

HOT TOPICS in Education Law:

**Alabama School Choice and Student
Opportunity Act (Charter Schools)**

Hereford v. Huntsville City Schools

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Topics for this Session

- Alabama School Choice and Student Opportunity Act:
 - Charter schools finally come to Alabama.
 - What are these schools?
 - How do they operate?
 - What will they do for (or to) public education?
- *Hereford v. Huntsville City Schools*:
 - Desegregation case in 2015?
 - What is a consent order?
 - Major changes in store for HCS?
- Interaction of charter school law with the consent order?



What are Charter Schools?

- Publicly funded schools operated under contract with not-for-profit organizations.
- Operate outside many Department of Education regulations applicable to non-charter public schools.
- Provide another parental choice for parents.
- Consumerism brought to public education?



Key Terms

- Public Charter Schools.
 - Conversion charter schools.
 - Start-up charter schools.



Key Terms

■ Authorizer

- Local School Boards or
- Alabama Public Charter School Commission.
 - 11 members.
 - 4 appointees from governor.
 - 1 appointee from Lt. governor.
 - 2 appointees from president pro tempore of the Senate.
 - 3 appointees from speaker of the House of Representatives.
 - 1 rotating member from local school system.
 - Members must be committed to supporting charter schools.
 - Hears appeals from applicants denied a charter by local school board authorizers.



Key Terms

- Governing board.
- At-risk students.
 - Economic disadvantage.
 - Academic disadvantage.
- Themes: Charter schools may be organized around a particular theme.



Conversion v. Start-Up

- Conversion.
 - A school that existed as a non-charter public school before becoming a charter school.
 - Enrollment priority for students in the prior attendance boundaries.
 - Once those students have been given priority, enrollment is available to **all students in the state**.
 - Current teachers and administrators must be given an opportunity to apply for a position.
 - Not guaranteed a position at charter school.
 - Must be given preference for other available positions in the district.
 - **No limit** on the number of conversion schools.



Conversion v. Start-Up

- Start-up
 - Enrollment open to any student residing in the state.
 - Limit of **10 per year**, state-wide.
- Provisions for both.
 - Must follow the application process.
 - Are favored if they target at-risk students.



Local School Board Dilemma

To Register, or Not To Register

- If registered, a local school board—
 - Has authorizing authority.
 - May select theme.
 - May convert an existing public school.
 - Drafts and negotiates charter contract.
 - Has oversight authority and responsibility.
 - Earns percentage of per pupil allocation for oversight.



Local School Board Dilemma

To Register, or not to Register

- If not registered—
 - Commission may authorize charter school in district.
 - Local district will have no authority to influence theme.
 - Local district will have no input on charter contract.
 - Local district will have no oversight authority.
 - Local district will receive no part of per pupil allocation for charter schools authorized by the commission.



Why not Register?

- Significant responsibility in connection with applications.
- Significant reporting and oversight responsibility.
- Little control over charter school educational product.
- Diversion from mission of operating public schools.
- Philosophical opposition to charter schools.
- Potential liability risk.
- Conflict with desegregation orders (more later).



Contradictory Provisions

Ever present in Alabama's legislation

- “This subsection does not preclude the formation of a public charter school whose mission is focused on serving special education students, **students of the same gender**, students who pose such severe disciplinary problems that they warrant a specific educational program, or students who are at risk of academic failure. Notwithstanding the stated mission of the public charter school, **any student may attend.**”
- “Each member of the commission shall have demonstrated understanding of and **commitment to charter schooling** as a tool for strengthening public education and shall sign an agreement to hear the appeal and review documents **in a fair and impartial manner.**”



Local School System Immunity

Authorizer that grants a charter “is not liable for the debts or obligations of the public charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authorizer has complied with **all oversight responsibilities required by law, including, but not limited to, those required by this act.**”



Provisions About Local Systems Under Federal Desegregation Orders

- “The applicant for a public charter school, the local school board for the district in which a public charter school is proposed to be located, and the authorizer shall carefully review the potential impact of an application for a public charter school on the efforts of the local school system to comply with court orders and statutory obligations **for creating and maintaining a unitary system of desegregated public schools.**”
- “The authorizer shall attempt to measure the likely impact of a proposed public charter school on the efforts of local school systems **to achieve and maintain a unitary system.**”
- “The authorizer shall not approve any public charter school under this act that hampers, delays, or in any manner negatively affects the desegregation efforts of a local school system.”



Factors in Play for Public Schools

- Like AAA, a further drain of public education dollars away from locally operated public schools.
- How much demand for “choice” is there?
- Will drain on funding for public schools diminish ability of non-charter public schools to provide top quality educational “product”?
- Will local public schools find ways to incorporate the charter concept to enhance their product?
- Will there be a tug of war between charters and federal desegregation orders?



***Hereford v.
Huntsville City Schools***



Hereford v. Huntsville City Schools

- Filed in 1963, by Dr. Hereford on behalf of his child.
 - Fifth Avenue School (Governors Drive).
- Legal climate.
 - *Brown v. Board of Education* (1954).
 - “With all deliberate speed”
 - *Green v. School Board of New Kent County* (1968).
 - Develop a desegregation plan that “promises to work, and promises realistically to work now.”
 - Green factors:
 - Student assignment.
 - Faculty and staff assignment.
 - Facilities.
 - Extracurricular activities.
 - Transportation.



Hereford v. Huntsville City Schools

- *Singleton v. Jackson Municipal Separate School District* (1970).
 - Fifth Circuit adoption of the *Green* factors.
- 1970 Order in *Hereford*.
 - Court applies *Green* factors to Huntsville.



1970s

- Extensive efforts from HCS to integrate, including school clustering and bussing.
- Achieved significant racial diversity in nearly all schools.
- This was followed by a period of white flight.



1980s

- HCS created four magnet programs designed to combat the white flight:
 - Academy for Academics and Arts (Cavalry Hill).
 - Lee High School Performing Arts and Engineering Magnet.
 - Johnson High School International Education and Space Science.
 - Academy for Science and Foreign Language (Davis Hills).
- Birth of a very important Huntsville resident.



1990s and 2000s

- More expansion of the City of Huntsville.
- Fewer major steps towards reaching unitary status.



2014-15

- 2014:
 - Huntsville City Schools files a motion for entry of a new student assignment plan.
 - After contentious litigation, the court orders the parties (the United States and HCS) to mediate not only a new student assignment plan, but a **pathway to unitary status**.
- 2014-2015: Development of the consent order. (***What is a consent order?***)
 - Extensive mediation between the parties.
 - Completion of a plan to reach unitary status.
 - Public rollout of the plan.
 - Hearing before Judge Haikala.
 - Awaiting the court's ruling.



Contents of Proposed Consent Order

- Sets up a pathway for reaching unitary status.
 - The idea being that if HCS does what the consent order requires, it should be well positioned to petition the court for unitary status.
- This consent order does not actually grant unitary status.
- Covers the *Green* factors, plus other ancillary factors such as—
 - Student discipline.
 - Oversight.
 - Desegregation Advisory Committee .
 - Reporting.



Student Assignment

- Student attendance boundaries.
- School grade configurations.
- Feeder pattern realignment.
- Majority-to-minority transfers.
- Magnet schools and programs.
- Equitable access to course offerings.

This section makes up approximately one-half of the proposed consent order.



Extracurricular Activities

- The proposed consent order sets a floor for the number of activities at each school.
- There are set minimums for each grade configurations (elementary, middle, and high school).



Facilities

- New construction.
- Renovations.
- Playground plans.
- SMALLab plans.



Faculty

- Continuing measures to ensure racial diversity for—
 - District-level administrators.
 - Principals.
 - Faculty.
 - Selection committees.



Transportation

- The parties have agreed to move jointly for unitary status as to this factor.



Ancillary Issues

- Discipline:
 - Positive school climate.
 - New code of conduct.
 - Behavioral learning.
 - SRO and security changes.
- Desegregation Advisory Committee:
 - Made up of parents and high school seniors.
 - Meet with the superintendent and inform the court about HCS progress with the consent order terms.



Unitary Status

- No specific times are listed in the proposed consent order.
- Requires—
 - **Good faith** implementation of the terms for
 - **A reasonable period of time.**
- Translated:
 - It is up to the court.



Charter School Conflicts with the *Hereford* Proposed Consent Order

- Charter schools have freedom, under the law, to—
 - Have open enrollment.
 - Calculate their own capacity.
 - Select unique programming.
 - Adopt a unique curriculum with unique standards.



Charter School Conflicts with the *Hereford* Proposed Consent Order

- Proposed Consent Order defines policies for—
 - Zone lines, transfers, and other enrollment issues.
 - School capacity.
 - Unique programming, and protection as to this programming, at magnet schools and programs.
 - AP, IB, and honors classes, and accelerated math curriculum.



Supremacy Clause of U.S. Constitution

- Article Six, Clause 2:
 - “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”
- The remedial power of the Fourteenth Amendment is the source of the court’s power to enter the proposed consent order.



Conclusion

- The proposed consent order is a transformative document for Huntsville City Schools.
- The Alabama School Choice and Student Opportunity Act will significantly affect the way local school systems provide public education.
- The federal and state courts will have to resolve any conflicts between these two.



Questions?

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