).

²⁰ *Id.* See also, Stephen D. Sugarman and Emlei M. Kobuyama, *Approving Charter Schools: The Gate-Keeper Function* 53 *Administrative Law Review* 870, 907-09 (2001).

²¹ Premack, *supra note 8*, at 21-22.

²² Cal. Educ. Code section 47613.

²³ Premack, *supra note 8*, at 33. See generally United States General Accounting Office, *Charter Schools: Limited Access to Facility Financing* (September 2000)(describing the inadequacy of funding available for charter school facility financing).

²⁴ Premack, *supra note 8*, at 69, 77.

²⁵ Paul T. Hill *The Supply Side of School Choice* in *School Choice and Social Controversy*, *supra note 6*, at 140-73.

²⁶ Premack, *supra note 8*, at 33.

²⁷ Sugarman, *supra note 20*, at 893-907.

²⁸ Nelson, *supra note 7*, at 36.

²⁹ Premack, *supra note 8*, at 27.

³⁰ Stephen D. Sugarman, *Two School-Finance Roles for the Federal Government: Promoting Equity and Choice*, 17 *St. Louis U. Public L. Rev.* 79, 80-81 (1997).

³¹ Bridget A. Flanagan and Chad J. Graff, *Federal Mandate to Educate Disabled Students Doesn't Cover Costs*, 47-SEP *Fed. Law.* 22 (2000). See also Jane K. Babin, *Comment: Adequate Special Education: Do California Schools Meet the Test?*, 37 *San Diego L. Rev.* 211 (2000).

³² See generally, Robert W. Adler, *Unfunded Mandates and Fiscal Federalism: A Critique*, 50 *Vand. L. Rev.* 1137 (1997).

³³Premack, *supra note 8*, at 43.

³⁴Nelson, et al., *supra note 7*, at 40.

³⁵*Id.*, at 40, nt 24.

³⁶See generally, Laura F. Rothstein, *School Choice and Students with Disabilities in School Choice and Social Controversy*, *supra note 6*, at 332-64.

³⁷See Nelson, et al., *supra note 7*, at 36.

³⁸*Id.*, at 37.

³⁹Jeffrey R. Henig and Stephen D. Sugarman, *The Nature and Extent of School Choice*, in *School Choice and Social Controversy*, *supra note 6*, at 29.

⁴⁰See generally, K. Lloyd Billingsley & Pamela A. Riley, *Expanding the Chartering Idea* (Pacific Research Institute 1999).

⁴¹Meredith May, "Fake enrollment at charter school," *San Francisco Chronicle* (January 24, 2002), at A19; Meredith May, "State investigating charter school system; Recent fraud probe sparks scrutiny," *San Francisco Chronicle* (Feb. 27, 2002), at A13.

⁴²Senate Bill 740, 2001-2002 Reg. Sess. (Cal. 2001)(Oct. 14, 2001 Version), *available at* http://www.leginfo.ca.gov/pub/bill/sen/sb_0701-0750/sb_740_bill_20011014_chaptered.pdf.

⁴³See generally, Joe Nathan, *Charter Schools: Creating Hope and Opportunity for American Education* (Jossey-Bass 1996).

⁴⁴See generally, Frank R. Kemerer, *School Choice Accountability*, in *School Choice and Social Controversy*, *supra note 6*, at 174-211.

⁴⁵Hill, *supra note 25*, at 156-159.

About the Author

Stephen Sugarman

Agnes Roddy Robb Professor of Law
UC Berkeley
School of Law

Email: sugarman@law.berkeley.edu

The World Wide Web address for the *Education Policy Analysis Archives* is epaa.asu.edu

General questions about appropriateness of topics or particular articles may be addressed to the Editor, Gene V Glass, glass@asu.edu or reach him at College of Education, Arizona State University, Tempe, AZ 85287-2411. The Commentary Editor is Casey D. Cobb: casey.cobb@unh.edu .

EPAA Editorial Board

[Michael W. Apple](#)

University of Wisconsin

[John Covalleskie](#)

Northern Michigan University

[Sherman Dorn](#)

University of South Florida

[Richard Garlikov](#)

hmwkhhelp@scott.net

[Alison I. Griffith](#)

York University

[Ernest R. House](#)

University of Colorado

[Craig B. Howley](#)

Appalachia Educational Laboratory

[Daniel Kallós](#)

Umeå University

[Thomas Mauhs-Pugh](#)

Green Mountain College

[William McInerney](#)

Purdue University

[Les McLean](#)

University of Toronto

[Anne L. Pemberton](#)

apembert@pen.k12.va.us

[Richard C. Richardson](#)

New York University

[Dennis Sayers](#)

California State University—Stanislaus

[Michael Scriven](#)

scriven@aol.com

[Robert Stonehill](#)

U.S. Department of Education

[Greg Camilli](#)

Rutgers University

[Alan Davis](#)

University of Colorado, Denver

[Mark E. Fetler](#)

California Commission on Teacher Credentialing

[Thomas F. Green](#)

Syracuse University

[Arlen Gullickson](#)

Western Michigan University

[Aimee Howley](#)

Ohio University

[William Hunter](#)

University of Calgary

[Benjamin Levin](#)

University of Manitoba

[Dewayne Matthews](#)

Education Commission of the States

[Mary McKeown-Moak](#)

MGT of America (Austin, TX)

[Susan Bobbitt Nolen](#)

University of Washington

[Hugh G. Petrie](#)

SUNY Buffalo

[Anthony G. Rud Jr.](#)

Purdue University

[Jay D. Scribner](#)

University of Texas at Austin

[Robert E. Stake](#)

University of Illinois—UC

[David D. Williams](#)

Brigham Young University

EPAA Spanish Language Editorial Board

Associate Editor for Spanish Language

[Roberto Rodríguez Gómez](#)

Universidad Nacional Autónoma de México

roberto@servidor.unam.mx

Adrián Acosta (México)

Universidad de Guadalajara
adrianacosta@compuserve.com

Teresa Bracho (México)

Centro de Investigación y Docencia
Económica-CIDE
bracho dis1.cide.mx

Ursula Casanova (U.S.A.)

Arizona State University
casanova@asu.edu

Erwin Epstein (U.S.A.)

Loyola University of Chicago
Eepstein@luc.edu

Rollin Kent (México)

Departamento de Investigación
Educativa-DIE/CINVESTAV
rkent@gemtel.com.mx
kentr@data.net.mx

Javier Mendoza Rojas (México)

Universidad Nacional Autónoma de
México
javiermr@servidor.unam.mx

Humberto Muñoz García (México)

Universidad Nacional Autónoma de
México
humberto@servidor.unam.mx

Daniel Schugurensky

(Argentina-Canadá)
OISE/UT, Canada
dschugurensky@oise.utoronto.ca

Jurjo Torres Santomé (Spain)

Universidad de A Coruña
jurjo@udc.es

J. Félix Angulo Rasco (Spain)

Universidad de Cádiz
felix.angulo@uca.es

Alejandro Canales (México)

Universidad Nacional Autónoma de
México
canalesa@servidor.unam.mx

José Contreras Domingo

Universitat de Barcelona
Jose.Contreras@doe.d5.ub.es

Josué González (U.S.A.)

Arizona State University
josue@asu.edu

María Beatriz Luce (Brazil)

Universidad Federal de Rio Grande do
Sul-UFRGS
lucemb@orion.ufrgs.br

Marcela Mollis (Argentina)

Universidad de Buenos Aires
mmollis@filo.uba.ar

Angel Ignacio Pérez Gómez (Spain)

Universidad de Málaga
aiperez@uma.es

Simon Schwartzman (Brazil)

American Institutes for Resesarch–Brazil
(AIRBrasil)
simon@airbrasil.org.br

Carlos Alberto Torres (U.S.A.)

University of California, Los Angeles
torres@gseisucla.edu