The Politics of Education Reform: Lessons Learned from New Orleans

Robert A. Garda, Jr.
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Introduction

The education system in New Orleans was in need of dramatic reform long before Hurricane Katrina. The storm razed the educational facilities and state leaders took the opportunity to raze the broken educational governance structures in New Orleans. Leaders re-created the Orleans Parish School District based on the education reforms sweeping the nation: school choice, accountability, state takeover of failing schools, and charter schools. “Katrina struck at a critical moment in the evolution of the contemporary education-reform movement” and New Orleans “became a magnet for the school reform movement.” The new reforms took root and Orleans Parish School District is the only school district in the United States with a majority of students attending charter schools. It is also one of the few school districts where the state has taken control of a vast majority of the schools under state accountability laws. The city is now the proving ground for modern education reforms and policymakers from around the country are watching closely. The mistakes made and lessons learned in New Orleans since Hurricane Katrina can act as a roadmap for states and districts moving toward the “new” education model - choice plans, charter schools and greater state involvement in education.

This article focuses on the politics shaping the education reform efforts in New Orleans. It will not tackle the raging debate about whether charter schools and choice models provide a better education than traditional governance models. Instead, this

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* Associate Professor, Loyola University New Orleans College of Law. I would like to thank Renita Thukral for sharing her insights about the Louisiana political process. I am also appreciative of Stanley Bordelon and Jervan Wiltz for their invaluable research assistance.

4 Stephen Maloney, Nation’s Charter School Leaders Focus on New Orleans, NEW ORLEANS CITYBUSINESS, June 1, 2007; Catherine Gewertz, Vallas Charts New Path for New Orleans, EDUCATION WEEK (June 27, 2007); Lesli A. Maxwell, A City Yearns for Rebirth Among Ruin, EDUCATION WEEK (Aug. 14, 2007) (the efforts to rebuild New Orleans’ education system is “one of the nation’s most important education stories.”); Patrick Johnsson, As New Orleans Restarts its Schools, Most are Now Charter Schools, THE CHRISTIAN SCIENCE MONITOR p1 (Sept. 4, 2007) (New Orleans is the “proving ground” for charter schools); Isaacson, supra note (New Orleans will be the nation’s most visible test of the charter school movement.”); Greg Toppo, In New Orleans Schools, It’s Like Starting Over, USA TODAY p1 (June 7, 2007); Darran Simon and Sarah Carr, Panel OKs 8 New Charter Schools, NEW ORLEANS TIMES PICAYUNE Dec. 4, 2008.
5 For a discussion of recent evidence in this debate, see Trip Gabriel, Despite Push, Success at Charter Schools is Mixed, THE NEW YORK TIMES, May 1, 2010; Sonja Ralston
article discusses the political divides and hurdles that arise when choice and charter models are adopted. It is these political battles, and not student achievement data and school performance scores, which determines the form and substance of education reform.\(^6\) The disparate agendas of the interest groups - such as the teacher’s union, the state, the Orleans Parrish School Board, charter operators, and the federal government – have radically shaped the course of reconstructing education in New Orleans. Tracking these diverse interests and the political fault lines they create provides a window into similar political forces that will affect education reform in states that adopt school choice, charter schools and state takeover measures.

Part I of this article explains the political landscape before the storm, with an emphasis on the state’s repeated and failed attempts to gain control over the woefully underperforming New Orleans Public Schools. Hurricane Katrina altered the delicate balance of power and this part explains the varied interests considered and political battles waged when creating Act 35, the emergency legislation that radically transformed school governance after Katrina. Part II explains the intricacies of Act 35 and the complex governance structure and myriad types of schools it created. The decentralized, multi-operator school system created by Act 35 heightened long-standing political frictions and created entirely new ones. Part III explores these political divides and the major political players, such as the state run Recovery School District, the Orleans Parrish School Board and the individual charter schools, and their diverging interests. The political schisms arising since Hurricane often hinder the reform effort. This Part also explains the large political issues looming on the horizon, such as charter renewal and revocation and whether, when and how the state will return control of the schools to local control. Finally, Part IV explores the political lessons other school districts and states can learn from the New Orleans experience, particularly as it relates to state takeover, charter schools and school choice plans.

I. Pre-Katrina Education Reforms in New Orleans

Prior to Hurricane Katrina, the Orleans Parish School District (OPSD) was viewed as one of the worst urban school districts in the nation.\(^7\) Most of its schools were “academically unacceptable”\(^8\) under state standards and 112 of the 127 public schools...
were being threatened with state takeover. The state believed that the “poor academic performance in New Orleans was systemic.”

The Orleans Parish School Board (OPSB), the entity in control of New Orleans public schools prior to the storm, was plagued by corruption and financial mismanagement. Prior to the hurricane the district was officially bankrupt, with over $265 million in debt. Corruption had become so rampant that the FBI set up a task force housed in the district headquarters which led to dozens of criminal indictments. The OPSB had become racially polarized and appeared more concerned about who controlled supplier contracts and the union contract than the well being of children. There was also leadership void, as the OPSB ran through eight superintendents between 1998 and 2005. The high turnover rate was due, in part, to the high level of friction between the superintendents and the highly active and controlling OPSB that was infamous for its micromanagement of the system.
Based on this dismal record of academic performance and entrenched financial mismanagement and graft, the public and state legislators had lost confidence in the OPSB’s ability to run the schools. By the time Hurricane Katrina struck, the schools were in desperate need of new leadership and governance structures, but the Louisiana legislature had tried and failed at such reforms before. Long before Hurricane Katrina the Louisiana legislature had become hostile to the leadership of the OPSB and supported any measures that hacked away at its authority. The state used two primary vehicles prior to the storm to attempt to cut OPSB out of the management of New Orleans schools: the state school accountability statute and chartering enabling legislation.

A. Accountability Measures

The school accountability movement began in the 1990s. The foundation of the movement is to make schools accountable for failing to properly educate their students. This is accomplished by grading schools and districts based on their students’ scores on standardized tests, graduation rates, and other objective measures. Local districts and schools would have to meet certain benchmarks or face sanctions from the state.

Louisiana first implemented school accountability reforms in 1997 through the Louisiana School and District Accountability System (LSDAS). The LSDAS set performance growth targets for schools, developed a report card system to inform the public about school performance and called for corrective action for schools that failed to meet their targets. When the 2001 No Child Left Behind Act (NCLB) set federal requirements for state accountability systems, the Louisiana legislature responded by amending the LSDAS with the Recovery School District Act (“RSDA”). The RSDA required the newly created state run Recovery School District (RSD) to divest local school boards of control of schools that are “academically unacceptable” for four consecutive years. The failed school would be operated by the RSD and reorganized

[hereinafter COWEN CENTRAL OFFICE REPORT].

17 Laura Maggi, Senate Panel OKs School Takeover Bill – But Black Caucus, Unions Have Qualms, NEW ORLEANS TIMES PICAYUNE (Nov. 11, 2005); Laura Maggi, Orleans School State-Takeover Plan Advances – Senate Panel Also Endorses Spending Scheme, NEW ORLEANS TIMES PICAYUNE (Nov. 18, 2005). There were “long-standing, anti-New Orleans feelings among many state legislators.” TEACHERS’ UNION REPORT, supra note __, at 17.


19 LA. REV. STAT. ANN. §17:10.1 et seq. (Supp. 2009).


22 LA. REV. STAT. ANN. §17:10.5(A)(1) (Supp. 2009). It was also necessary to amend
“to bring the school to an acceptable level of performance.” The legislation specified that the RSD would retain control over schools “for a period of not less than five school years” but did not specify the conditions under which schools would be returned to local control.

Passage of the RSDA was fueled, in part, by the desire of the state to take over OPSB schools. The RSDA provided the state the necessary mechanism to wrest control of schools from distrusted school districts, and the OPSB was at the top of the list. Its passage was contentious, and school boards vehemently opposed it because it provided the state a mechanism to reduce their power over local education. Teachers’ unions also opposed it because the RSD was exclusively in control of staffing schools that were transferred to it, meaning it was not subject to collective bargaining agreements.

In 2004, the legislature again chipped away at the authority of local school boards by restricting their ability to act once the school system was deemed to be “academically in crisis.” It defined “academically in crisis” to mean a local system in which more than thirty schools are academically unacceptable or more than fifty percent of its students attend schools that are academically unacceptable. By expanding the circumstances under which local school boards lose authority, Louisiana’s accountability statute gave the state the potential to exert increasing powers over local schools. Louisiana’s accountability measures were only one tool in the state’s education reform chest; charter schools were another significant lever to divest failing school districts of their power.

B. Charter Schools

Charter schools were introduced in 1988 as a way to spawn innovation in teaching and curriculum. Charter schools are public schools run by private entities through a contract, or charter, with an authorizer. They are freed under state law from many of the restrictions that apply to traditional district schools in exchange for a higher level of accountability for academic success. Charters are granted greater autonomy over decision-making, such as staffing, budgeting and curriculum, than traditional public schools. In theory, this freedom allows charter schools to innovate new and successful
educational methods that could then be adopted district wide. Charter schools, in their infant years, were viewed as experimental schools and not as an accountability measure, but that soon changed.²⁹

In 1995, Louisiana authorized a limited pilot program for the creation of charter schools through Act 192, which became the foundation of the Louisiana Charter School Demonstration Programs Law (the “Charter Enabling Statute”).³⁰ The purpose of the new law was to create “innovative kinds of independent public schools for students.”³¹ Act 192 permitted only local school boards to authorize charter schools. The OPSB did not participate in the pilot program because of public opposition and the fear that charter schools would increase divisiveness along race and class lines.³² There was concern that charter schools would further stratify the already racially and socioeconomically segregated schools. In fact, only three charter schools opened in Louisiana in 1996, primarily because there was significant political pressure on school boards to not participate.³³ An attempt to expand the program to all school districts and allow the state Board of Elementary and Secondary Education (BESE) to authorize charters failed in the legislature in 1996.³⁴

Because of the limited participation, the Charter Enabling Statute was revised substantially in 1997 by Act 477.³⁵ Act 477 expanded participation to all school districts but capped the total number of charter schools. It also gave potential charter operators the right to appeal to BESE if their proposal was rejected by the local school board, subject to a sunset provision.³⁶ School boards were unwilling to part with control over their schools and exercised their political clout to limit the scope of the new legislation. The sunset provisions, the cap on charter schools and the rejection of an independent charter authority appointed by BESE, were successful attempts to maintain the “powers

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²⁹ Holly-Walker, supra note __, at 143-44.
³¹ LA REV. STAT. ANN. § 17:3972(A). Charter schools were not created as a means to keep a failing public school open, although the law did not preclude that from happening. LA. REV. STAT. ANN. 17:17:3972(B)(2).
³³ COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 6.
³⁴ COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 6.
³⁶ COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 6-7.
that be” at the local level.37

Under Act 477, charter schools were initially chartered for a five year period. The Act did not identify the circumstances under which charters would be renewed. It only delineated the circumstances under which charters would be revoked: failure to fulfill any requirements of the charter agreement, failure to establish improvement in the academic performance of pupils, failure to meet generally accepted accounting standards, violations of any laws applicable to a charter school.38 Charter schools knew what would lead to revocation but were provided no standards or minimum requirements for renewal.

Act 477 also identified four types of charter schools based on whether they were new schools or conversions of existing schools and their authorizing entity. Type 1 charter schools are new schools authorized by a local school board. Type 2 charter schools are new schools or converted preexisting schools authorized by BESE. Type 3 charter schools are conversions of existing public schools authorized by the local district. Type 4 charter schools are new schools or converted preexisting schools operated pursuant to a charter between a local school board and BESE.39 Each type of charter school is subject to varying rules and regulations regarding enrollment demographics, admission requirements, teacher certification requirements, asset ownership, funding streams, and obligations towards special education students.40

In 2003, the nature of charter schools changed in light of passage of the RSDA accountability law. As explained above, the RSDA authorized BESE, through the RSD, to take over failing public schools. Companion legislation created a new Type 5 category of charter schools. Type 5 charter schools are preexisting public schools transferred to the RSD and authorized by BESE.41 Unlike the other charter types, Type 5 charters could not utilize admission requirements.42 Charter schools, once considered experimental schools that could lead to district-wide innovation, were now legislatively

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37 COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 7.
38 1997 Acts No. 477 §1 (Codified as LA. REV. STAT. ANN. 17:3992(A) and (C)). It was not until 2008 that BESE promulgated a regulation providing that renewal requires the charter operator to demonstrate “at a minimum . . . improvement in the academic performance pupils over the term of the charter school’s existence.” La. Admin. Code Title 28, Part CXXXIX, §1501(F).
39 See LA. REV. STAT. ANN. § 17:3973(2)(b)(i) - (iv) (2006). For an in-depth discussion of the different types of charter schools and the different obligations of each type, see COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 8-9.
40 LA. REV. STAT. ANN. §§ 17:3991(B)(1), (B)(3), (C)(6), and (H) and §§ 17:3995(A) and (B). For an in-depth discussion of the various charter types and the different obligations of funding of each type, see Paul T. O’Neill and Renita Thukral, The Unique System of Charter Schools in New Orleans After Hurricane Katrina: Distinctive Structure, Familiar Challenges, 11 LOY. J. OF PUB. INTEREST LAW 319, 322-35 (2010).
41 2003 La. Acts No. 9 §1 (Codified as LA. REV. STAT. ANN. 17:3973(2)(b)(v)). Type 5 charter schools were exempted from the cap imposed by the legislature on the total number of charter schools that could operate in the state at one time. 2003 Acts No. 9 §1 (Codified as LA. REV. STAT. ANN. 17:3983(F)(1)).
42 LA. REV. STAT. ANN. 17:3991(B)(1)(d).
positioned to be a primary method for the state to reconstitute failing schools. This new role for charter schools became even more apparent after Hurricane Katrina. The state legislator and other political leaders attempted to use the tools of accountability and charter schools to divest the OPSB of power. State legislators introduced bills in the decade before Katrina to dissolve the locally elected board and institute a takeover. Each bill failed. There was also talk before Katrina of converting some of the public schools to charter schools as a way of adding revenue and more competent administration. The University of New Orleans proposed to create and oversee a new charter school district which would convert ten existing public schools, but union opposition halted the proposal. Finally, over strenuous OPSB objection, the state took over several New Orleans schools prior to Katrina and converted them into charter schools.

Policymakers also attempted other strategies to ebb the power of the OPSB. For example, former Mayor Nagin sought to wrest control of from OPSB by putting schools under the control of a school board appointed by a mayor, but his efforts failed.

The only significant inroad made into OPSB power was legislation in 2004 that gave control over all financial management and personnel to the superintendent. The OPSB regularly fought proposals for state takeover and charter schools and consistently won. The teacher’s union, the OPSB and many community leaders in favor of local control

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43 Holly-Walker, supra note __, at 156. The OPSB also began viewing charter schools as the best method for turning around failing schools. COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 7.


45 Kathryn G. Newmark and Veronique De Rugy, Will New Orleans become the new city of choice?, Education Next. 2006. p. 2. See also, Brian Thevnot, Lusher Faculty Approve Charter Proposal; Parents Next to Vote on Conversion Plan, TIMES PICAYUNE, August 18, 2005, at B1.

46 Laura Maggi, Senate Panel OKs School Takeover Bill – But Black Caucus, Unions Have Qualms, NEW ORLEANS TIMES PICAYUNE (Nov. 11, 2005); Steve Ritea, School Board Considers Limited Role; State Takeover Leaves Only 8 Institutions, NEW ORLEANS TIMES PICAYUNE (Dec. 7, 2005); Kathryn G. Newmark and Veronique De Rugy, Will New Orleans become the new city of choice?, EDUCATION NEXT 2006, p. 2. At that time, the state had not taken over schools anywhere else in Louisiana under the accountability laws. Charles Lussier, School Work Unfinished: More Tools Needed to Build on State’s Success, Officials Say, THE ADVOCATE p1 (Aug. 5, 2007).

47 Steve Ritea, Who Runs Schools is a Sore Spot; N.O. Mayor Has Little Control Over District, TIMES PICAYUNE, National p1 (May 15, 2006).

48 Lolis Eric Elie, N.O. Schools Now Facing Ultimate Test, TIMES PICAYUNE p1 Metro (Oct. 16, 2006); COWEN 2010 REPORT, supra note __, at 8.
were always able to stave off efforts to neuter the OPSB.\textsuperscript{49} Change would have been “utterly impossible if we had continued to try and chip away at it.”\textsuperscript{50} Then Hurricane Katrina made landfall and changed the entire political dynamic.

II. The Post-Katrina Battle for Control of the New Orleans Schools

On the second Monday of the 2005-2006 school year, Hurricane Katrina flooded New Orleans. It caused the displacement of 64,000 students and caused $800 million in damage to public school buildings.\textsuperscript{51} Fewer than 20 of the 120 school buildings remained useable after the hurricane.\textsuperscript{52} Students, teachers and administrators were all forced to evacuate and the tax base supporting the schools was decimated.\textsuperscript{53}

A. Act 35: Restructuring the New Orleans Education System

Hurricane Katrina created the perfect catalyst to reshape the governance structure of the New Orleans Public Schools. City and state leaders immediately recognized the opportunity to remove schools from the control of the OPSB.\textsuperscript{54} State leaders believed that the financial situation and broken leadership of the OPSB left it incapable of opening schools on its own. The rebuilding simply could not be left to a dysfunctional school board that had allowed the schools to deteriorate and failed to open a single school within three months of the storm.\textsuperscript{55}

Indeed, many considered the historic opportunity to reconfigure New Orleans schools “the silver lining to Katrina’s storm clouds . . .”\textsuperscript{56} Local, state, and even national

\textsuperscript{49} Darran Simon and Sarah Carr, Fresh Era Beginning for School Board; Incoming Members Bring New Stance on Charters, Union, NEW ORLEANS TIMES PICAYUNE p1, Oct, 10, 2008.

\textsuperscript{50} Michelle Goldberg, Missing School in the Big Easy (Feb. 13, 2006), available at \url{http://www.nathanielturmer.com/missingschoolinthebigeasy.htm}; Kerry Dolan, Katrina’s Surprise, FORBES 96 (Vol. 179, No. 3, Aug. 13, 2007) (“It took a hurricane to speed up and really jump start the reform efforts in New Orleans”).


\textsuperscript{52} Hill and Hannaway, supra note __; Lesli Maxwell, Up From the Ruins, EDUCATION WEEK (Oct. 3, 2007).

\textsuperscript{53} Hill and Hannaway, supra note __.

\textsuperscript{54} Laura Maggi, Blanco Backs State Takeover of N.O. Schools – Who Would Run Them is Another Question, NEW ORLEANS TIMES PICAYUNE (Nov. 2, 2005).

\textsuperscript{55} Laura Maggi, State to Run Orleans Schools; Local Board Loses Authority Over 102, NEW ORLEANS TIMES PICAYUNE, A1, Nov. 23, 2005.

\textsuperscript{56} Laura Maggi and Steve Ritea, State May Take Over 104 N.O. Schools; If Blanco’s Plan is Enacted, School Board to Control 13, NEW ORLEANS TIMES PICAYUNE (Nov. 4, 2005); Hill and Hannaway, supra note __ (education could be one of the “bright spots” or the rebuilding); Editorial, A New Beginning, TIMES-PICAYUNE, NOV. 19, 2005, at 6, available at 2005 WLNR 18707987 (calling Katrina a “golden opportunity” to rebuild a
politicians embraced the destruction that Hurricane Katrina wrought on the New Orleans public school system as a chance to turn a failing school system into a model one. In the words of then Governor Blanco, “It took the storm of a lifetime to create the opportunity of a lifetime . . . that the state take control and re-create” the New Orleans public schools. With the woefully underperforming schools decimated and the entire educational landscape needing to be rebuilt from the ground up, a power struggle over who would be in charge of the rebuilding ensued.

In late September the federal government offered a $20.9 million grant to assist new and existing charter schools, but no comparable funding was granted to traditional neighborhood schools. This immediately moved charter schools to the top of the priority list in the cash strapped school district. National charter advocacy groups also pushed for charter schools as the solution for the decimated education system, proclaiming their schools would be free from the myriad of oppressive and stagnating local rules that regulated curriculum, hiring and firing faculty, and school budgets. Many people perceived the stronghold the teachers’ union had on New Orleans public schools as a significant contributor to the problem of pupil underperformance.

better school system); Isaacson, supra note __; RECOVERY SCHOOL DISTRICT LEGISLATIVELY REQUIRED PLAN, supra note __, at 4 (Katrina created “a once-in-a-lifetime opportunity to create a fundamentally better public education system in New Orleans.”).

Kathryn G. Newmark & Veronique De Rugy, Hope After Katrina: Will New Orleans Become the New City of Choice? EDUCATION NEXT, Fall 2006, at 13, available at http://media.hoover.org/documents/ednext20064_1; Michelle Goldberg, Missing School in the Big Easy (Feb. 13, 2006), available at http://www.nathanielturner.com/missingschoolinthebigeasy.htm ("[T]he destruction, terrible as it was, may prove to be the salvation of a school district that had been drowning for years."); Toppo, supra note __; Waldman, supra note __.

TEACHERS’ UNION REPORT, supra note __, at 6. Governor Blanco also called it a “golden opportunity,” an “opportunity to do something incredible” and an “overdue gift to our children.” Hill and Hannaway, supra note __; Laura Maggi, State to Run Orleans Schools; Local Board Loses Authority Over 102, NEW ORLEANS TIMES PICAYUNE, A1, Nov. 23, 2005.


Schwam-Baird and Mogg, supra note __, at 167; UNITED TEACHERS OF NEW ORLEANS, LOUISIANA FEDERATION OF TEACHERS AND THE AMERICAN FEDERATION OF TEACHERS, NO EXPERIENCE NECESSARY: HOW THE NEW ORLEANS SCHOOL TAKEOVER EXPERIMENT DEVALUES EXPERIENCED TEACHERS 16 (June 2007); Holley-Walker supra note __, at 145.

Kathryn G. Newmark and Veronique De Rugy, Will New Orleans become the new
schools provided a means to break the union’s control.

In short, charter schools presented the state both a politically and educationally viable alternative to redesigning New Orleans public schools.62 Governor Kathleen Blanco signed executive orders in September and October that waived state laws requiring faculty and parental consent for conversion of non-charter public schools into charters and certain timelines.63 The path was cleared for charter schools.

As a result of the federal funds and public pressure, the OPSB immediately voted to approve twenty-one charter applications.64 The decision was controversial. Citizens filed a lawsuit to prevent some of these schools from opening as charter schools.65 The first meeting of the Algiers Charter School Association, which oversaw most of the new charters, had to be guarded by armed National Guardsmen.66 The new charter schools enjoyed autonomy over hiring and firing decisions meaning they were not subject to the OPSBs collective bargaining agreement and did not have to give priority to teachers who belonged to the union. The union responded to the OPSB’s grant of charter applications with a lawsuit seeking to block the opening of charter schools.67

The OPSB’s decision to charter these schools was more financial than philosophical. The district was cash-strapped and had little choice but to accept the $21 million federal grant and significant philanthropic money targeted for charters in order to open schools.68 Charter schools were adopted not because of superior educational city of choice?, EDUCATION NEXT 2006. No. 4 at 19; Patrik Jonsson, As New Orleans Restarts Its schools, Most Are Now Charter Schools, CHRISTIAN SCIENCE MONITOR, Sept. 4, 2007 at A1; Darran Simon & Sarah Carr, Fresh Era Beginning for School Board Incoming Members Bringing New Stances on Charters, Union, NEW ORLEANS TIMES-PICAYUNE, Oct. 10, 2008, at A1 (“The teachers union in New Orleans . . . are kind of labeled as obstructionists when it comes to reform.”); Jan Resseger, Public Education in New Orleans In the Aftermath of Katrina, MESSAGE ON PUBLIC EDUCATION 2007 UNITED CHURCH OF CHRIST JUSTICE & WITNESS MINISTRIES (2007); Tisserand, supra note __.

66 See Laura Maggi and Steve Ritea, State May Take Over 104 N.O. Schools; If Blanco’s
While OPSB was attempting to salvage the education system through chartering schools, other organizations pushed for more dramatic measures. New Orleans Mayor Ray Nagin organized the Bring New Orleans Back Commission, which proposed the divestment of the school board’s power by embracing charter schools and decentralized administration. The commission believed that universities and foundations would help pay for the city to rebuild schools, but only if they did not have to get involved in the maligned politics of the OPSB. The Commission called the conversion to charter schools “the expedient way” to open schools after Hurricane Katrina and proposed that traditional public schools be granted more autonomy over hiring and budgeting. Proposals to change the composition of board were also considered, including making board members appointed instead of elected. Scott Cowen, the Tulane University President, suggested the state appoint a board of business and community leaders to run the schools.

The shamed and scapegoated OPSB did not initially put up much of a fight to retain control of the schools. It publicly acknowledged that it would not be able to re-open schools for the 2005-06 school year. Knowing that the OPSB could not re-open a sufficient number of schools and that charter schools alone could not fill the gap, Governor Blanco seized the opportunity for state takeover of the schools.

In November, Governor Blanco called an emergency legislative session to determine how to rebuild the New Orleans school system. She proposed that the state take over a majority of the schools and then use the charter model as a primary tool in the recovery effort. She suggested that the state Education Department, through BESE, would take over all schools with performance scores below the state average – roughly 100 schools – place them in the Recovery School District (RSD) and control every aspect

Plan is Enacted, School Board to Control 13, NEW ORLEANS TIMES PICAYUNE (Nov. 4, 2005); THE INSTITUTE ON RACE AND POVERTY, supra note __, at 27.

69 THE INSTITUTE ON RACE AND POVERTY, supra note __, at 11, 27, 69-70; Dirk Tillotson, What’s Next for New Orleans?, HIGH SCHOOL JOURNAL, Dec. 2006- Jan. 2007, at 72. (“Now [charter schools] have moved center stage and will likely remain there if only for ‘political’ reasons.”); TEACHERS’ UNION REPORT, supra note __, at 4, 15 (“financial realities, not genuine, systemic reform – prompted the OPSB to convert roughly a dozen of its schools into charter schools.”)


71 Catherine Gewertz, New Orleans Panel Rethinks School System, EDUCATION WEEK, Jan. 11, 2006, at 5; TEACHERS’ UNION REPORT, supra note __.


73 Steve Ritea, Bell’s About to Ring, TIMES PICAYUNE, p1 (July 2006).

74 Holly-Walker, supra note __, at 136.

from choosing which schools to open, where students would attend school, and whether to run them directly or hand them over to third parties as charter schools. Only the highest performing schools would be left in the control of the OPSB. Another proposal, backed by the Republican legislative caucus, was even more drastic, calling for the state to take control over all New Orleans schools. Steve Scalise, the sponsor, argued that it made no sense to leave the highest performing schools in the hands of the distrusted OPSB.

The hearings on the proposals were contentious. Proponents of the proposals argued that rebuilding the schools could not be left to a local board that had allowed the schools to disintegrate before the storm and who had failed to open a school in the three months since the storm. The state, they urged, could do a better job of running the schools and utilize best practices and national experts to build model schools.

The OPSB and its interim superintendent opposed the push for state takeover. The Orleans Parish delegation, particularly the African-American members, also resisted a change in education governance arguing that the proposals were mere “opportunism” to finally wrest the schools from local control. They argued that the measure was simply privatization of schools pushed by national groups with an ideological agenda meant only to strip power from the local electorate.

The unspoken underlying concern was that the white leaders in Baton Rouge were divesting the primarily black leadership in the OPSB of power. It was perceived that white outsiders (in Baton Rouge and national education interest groups) were using the hurricane to fix what the mostly black leadership of New Orleans could not. The state takeover would mean that administrative control would be moved from the mostly

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76 Laura Maggi, N.O. Schools Takeover Idea Has Legs – House, Senate Panels Tackle Bills this Week, NEW ORLEANS TIMES PICAYUNE (Nov. 9, 2005).
77 House Bill 93; Laura Maggi, Panel Approves 2 Bills Allowing School Takeover – Scalise Plan Puts all N.O. Classes into State’s Hands, NEW ORLEANS TIMES PICAYUNE (Nov. 10, 2005); Laura Maggi, Orleans School State-Takeover Plan Advances – Senate Panel Also Endorses Spending Scheme, NEW ORLEANS TIMES PICAYUNE (Nov. 18, 2005).
78 Laura Maggi, Orleans School State-Takeover Plan Advances – Senate Panel Also Endorses Spending Scheme, NEW ORLEANS TIMES PICAYUNE (Nov. 18, 2005); Laura Maggi, State to Run Orleans Schools – Local Board Loses Authority Over 102, NEW ORLEANS TIMES PICAYUNE (Nov. 23, 2005).
80 Laura Maggi, N.O. Schools Takeover Idea Has Legs – House, Senate Panels Tackle Bills this Week, NEW ORLEANS TIMES PICAYUNE (Nov. 9, 2005); Laura Maggi, Senate Panel OKs School Takeover Bill – But Black Caucus, Unions Have Qualms, NEW ORLEANS TIMES PICAYUNE (Nov. 11, 2005); Laura Maggi, State to Run Orleans Schools – Local Board Loses Authority Over 102, NEW ORLEANS TIMES PICAYUNE (Nov. 23, 2005); Schwam Baird and Mogg, supra note __, at 169-70. A majority of New Orleans legislators voted against Governor Blanco’s proposal. Tisserand, supra note __; TEACHERS’ UNION REPORT, supra note __, at 17.
81 Maxwell, supra note __. For a discussion of the claims of racism in passage of Act 35, see Schwam Baird and Mogg, supra note __, at 171.
minority OPSB and electorate to a mostly white state run system in Baton Rouge.\(^{82}\) There was also concern that the mostly black teaching force that comprised the union prior to Katrina would be replaced by a mostly white, non-union teaching force after the storm.\(^{83}\) Another major critique was that parents, teachers and administrators, most of them minorities displaced by the storm, were cut out of the education reform discussion.\(^{84}\)

Teacher’s unions also opposed the reform worrying that it could lead to worse working conditions and benefits.\(^{85}\) Schools transferred to the RSD would not be subject to any collective bargaining agreements as the RSD had absolute discretion about staffing. The United Teachers of New Orleans backed an amendment to Governor Blanco’s proposal which would keep the collective bargaining agreement in place as schools moved to state control.\(^{86}\) The amendment failed but the stage was set for union resistance to the state takeover and charter reform efforts which have persisted.

In the end Governor Blanco’s proposal for partial takeover of the schools won out over the proposal for full state takeover.\(^{87}\) On November 30, 2005 Act 35 was signed into law with broad based support from legislators that were increasingly unhappy with the OPSB.\(^{88}\) Act 35 granted the state a new mechanism to take over schools. Prior to Act


\(^{83}\) Patrik Jonsson, *As New Orleans Restarts Its schools, Most Are Now Charter Schools*, *Christian Science Monitor*, Sept. 4, 2007 at A1 (After the storm, says Ms. Cockerham, New Orleans’ black teachers were the victims of an ideological drive by elitist—and mostly white—pro-charter advocates who now control the central office.”).


\(^{85}\) Laura Maggi, *N.O. Schools Takeover Idea Has Legs – House, Senate Panels Tackle Bills this Week*, *New Orleans Times Picayune* (Nov. 9, 2005);


\(^{87}\) House Bill 93 passed the House but died in a Senate committee. *Key Votes on Disaster Issues*, *Baton Rouge Advocate* (Nov. 27, 2005).

the state could only take over schools that were “academically unacceptable” for four straight years. Act 35 allowed the state to take control of schools that were not “academically unacceptable” but that had school performance scores below the state average, so long as the school was in a district designated as being in “academic crisis.” This change in designation transferred control over 107 New Orleans public schools to the RSD.

Pursuant to Act 35, the RSD would “retain jurisdiction over any school transferred to it for a period of not less than five school years. . . .” This language mirrored the existing language under the RSDA for the “traditional” state takeover and did not specify the conditions under which schools would be returned to local control. At the time, five years was viewed as plenty of time for OPSB to get its financial house in order and prepare for the return of its schools.

Act 35 also made changes to the Charter Enabling Statute, contemplating that the schools taken over by the RSD would soon become Type 5 charter schools. It mandated concrete authorizing standards and limited who could be on a charter school’s governing board. The Act also provided that schools transferred to the RSD “shall be reorganized . . . and operated . . . in whatever manner is determined by [the RSD] to be most likely to improve the academic performance of each student in the school.” The legislature obviously contemplated that the RSD would be a small, lean administrative office overseeing charter schools and directly running few, if any, of the newly transferred schools.

Act 35 also removed the authority of local school boards that has been declared to

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89 LA. REV. STAT. ANN 17:10.5(A)(1).
90 2005 1st Ex. Sess. La. Acts No. 35 §1 (Codified as LA. REV. STAT. ANN 17:10.7(A)(1)). At the time of the legislation, the OPSD was in “academic crisis” because it had more than 30 academically unacceptable schools. See LA. REV. STAT. ANN. §17:10.6 (2009)); Laura Maggi, Senate Panel OKs School Takeover Bill – But Black Caucus, Unions Have Qualms, NEW ORLEANS TIMES PICAYUNE (Nov. 11, 2005).
91 RECOVERY SCHOOL DISTRICT LEGISLATIVELY REQUIRED PLAN, supra note __, at 12; Schools Transferred to the Recovery School District Pursuant to HB 121, available at http://www.louisianschools.net/lde/misc/pub.asp
92 2005 1st Ex. Sess. La. Acts No. 35 §1 (codified at LA. REV. STAT. ANN § 17:10.7(C) (2005)).
93 Steve Ritea, School Board Considers Limited Role; State Takeover Leaves Only 8 Institutions, NEW ORLEANS TIMES PICAYUNE (Dec. 7, 2005).
94 BOSTON CONSULTING GROUP, supra note __, at 28.
95 2005 1st Extra. Sess. La. Acts No. 35 §1 (Codified as LA. REV. STAT. ANN. § 17:3973(2)(b)).
96 2005 1st Extra. Sess. La. Acts No. 35 §1 (Codified as LA. REV. STAT. ANN. § 10.7(B)(1)).
97 Steve Ritea, Bell’s About to Ring, TIMES PICAYUNE, p1 (July 2006); Waldman, supra note __; BOSTON CONSULTING GROUP, supra note __, at 17. But see THE INSTITUTE ON RACE AND POVERTY, supra note __, at 27 (arguing that the legislature did not intend a rise in charter schools through Act 35).
be in academic crisis – at the time only the OPSB - to consider, review, or act upon charter applications for Type 1 charter schools. In other words, no new schools would be placed in the control of the OPSB, the most it could do was convert existing traditional schools into charter schools.

Finally, because it was uncertain where schools would open and where residents would return, it was critical that schools become city-wide access schools – meaning they were required to take students from anywhere in the district and provide transportation. New Orleans no longer has neighborhood schools with attendance zones. While the open enrollment policy was born out of necessity it quickly became a popular characteristic of the school system that remains despite a stable population base making it no longer critical.

The political compromise of Act 35 was clear – OPSB could survive, but barely. Even presented with the “opportunity” of Katrina's devastation, policymakers were unwilling to dissolve the New Orleans district entirely. Considering that full takeover and replacement is a common practice in other areas, this limited takeover speaks volumes of the political power of the OPSB. Act 35 promised that the RSD schools may be returned to the control of OPSB in five years, but there was no guarantee and the RSD already had hopes of turning most of the schools into charter schools by that time.

Having been stripped of its schools and in order to prevent bankruptcy, the OPSB fired 7,500 employees, including 4,000 teachers. The union responded with

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98 2005 1st Extra. Sess. La. Acts No. 35 §1 (Codified as LA. REV. STAT. ANN. 17:17;3982(A)(1)(b)).
99 Darran Simon, New School Era Opens Today; Recovery District Has 13,400 Students, New Orleans Times Picayune, p1 (Sept. 4, 2007). For a thorough discussion of the genesis of city-wide access schools, see Schwam Baird and Mogg, supra note __, at 173-75. Only six schools, all charter schools, do not provide free transportation to their students. THE INSTITUTE ON RACE AND POVERTY, supra note __, at 30.
101 In a recent survey, 79% of voters and 88% of parents support school choice and agree that parents should be able to send their children to any school in the city. THE SCOTT S. COWEN INSTITUTE, PUBLIC EDUCATION THROUGH THE PUBLIC EYE: A SURVEY OF NEW ORLEANS VOTERS AND PARENTS 4 (Dec. 2009), available at _____.
102 COWEN POLITICAL LEADERSHIP REPORT, supra note __, at 24.
103 Laura Maggi, State to Run Orleans Schools – Local Board Loses Authority Over 102, NEW ORLEANS TIMES PICAYUNE (Nov. 23, 2005); Laura Maggi and Steve Ritea, State May Take Over 104 N.O. Schools; If Blanco’s Plan is Enacted, School Board to Control 13, NEW ORLEANS TIMES PICAYUNE (Nov. 4, 2005); Holly-Walker, supra note __, at 144; Editorial, Starting Off in the Hole, TIMES PICAYUNE, p6 Metro (Aug. 17, 2006).
104 BOSTON CONSULTING GROUP, supra note __, at 10; Tisserand, supra note __.
unsuccessful lawsuits attempting to block Act 35 and the terminations. One of the biggest and most powerful opponents of charter schools and state takeover measures – teacher unions - was wiped off the political map. A member of BESE stated that neutering the unions was a positive “unintended consequence” of the state takeover.” It may not have been unintended, as Act 35 provided the only way for the state to “terminate . . . central office employees [and] eliminate the collective bargaining agreement . . ..” Today, no public school teachers in New Orleans are covered by a union contract, though the unions continue to issue scathing reports about the state takeover and charter schools.

With the passage of Act 35, the “dream” educational structure of choice and charter advocates was attained. Students would be provided access and transportation to almost any school within the district, many of which would be charter schools with autonomy over hiring, curriculum and budget. Paul Vallas, the Superintendent of the RSD, proclaimed that “[t]his will be the greatest opportunity for educational entrepreneurs, charter schools, competition and parent choice in America.” New Orleans would be the ultimate testing ground, and battle ground, for the new education model embracing choice, competition, charter schools and accountability.

### B. The New Governance Structure

Act 35 changed the educational governance structure overnight, from a centralized, single-district system to multi-operator, decentralized model that contemplated a rise in charter schools. As of August 2010, the organizational governance chart of New Orleans’ schools must certainly be one of the most complex of any school district in the country.

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107 Tisserand, *supra* note __.


109 Waldman, *supra* note __.

110 Isaacson, *supra* note __; Waldman, *supra* note __ (it was hailed as “the biggest experiment in a system of schools of choice we’ve ever seen” and “the most market driven system in the United States.”).

Act 35 effectively turned over operational control and governance of the New Orleans public schools to three separate entities: the OPSB, the RSD and a myriad of charter operators. The result was even more fractured because five different types of charter schools exist in Louisiana, each with unique funding streams, enrollment rules, and authorizing entities. This means Act 35, combined with prior legislation, created seven distinct types of schools in New Orleans: RSD direct run, OPSB direct run and five different types of charter schools.

First, there are the schools under the control of the OPSB. These schools were the highest performing schools prior to Katrina and many employ explicit and implicit selective admission requirements. Many demand admissions essays, parent involvement, minimum retention G.P.A., behavior contracts, or a certain level of academic
achievement. As of August 2010, the OPSB directly runs four schools and oversees twelve charter schools. The OPSB charter schools are Type 1, 3 and 4 charter schools, overseen by the OPSB, and represent the best of the pre-Katrina traditional schools. These schools consistently outperform the other New Orleans schools, by a significant margin, on state accountability measures. They also enroll the second smallest percentage of African-Americans (69%) and the lowest percentage of students receiving free and reduced lunch (63%) of all the school types in New Orleans and serve the highest percentage of white students.

The OPSB also directly runs four schools, including two magnet high schools. These schools are the second best performers on state accountability measures of all New Orleans school types. They enroll the third smallest percentage of African American students (93%) and students receiving free and reduced lunch (78%) of all the school types in New Orleans.

The second district, the RSD, will oversee forty-six charter schools and directly run twenty three schools in the 2010-2011 school year. The RSD direct-run schools were created as a “Plan B” after the state did not receive enough qualified applicants to open charter schools in 2005 and 2006. As a member of BESE explained, “[w]e wanted charter schools to open and take the majority of the students. That didn’t happen, and now we have the responsibility of educating the ‘leftover’ children.” The RSD was woefully unprepared to directly run schools and began at a severe disadvantage.

112 THE INSTITUTE ON RACE AND POVERTY, supra note __, at 4, 29; COWEN 2010 REPORT, supra note __, at 21.
113 COWEN 2010 REPORT, supra note __, at 9.
114 TEACHERS’ UNION REPORT, supra note __, at 15.
115 COWEN 2010 REPORT, supra note __, at 27.
118 COWEN 2010 REPORT, supra note __, at 27.
119 COWEN FIVE YEAR REPORT, supra note __, at 8-9. See also THE INSTITUTE ON RACE AND POVERTY, supra note __, at 38-42.
120 Sarah Carr, New Orleans Charter Schools will Outnumber Traditional Schools 2 to 1 Next Year, THE TIMES PICAYUNE, May 5, 2010. It oversaw 37 charter schools and directly operated 33 schools at the beginning of the 2009-10 school year. COWEN 2010 REPORT, supra note __, at 9.
121 Waldman, supra note __; Quigley, supra note __; BOSTON CONSULTING GROUP, supra note __, at 17.
122 Quigley, supra note __.
123 Steve Ritea, Students Back in Douglas High; But School Still Struggles With Basic Services, THE TIMES PICAYUNE p1 Metro (Oct. 3, 2006); COWEN CENTRAL OFFICE REPORT
RSD direct-run schools also cannot cap enrollment like charter schools, have to take all students, even those arriving mid-year, and cannot exert any control over enrollment like charter schools. They essentially have to take all-comers.\textsuperscript{124} It is no surprise that RSD direct-run schools were quickly viewed as the “dumping ground” for students with behavioral or academic challenges or for students that simply could not get into charter schools.\textsuperscript{125}

Not surprisingly, the RSD direct run schools consistently perform worse on state accountability measures than any other school type in New Orleans.\textsuperscript{126} The RSD direct-run schools have the highest percentage of African Americans enrolled (97%), the lowest percentage of white students and the second highest percentage of free and reduced lunch students (88%) of all the school types in New Orleans.\textsuperscript{127}

The RSD also oversees a growing number of Type 5 charter schools. The percentage of students attending charter schools in New Orleans has risen every year since Katrina. Sixty percent of students attended charter schools in 2009-10 school year and it is anticipated that over seventy percent of students will attend charter schools in the 2010-11 school year.\textsuperscript{128} Charter schools will outnumber direct run schools by more than two to one and by 2012 the ratio is expected to be three to one.\textsuperscript{129}

The RSD charter schools have the second highest percentage of African Americans enrolled (96%) and the highest percentage of students eligible for free and

\textsuperscript{124} \textit{The Institute on Race and Poverty}, supra note __, at 9 (the RSD, expecting to charter most of its schools, was unprepared to directly run schools); \textit{Cowen 2008 Report}, supra note __, at 10-11; \textit{Editorial, Starting Off in the Hole}, \textit{Times Picayune}, p6 Metro (Aug. 17, 2006); \textit{Editorial, Finding the Best Teachers}, \textit{Times Picayune}, p4 Metro (July 17, 2006); \textit{Boston Consulting Group}, supra note __, at 18.

\textsuperscript{125} \textit{Boston Consulting Group}, supra note __, at 11; \textit{Quigley}, supra note ___; Christopher Tidmore, \textit{Cosby Weighs in on State-Run Schools}, \textit{Louisiana Weekly}, February 5, 2007; \textit{Tough}, supra note ___ (calling RSD direct run schools “schools of last resort.”); \textit{Teachers’ Union Report}, supra note __, at 17 (explaining why the RSD direct run schools are the schools of last resort).


\textsuperscript{127} \textit{Cowen Five Year Report}, supra note __, at 8-9; \textit{Cowen 2010 Report}, supra note __, at 11-12; \textit{The Institute on Race and Poverty}, supra note __, at 38-42.

\textsuperscript{128} \textit{Cowen Governance Models Report}, supra note __, at 4, 11; \textit{Cowen 2010 Report}, supra note __, at 11. In the 2010-11 school year, four new charter schools will open and six RSD direct run schools will convert to charter schools. \textit{Cowen Governance Models Report}, supra note __, at 1.

\textsuperscript{129} \textit{Cowen Governance Models Report}, supra note __, at 1; Sarah Carr, \textit{New Orleans Charter Schools will Outnumber Traditional Schools 2 to 1 Next Year}, \textit{The Times Picayune}, May 5, 2010; \textit{The Institute on Race and Poverty}, supra note __, at 5, 11.
reduced lunch (90%) of all the school types in New Orleans.\textsuperscript{130} These schools are the second worst performers on state accountability measures of all New Orleans school types.\textsuperscript{131}

Lastly, three additional charter schools are overseen by BESE which is independent of both the OPSB and the RSD. One of these schools is new while the other two are high performing selective admission schools.\textsuperscript{132} These charter schools enroll the lowest percentage of African-American students (68%) and the second lowest percentage of free and reduced price lunch students (70%) of any school type.\textsuperscript{133}

In sum, there are 7 types of schools in New Orleans each subject to different rules, regulations and governance: OPSB direct run schools, OPSB charter schools (of which there are three types), RSD direct run schools, RSD charter schools (Type 5) and BESE charter schools (Type 2). OPSB and BESE charters are the highest performers, have the highest percentage of white students and the lowest percentage of black students and students in poverty. OPSB direct run schools are the next best performers and enroll lower percentage of blacks and low income students than RSD schools. The RSD charter and direct-run schools have comparable enrollments for African Americans and poor students, but RSD charters outperform RSD direct run schools.\textsuperscript{134}

This complicated governance structure is compounded by the overlapping control over key system-level functions.\textsuperscript{135} The RSD and OPSB are both allowed to operate schools and manage their system finances and facilities. The OPSB, along with BESE, also have the power to authorize and oversee charter schools. No entity, it seems, has the responsibility for system-wide planning, policymaking, and coordination in this new fractured governance system.\textsuperscript{136}

III. Political Fault Lines Resulting from the New Governance Model

Deep political divisions emerged from this fractured governance structure. In theory, charter schools and school choice should appeal to conservatives because they undermine big government by introducing free market competition into a traditional public institution and they reduce the power of local school boards and unions.\textsuperscript{137}

\textsuperscript{130} COWEN FIVE YEAR REPORT, \textit{supra} note __, at 8-9.
\textsuperscript{131} COWEN 2010 REPORT, \textit{supra} note __, at 27.
\textsuperscript{132} THE INSTITUTE ON RACE AND POVERTY, \textit{supra} note __, at 29.
\textsuperscript{133} COWEN 2010 REPORT, \textit{supra} note __, at 11-12; THE INSTITUTE ON RACE AND POVERTY, \textit{supra} note __, at 38-42.
\textsuperscript{135} For an in-depth discussion of the distribution of key functions between the RSD, OPSB and BESE, see COWEN GOVERNANCE MODELS REPORT, \textit{supra} note __.
\textsuperscript{136} COWEN GOVERNANCE MODELS REPORT, \textit{supra} note __, at 7-8.
\textsuperscript{137} Tisserand, \textit{supra} note __; Michelle Goldberg, \textit{Missing School in the Big Easy} (Feb.
Liberals, according to traditional thinking, should oppose charter schools and choice for exactly these reasons. But it is not nearly that simple. Traditional political battle lines do not hold up when it comes to education reform, particularly in New Orleans. The interests are far more nuanced with many political fault lines, not one. As one traditional school leader stated, it feels like a “tug of war” between the RSD, OPSB and charter schools. The critical political divisions are between the state and OPSB, charter schools and direct run schools, and the varied races and classes.

A. The Political Tensions Between the RSD and the OPSB

The first and most obvious political tensions arose between the RSD and the OPSB. The fault line between state and local control had long historical roots before Hurricane Katrina and divisions between the two players proliferated after the storm. From the beginning there were concerns about inequitable funding between RSD and OPSB schools. The trimmed down OPSB was saddled with large legacy costs that the RSD schools did not have to pay. This meant the RSD schools could allocate more funds toward educating students, which OPSB felt gave them an unfair advantage. For example, the OPSB accused the RSD of stealing teachers by offering salary packages that could not be matched by the OPSB. This tension was not reduced until legislation in 2010 basically required all schools to share in the legacy costs. The districts also fund their direct run schools differently. The OPSB funds schools based on student to teacher ratios and mandated positions whereas the RSD funds its schools by a weighted student formula. This results in disparate funding for schools within the OPSB and the RSD and leads to jealousy, distrust and inequality.
There is still no working relationship between the RSD and OPSB. They act more like free market competitors than governmental entities engaged in the common goal of educating students. They fight over school quality, financing and are currently in a lawsuit over insurance proceeds. This makes the inevitable return of the RSD schools to OPSB control “fraught with uncertainty and political conflict.” The primary political tensions center around when and under what circumstances the state will return the schools to local governance, what will the governance structures of the returned schools look like and what will the be the governance structure of the OPSB when the schools are returned.

1. When, and Under What Circumstances, Will Schools be Returned to Local Control?

Act 35 cryptically provides that after five years (not including the year when transfer occurred) BESE will decide whether to return schools to the school district or retain control. The RSD must make a recommendation to BESE in late 2010 and 2011 as to whether some or all of the schools will be returned. Act 35 does not mandate that schools be returned to local control nor does it identify the criteria for deciding which schools to return. The opaque standards leave BESE significant discretion in deciding whether to return schools to OPSB, which leaves the door open for intense political wrangling.

The return of the schools to local control was already being considered seven months after Act 35 was passed. It continued to be a pressing concern, with calls for BESE to develop a process and timetable for the return of schools to local control. The state legislators that had voted to place 107 schools into the hands of the RSD began contemplating whether to hand them back to local control after a tumultuous first year. The first school board elected after Katrina made it a priority to craft a plan to return state run schools to local governance. Board members are now calling more vociferously

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147 COWEN 2010 REPORT, supra note __, at 30, 36.
148 Maxwell, supra note __.
149 LA. REV. STAT. ANN. § 10.7(C)(1)-(3) (2010).
150 SCOTT S. COWEN INSTITUTE FOR PUBLIC EDUCATION AT TULANE UNIVERSITY, CREATING A GOVERNING FRAMEWORK FOR PUBLIC EDUCATION IN NEW ORLEANS: EXECUTIVE SUMMARY 1 (Nov. 2009), available at _____; COWEN GOVERNANCE MODELS REPORT, supra note __, at 1; COWEN 2010 REPORT, supra note __, at 30.
151 Steve Ritea, Bell’s About to Ring, TIMES PICAYUNE, p1 (July 2006).
152 COWEN 2008 REPORT, supra note __, at 46.
153 Steve Ritea and Darran Simon, A Proven Superintendent and a Hotshot Group of Educators are Inspiring Others to Bring Their Skills to New Orleans, NEW ORLEANS TIMES PICAYUNE MAY 26, 2007.
154 Darran Simon and Sarah Carr, Fresh Era Beginning for School Board; Incoming Members Bring New Stance on Charters, Union, NEW ORLEANS TIMES PICAYUNE p1, Oct,
for the immediate return of RSD schools to local control.\textsuperscript{155} It has even been a major issue in the last two mayoral elections even though the mayor exercises not control over schools.\textsuperscript{156}

The OPSB and the teachers’ union have the most significant interest in seeing the RSD direct-run schools returned to local control. OPSB is keen to gain control over schools so that it can control hiring, budgeting, and contracting at the schools and to control the funds allocated for those schools. The union supports return to local control because its best chance entering a collective bargaining agreement is with the OPSB.

But no-one is certain of the criteria that will be used to determine which schools will be returned. Traditional accountability thinking mandates that failing schools are given to the state, reconstituted, and once they are performing well they are handed back to the local school district. The irony in this logic is that the state will return the best schools to the OPSB even though these schools thrived under state control. It seems counter-intuitive to return a high performing school under state governance to OPSB governance where it was a failing school. Because the accountability legislation does not specifically define the criteria for return to local control, the decisions might be based on political interests rather than what is best for the students of each school.

Recognizing this looming problem, the legislature amended the return provisions in 2008. Act 489 added a public hearing requirement, clarified that a majority of BESE will decide the return issue, clarified that a school may be returned after five years, not that it had to be returned, and eliminated BESE’s discretion to retain the school for a new period of less than five years.\textsuperscript{157} But the legislation failed to identify the criteria BESE was to consider in the return decision and further politicized the return decision by adding a public hearing component. It is feared that BESE, an elected board, may be susceptible to political pressure making decisions to return schools to local control.

Indeed, the first public meeting about the return of RSD schools to the OPSB was politically charged.\textsuperscript{158} Paul Pastorek, the State Superintendent, recommended that schools be returned based on three criteria: the performance of the school district that they are being returned to, the performance of the school, and whether the school wishes

\textsuperscript{155} Cindy Chang, \textit{New Orleans Parents Complain that Charter Schools Are Leaving Most Vulnerable Students Behind}, \textsc{The Times Picayune}, March 29, 2010; Ramon Antonio Vargas, \textit{Watchdog Groups Recommend New Models for Governing New Orleans Public Schools}, \textsc{The Times Picayune}, May 19, 2010.
\textsuperscript{156} Steve Ritea, \textit{Who Runs Schools is a Sore Spot; N.O. Mayor Has Little Control Over District}, \textsc{Times Picayune}, National p1 (May 15, 2006); Sarah Carr, \textit{Mayoral Candidates Offer Proposals for New Orleans Public Schools}, \textsc{The Times Picayune}, Jan. 10, 2010; Frank Donze, \textit{Mitch Llandrieu Vows Hands-On Schools Approach}, \textsc{The Times Picayune}, March 10, 2010.
\textsuperscript{157} 2008 La. Acts No. 489 §1 (Codified as LA. REV. STAT. ANN 17:10.7(C)(1) and (3)); \textsc{Boston Consulting Group}, \textit{supra} note __, at 10.
to return to local control. Not surprisingly, Superintendent Pastorek did not recommend that any school be handed back to OPSB in the next two years. The plan was notable for several reasons. First, it hinged return on the performance of the local school district in addition to performance of the schools. The idea of district performance, instead of individual school performance, is a new accountability principle and likely not contemplated when Act 35 was passed. Second, the plan allowed schools to choose whether to return to local control. It is unlikely that any school would choose to change its governance structure mid-stream meaning the RSD has positioned itself to become a permanent fixture in New Orleans education. The contingent state takeover may become a permanent governance restructuring. Finally, it provides that failing schools in the RSD will be restructured and remain in the RSD for a longer period of time. The RSD, it seems, will be given multiple attempts to reform schools, thus extending its tenure in school governance.

These unique facets of the return plan make it highly controversial. The primary concern in returning schools to the OPSB is that they will once again be financially and educationally mismanaged and micromanaged. Counterbalancing these concerns is the loss of local control if the statewide elected BESE and appointed RSD retain control of the schools. Local communities already feel they were denied input over RSD decisions to charter schools. Marginalized community voices and diminished political control were concerns raised by unions and the OPSB in opposition to Act 35 and are being heard again in the debates over returning the schools.

2. What will the Returned Schools Look Like?

The RSD, fully aware that at some point it will hand back schools to a district it does not trust, is working to change the governance models of these schools. The RSD’s plan is to charter most of the RSD operated schools. The RSD has not only chartered many schools, it is also decentralizing its operations and pushing significant powers down to the school level, such as budgeting and hiring. The goal of the RSD is to

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159 PASTOREK, supra note __, at 4-8.
161 Darran Simon, Vallas to Stick With N.O. Recovery Schools, NEW ORLEANS TIMES PICAYUNE Oct. 29, 2008; COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 10; Darran Simon, More Schools to Join Charter System, NEW ORLEANS TIMES PICAYUNE, Dec. 22, 2008 (the RSD expects to be a monitoring and intervention district, not a direct operator). The RSD wants 90% of schools to be charter schools. Tough, supra note __.
162 COWEN CENTRAL OFFICE REPORT supra note __, at 1; COWEN 2010 REPORT, supra note __, at 24; PAUL G. PASTOREK, LOUISIANA DEPT. OF EDUC., RECOVERY SCHOOL
make the RSD direct run schools operate more like charter schools, with the RSD maintaining the limited roles of accountability, school support, and shared services. Superintendent Paul Vallas stated in 2009 that “this district is going to be almost exclusively made up of charter and independent schools that may not legally be charters, but they have all the autonomy, flexibility and independence that charters do.” This follows a recent trend in education reform to abandon the centralized command and control structures that have historically dominated local school governance.

This trend is not popular with local school boards and unions, which support centralized local control over schools. OPSB and the teachers’ union are historically resistant to decentralization efforts. For example, the Louisiana School Board Association and the teachers’ unions sought ouster of state superintendent Paul Pastorek when he introduced legislation limiting school board influence on personnel decisions. More recently, the union opposed a new law in Louisiana allowing BESE to waive state laws and regulations for certain public schools to allow them more autonomy. The union filed a lawsuit challenging constitutionality of the law alleging it threatens collective bargaining arrangements.

The RSD’s practice of chartering out significant numbers of its schools pushing decision-making to the site level ensures that even when the schools are handed back to the OPSB, it will only have limited control. The strategy is essentially an end-run around the mandate to return schools to local control. The problem this presents is that the RSD may be handing back direct-run schools accustomed to a high level of autonomy to a school board that is highly centralized and makes most decision for its schools. Katrina did not change the governance structure of the OPSB: it maintains much of its authority at the central office, making decisions over hiring, curriculum, classroom materials, school calendar and length of the school day. The autonomous schools of the RSD will not be anxious to return to the OPSB and forego their newfound autonomy.

DISTRICT, CONDITIONING FOR SUCCESS: A PROCESS TO TRANSFER SCHOOLS PLACED IN THE RECOVERY SCHOOL DISTRICT 3 (2010).

163 COWEN CENTRAL OFFICE REPORT supra note __, at 1, 10; Sarah Carr, Recovery School District Principals Gaining Control Over Hiring, THE TIMES PICAYUNE, Aug 17, 2009.

164 Stephen Maloney, Momentum Continues for Switch to Charters, NEW ORLEANS CITY BUSINESS, Jan. 12, 2009.

165 Ralston Elder, supra note __, at 428-36 (explaining the autonomous schools experiments throughout the country); COWEN CENTRAL OFFICE REPORT supra note __, at 4, 12-19.

166 COWEN CENTRAL OFFICE REPORT supra note __, at 5-7 (discussing history of decentralization efforts in New Orleans).


169 COWEN CENTRAL OFFICE REPORT supra note __, at 8-9.
One option BESE has when returning schools to local control is to impose “stipulations and conditions for return.”\textsuperscript{170} While the statute does not identify what these “stipulations and conditions” may be, the ambiguity may allow BESE to require the OPSB to allow autonomous decision-making by the returned school. Indeed, Superintendent Pastorek recommended that schools not be returned unless the OPSB “establish[es] policies that protect schools’ autonomy . . .”.\textsuperscript{171} Act 35, it appears, is being utilized as a means to reform school boards, not just schools. The disparate governance structures between the schools and the OPSB, and the uncertain opportunities the legislation presents to address this problem, will only heighten the tension and politicization of the return decisions.

The return of RSD-charter schools to OPSB control also presents unique problems. These schools exist as Type 5 charter schools and the state is the authorizing and oversight agency. The decision to renew the charter and the decision to return the school to local control are occurring at roughly the same time for most of these schools. If BESE decides to return and renew a Type 5 charter school to the OPSB, the law does not provide for shifting oversight to the OPSB or reconstituting the school into a charter school under local control. In this scenario it is likely the charter – a contract – is no longer valid.\textsuperscript{172} The charter school would apparently have to re-apply for a charter with OPSB, something no charter school wants to undergo. This complication, more than school performance, may drive decisions regarding return of charter schools to the OPSB. At the very least it creates strong incentives for RSD charter schools to push for retention on the RSD. Clearly, a strategy for transferring the charter schools under the RSD’s jurisdiction back to local control must be considered.\textsuperscript{173}

3. What Will OPSB Look Like?

The last political controversy regarding the return of schools to local control is the governance structure of the OPSB. Since the storm (and before) many have voiced doubts about maintaining the highly centralized OPSB, with its excessive central office staff, financial and managerial problems and limited accountability for serving students.\textsuperscript{174} Returning schools to the OPSB as currently constituted would create tremendous turmoil.\textsuperscript{175} Many residents lack faith in the OPSB – only 34% favored return

\textsuperscript{170} LA. REV. STAT. ANN. §10.7(C)(2)(b)(ii)(dd).
\textsuperscript{171} PASTOREK, supra note __, at 6.
\textsuperscript{173} COWEN POLITICAL LEADERSHIP REPORT, supra note __, at 12.
\textsuperscript{174} PASTOREK, supra note __, at 3; COWEN CENTRAL OFFICE REPORT supra note __, at 1.
\textsuperscript{175} COWEN GOVERNANCE MODELS REPORT, supra note __, at 3.
of the schools to OPSB control. It is believed that major governance reforms must occur within OPSB for it to be successful and for the RSD to feel comfortable handing schools back to it.

Many options for changing how OPSB operates or is structured have been proposed. Restructuring options include changing how the OPSB is elected, appointing board members, requiring minimum competencies for candidates for the school board, turning the district over to mayoral control, or retaining state control. Many of these alternative governance structures have been attempted in other locations with mixed results.

There are also calls for decentralizing school districts to provide individual schools with flexibility and independence from central control. This is a clean break from the classic model of highly concentrated decision-making at the district level utilized in most school systems. The state legislature attempted to limit school districts’ power to micromanage schools in the 2009 legislative session but the legislation failed. Union and school board opposition, combined with the fact that restructuring will require amendment to the state constitution, may combine to prevent any meaningful reform of the OPSB. This has not stopped Superintendent Pastorek from demanding a change in the OPSB governance structure before RSD schools will be returned to the OPSB.

B. The Racial and Socioeconomic Divide

In New Orleans most policies are looked at through the prism of race and class and the education reforms since Katrina are no exception. It is not surprising that as early as February, 2006, when only twenty schools were open and children were being turned away from charter schools, calls of race and class inequity surfaced. The multiple school options were perceived as creating a caste system along racial and socioeconomic lines. The perception of a tiered and segregated educational system

176 COWEN GOVERNANCE MODELS REPORT, supra note __, at 19.
177 COWEN GOVERNANCE MODELS REPORT, supra note __, at 9, 16, 22.
178 COWEN POLITICAL LEADERSHIP REPORT, supra note __; COWEN GOVERNANCE MODELS REPORT, supra note __, at 16-19.
179 COWEN POLITICAL LEADERSHIP REPORT, supra note __, at 20-23.
180 COWEN GOVERNANCE MODELS REPORT, supra note __, at 19.
181 COWEN GOVERNANCE MODELS REPORT, supra note __, at 16.
182 PASTOREK, supra note __, at 5.
183 Waldman, supra note __; COWEN POLITICAL LEADERSHIP REPORT, supra note __, at 11.
185 Steve Ritea, Frustrations Fly at School Meeting; McDonough Principal, Parents Air Concerns, TIMES PICAYUNE p1 Metro (Oct. 17, 2006). See also Patrick Johnsson, As New Orleans Restarts its Schools, Most are Now Charter Schools, THE CHRISTIAN SCIENCE
persists to today. A 2010 report by The Institute on Race and Poverty, alleging that charter schools create a tiered educational system that sorts students by race and class, caused a maelstrom of controversy.

The allegations of tiering and balkanization match community sentiment. The perception of poor African Americans is that selective-admission and charter schools are reserved for more advantaged children. The mere existence of selective admission schools that have a much higher proportion of whites than other schools confirm racial stratification to many black New Orleanians. A lower percentage of African-Americans parents also believe their child is enrolled in their first choice school than white parents.

The reason for the perceived and actual balkanization is hotly disputed. Some lay the blame exclusively at the feet of charter schools. But the broader system of school choice – a fundamental underpinning to Act 35 – is also responsible. School choice in New Orleans was hailed as empowering all parents by forcing schools to compete for students or close. As Senator Lamar Alexander explained, “[t]he idea of giving free market choice to families of New Orleans primarily benefits low-income people because people with money often have those choices.” While sound in theory, New Orleans shows how poor structures mean that not everyone can exercise their choice equally. Indeed, in 2008 only 57% of parents thought they had meaningful options when enrolling their children. Enrollment barriers such as lack of information, complex enrollment procedures and selective admission schools play a major role in the balkanization of New Orleans’ schools.

One reason for the racial and socioeconomic segregation in New Orleans schools is that understanding school options and registering for enrollment are difficult and time-consuming. It is a fractured and confusing landscape, with RSD direct-run schools,
OPSBS direct-run schools, and the numerous charter schools to select from and no centralized location to obtain information or enroll. Parents are overwhelmed with the various choices and often lack the skills to negotiate several different registration processes. Parents are forced to travel around town to several locations to register for their schools of choice. School choice, it seems, is reserved for well-informed, motivated parents with the time and resources to navigate the complex information gathering and registration process.

In 2008, less than half of parents agreed that information on school options were readily available. The number rose in 2009, when 62% of parents agreed that information on different school options was readily available and 84% agreed that that the registration and enrollment process was uncomplicated. Despite the improvement, one third of parents still do not feel they have good information or good options. It is particularly difficult to disseminate information on school options in New Orleans which has a forty percent illiteracy rate.

Educators and advocacy groups recognized early the inequity resulting from lack of information and difficult registration practices and created a common application to simplify the process. RSD traditional and charter schools utilize the common application while OPSB schools, both direct run and charter, do not. This means that there is not a unified application and enrollment system and the process is complicated, but it is steadily improving.

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196 Steve Ritea, Students and Parents Line Up to Register for School in Fall; Students are Returning to Rebuild, TIMES PICAYUNE, p1 metro (July 11, 2006); Ressenger, supra note __; Bratt, supra note __, at 414.


198 COWEN 2008 REPORT, supra note __, at 15.


200 BOSTON CONSULTING GROUP, supra note __, at 25.

201 Maxwell, supra note __; COWEN 2008 REPORT, supra note __, at 15; COWEN 2010 REPORT, supra note __, at 21; Sarah Carr, School Choice is a Real Test for Parents in New Orleans, THE TIMES PICAYUNE, Nov. 8, 2009; Sarah Carr, School Choice Series: Mother is Determined to Find Best Public Pre-K, THE TIMES PICAYUNE, Nov. 10, 2009.
Another reason for balkanized system is that not all schools are truly open admission. Many of the OPSB schools are selective admission schools whereas RSD charter schools and direct run schools are prohibited from practicing selective admissions. The Office of Civil Rights launched an investigation into whether OPSB admission policies are racially discriminatory, particularly at selective admission schools. And even some RSD charter schools, while not explicitly selective admission, utilize a more subtle form of selective admissions. They require parent contracts, minimum GPAs, lengthy admission applications, foreign language proficiency or admission essays and have caps on the number of students they enroll. Even first come first served admission practices and enrollment caps are a form of selective admission that favors the informed parent with resources and time. These practices allegedly “cream” students by race, class and level of parental involvement. While there is significant uncertainty as to whether non-selective charter schools are in fact creaming the best students, the existence of schools with selective academic admission requirements inherently leads to a sorting of students, with the highest performers siphoned into the best schools and the remainder of students left for the non-selective admission schools.

While political antipathy between academic selective admission and traditional schools predated Katrina, the hostility only grew after the storm. Both RSD and OPSB officials have called for an end to selective admission magnet schools, arguing that they

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204 Maxwell, supra note __; Tough, supra note __; BOSTON CONSULTING GROUP, supra note __, at 14; Sarah Carr, School Choice is a Real Test for Parents in New Orleans, THE TIMES PICAYUNE, Nov. 8, 2009. Twenty-six percent of public schools in New Orleans have a moderate to lengthy application process. BOSTON CONSULTING GROUP, supra note __, at 20.

205 Steve Ritea, Natural Selection, TIMES PICAYUNE p1 (Oct 23, 2006).

206 Tisserand, supra note __.


cream the best students, recreate a system segregated by income and ability and send a message to other students that they are not good enough. Overt threats have been made against the selective admission charter schools that their charters may be revoked or modified to prevent selective admission standards. This adds yet another layer of political discord in New Orleans.

C. The Division Between Charter Schools, Traditional Schools and Chartering Entities

Act 35 created an entirely new political division in New Orleans- the one between charter schools and direct run schools. Tensions between these two types of schools cropped up almost immediately after Katrina. The bitterness quickly grew to the point of acrimony. While some animosity is inherent between competitors in a free market education system, certain policies and practices only heighten the tensions.

Disputes over funding drive a significant wedge between charter and direct run schools. The direct-run schools complain that charter schools have access to extra funds from nonprofits and government grants that are not available to traditional schools. Individual charter schools in New Orleans have secured $10,000 to $250,000 in additional funding through private sources. Further funding disparities resulted from the fact that OPSB charter schools were not responsible for paying off the district’s large legacy debt whereas the direct-run schools had to contribute toward the debt. Direct run schools also complained that they were paying for the oversight of charter schools. As a result, legislation in 2009 permitted districts to retain two percent of the funds provided to charter schools to pay for administrative oversight.

Charter schools, on the other hand, argue that direct-run schools receive more

209 Steve Ritea, Natural Selection, TIMES PICAYUNE p1 (Oct 23, 2006).
212 BOSTON CONSULTING GROUP, supra note __, at 17; Tisserand, supra note ___ (“The most powerful foundations and wealthiest people are helping some schools succeed that conform to their vision of what schools should be . . . It’s an attempt to influence the outcomes of experimentation.”).
funding and better facilities from their districts. The RSD and OPSB spend more per pupil in their direct run schools than they do in the charter schools. With significant discretion over capital and education funding, charters perceived that their districts were allocating more funds to their direct-run schools. Funding determinations for individual schools are complicated and opaque which leads to tension and distrust between direct run and charter schools.

Aside from jealousies about what resources and support the other type of schools are receiving, and how such differences impact performance scores, there are more fundamental divisions at play in New Orleans between charter and traditional schools. The overall charter movement feels threatened by opponents of charter schools and individual schools worry about their continued existence because of the tenuous relationship with their authorizers.

While a majority of schools are charter schools, and a majority of students attend charter schools, the charter movement still feels threatened in New Orleans. Charter schools have come under significant attack. Unions continue their strong opposition to charter schools. They and other critics view charters as a move toward privatization that takes control of the schools out of the hands of the local citizenry and hands it to outsiders. They view the entire makeover as a form of disaster capitalism and an “ideological experiment” of the Bush administration “to make a pro-privatization, anti-public education statement.” Yet others argue that charters are to blame for creating the stratified education system and they threaten traditional public schools.

Community leaders argued to BESE in 2009 to stop issuing new charters in New Orleans.

But it seems the charter movement as a whole, at least in New Orleans, has little to fear because of strong support from the state legislature. The legislature removed the cap on charters in 2009. It also made it easier to convert a traditional school to a charter school by making it optional, instead of mandatory, for charter authorizers to hold a vote of teachers, staff and parents before a traditional school can convert to a charter school. Most recently, the legislature added automatic renewal provisions for charter

\[215\] COWEN 2010 REPORT, supra note __, at 19-20.
\[216\] BOSTON CONSULTING GROUP, supra note __, at 17, 47; COWEN 2008 REPORT, supra note __, at 36.
\[217\] Steven Brill, The Teachers’ Unions’ Last Stand, THE NEW YORK TIMES May 17, 2010; Ginger Gibson, Across N.O. Minds on Schools; Back to School Fair, Union March Held, NEW ORLEANS TIMES PICAYUNE, p1 Metro (Aug. 5, 2007).
\[218\] See Dingerson, supra note 131. See also Quigley, supra note ___; Schwam Baird and Mogg, supra note __, at 169, 172-173.
\[219\] THE INSTITUTE ON RACE AND POVERTY, supra note __, at 5, 8; COWEN 2010 REPORT, supra note __, at 16.
\[220\] COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 10.
\[221\] COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 10.
\[222\] The Institute on Race and Poverty, supra note __, at 28; O’Neill and Thukral, supra note __, at 338.
schools meeting certain performance levels, thus insulating them from politicized renewal decisions.\(^{223}\) In short, the charter movement is politically strong and continues to push favorable policies through the legislature.

The bigger concern for charter school advocates is that charter renewal decisions are coming up this year. A vast majority of charter schools are up for renewal in 2011, meaning they must submit renewal applications this Fall.\(^{224}\) Charter schools’ concerns over the renewal process derive primarily from the opaque renewal standards and how the ambiguous standards may be applied and manipulated by the different oversight entities with different political agendas.

State law was initially vague about how charters would be reviewed and what performance standards they must meet to be renewed.\(^{225}\) In 2008 the Louisiana Department of Education issued bright line renewal standards for charters it oversaw.\(^{226}\) With these concrete standards, Type 2 and Type 5 charter schools enjoy some insulation from a politicized renewal process. OPSB charters enjoy no such protection because the OPSB has no firm renewal standards in place.\(^{227}\) Unless an OPSB charter has met or exceeded accountability benchmarks and demonstrated growth in student achievement for three years it will not be automatically renewed and subject to uncertain renewal standards.\(^{228}\) Such schools will become pawns of the political process.

Closing underperforming charter schools is difficult and is often a political decision based on electorate attitudes and special interests more than school performance.\(^{229}\) Once schools have operated for five years parents and students become attached to the school no matter its performance level. Telling students and parents their school will no longer exist creates significant resistance. The timing of the renewal

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\(^{223}\) Act 334, amending LA. REV. STA. § 3992(2).


\(^{225}\) Sarah Carr, System Sought to Monitor Charter Schools, NEW ORLEANS TIMES PICAYUNE, Nov. 9, 2008; BOSTON CONSULTING GROUP, supra note __, at 32; Moore, supra note __, at 387. For a thorough discussion of charter renewal and evaluation procedures and standards, see Amy Moore, 11 LOY. U. NEW ORLEANS J. OF PUB. INT. L. 343 374-85 (2010); THE SCOTT S. COWEN INSTITUTE, ENSURING TRANSPARENCY & ACCOUNTABILITY IN THE CHARTER RENEWAL PROCESS 5 (June 2010), available at ____.


\(^{227}\) Sarah Carr, System Sought to Monitor Charter Schools, NEW ORLEANS TIMES PICAYUNE, Nov. 9, 2008. According to best practices, the quality of Louisiana’s law and policies regarding renewal is mixed. THE SCOTT S. COWEN INSTITUTE, ENSURING TRANSPARENCY & ACCOUNTABILITY IN THE CHARTER RENEWAL PROCESS 7 (June 2010), available at ____.

\(^{228}\) Act No. 344 (2010), amending LA. REV. STAT. § 3992(A)(2).

decision is also critical, as it is very unlikely a charter school will be closed (or not renewed) if the school year is approaching and closing the school would leave students and parents no time to find a new school. A chartering authority will find it difficult to not renew a school if students and teachers will be displaced. Add to these considerations the animosity between traditional and charter schools and it is easy to envision the political quagmire that must be negotiated to close, or fail to renew, a charter school. It is likely for these reasons, more than strictly performance scores, why only one New Orleans charter school has been closed since Katrina — and that one dissolved itself.

New Orleans charter schools’ concerns over renewal decision are heightened because of the uneven monitoring of charter schools that has already occurred. The state was clearly unprepared to evaluate and monitor charter schools early on. Many charter schools complained of too-aggressive monitoring while others complained of insufficient support. Much of the monitoring and support disparity — and fears over renewal disparity - results because of the different oversight agencies: the RSD, the OPSB and BESE.

School boards, such as the OPSB, are not considered strong authorizers and monitors of charter schools. The reason is simple: every charter school a board authorizes means one less school over which the board controls hiring, budget and curriculum decisions. This creates incentives for local school boards to refuse to authorize charters, refuse to renew charters, impose district-wide standards on charter schools infringing on their autonomy or favor direct-run schools in terms of facilities and funding. This inherent conflict of interest within school boards that directly run schools and authorize charter schools makes school boards a poor choice for charter monitors. National literature recognizes that local school boards are generally the worst type of authorizer because they are subject to political influence, are often controlled by anti-charter factions, are in competition with charter schools they authorize, and are generally averse to charter schools.

This has certainly been the case in New Orleans. There is significant tension between the OPSB and its charters. The recent charter evaluation standards issued by

234 COWEN GOVERNANCE MODELS REPORT, supra note __, at 10.
236 COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 18, 27.
237 COWEN 2010 REPORT, supra note __, at 30, 33. But see Cindy Chang, Four Charter Schools Placed on Probation Amid Problems with Finances or Student Performance, THE TIMES PICAYUNE, Nov. 25, 2009 (OPSB member Brett Bonin stated “I
OPSB, according to charter schools, were particularly onerous and antagonistic toward charter schools. Many charters complained that the OPSB developed a more bureaucratic and burdensome review process than the RSD or the state.\textsuperscript{238} In contrast, the RSD - a reform-minded district – enjoys a generally strong relationship with its charter schools.\textsuperscript{239} It is obvious why Type 5 charter schools, currently overseen by RSD, are not anxious for return to the antagonistic OPSB with vague renewal and revocation standards.\textsuperscript{240} Superintendent Pastorek has recommended that OPSB adopt the state standards for charter renewal as a precondition to returning charter schools to local control.\textsuperscript{241}

Charter schools also fear that charter renewal decisions are being made at the same time BESE is deciding whether to return schools to OPSB control. BESE will begin renewing Type 5 charter schools for the first time this year.\textsuperscript{242} The fact that renewal and return decisions are occurring simultaneously complicates both decisions significantly. For example, the vote to renew the Pierre A. Capdau charter school was delayed because it was wrapped up in broader debate about whether the school should be returned to the OPSB.\textsuperscript{243} Charter schools worry that the return decision will be leveraged into the charter renewal decision, or vice-versa. It is an issue that no-one wants to deal with because it is so highly politicized.\textsuperscript{244}

\section*{IV. Lessons Learned from the New Orleans Education Reforms}

The political divisions and controversies that arose over the educational governance after Katrina are not unique to New Orleans. While the storm that foisted a radical new governance structure on New Orleans was unique, it only expedited
which is occurring across the country – state takeover of failing schools, charter schools, choice, and decentralizing authority to the school level. New Orleans provides a glimpse of the policy divides and political factions that influence school districts of choice that may soon be prevalent throughout the country. Several lessons can be gleaned by looking through this window into the future.

First, the impact of the federal government and nonprofit organizations cannot be overstated. The monies offered by the federal government and private entities supporting charter schools heavily influenced governance decisions in New Orleans. The federal grant for charter schools directly after the storm “cement[ed] the role of New Orleans…as the nation’s preeminent laboratory for the widespread use of charter schools”245 While the pressure to accept the money was overwhelming in New Orleans because of the devastation of the flood, the recent economic downturn has left many school districts nationwide cash strapped and searching for outside funding sources. The Race To the Top Initiative from the federal government shows how far states and districts are willing to alter their educational systems for only the mere chance of attaining federal funds. The experience in New Orleans indicates, to a great extent, how funding from any source influences educational governance. But the money is not “free” because local citizenry feel marginalized and disenfranchised when non-local interests with national agendas drive reform efforts. While local input into the educational reforms in New Orleans was difficult, due to the mandatory evacuation order, other states and districts should ensure the opinions of the citizenry and local officials are considered before altering governance structures solely because of outside funding sources.

Second, as states take over more local schools under accountability measures it is important to reduce the tension between the state and local school boards. The easiest step to reduce distrust and enmity between state and local run schools is to ensure equal and transparent funding between the districts and the schools. If one type of district receives more funding than the other, or the districts divide the money between their schools differently, tensions and calls of inequity immediately arise. Disparate funding also makes assessment of school performance scores a futile apples to oranges comparison and creates uncertainty as to whether it is the state takeover, or disparate funding, that leads schools to fail or succeed.246 Accountability fails when it is impossible to ascertain whether new governance structures, or simply different funding amounts, lead to school improvement.

Even more significant to reducing the strife between states and school boards is consideration of the “end-game” – the return of schools from state to local control – before the takeover process commences. Before states wrest control of local schools there should be clear processes and standards delineating precisely how, and under what

245 Kathryn G. Newmark and Veronique De Rugy, *Will New Orleans become the new city of choice?*, *Education Next* (2006). See also Thomas Frank, *New Orleans Puts Charter Schools to the Test*, USA Today, Nov. 28, 2005 (The interest in charters was also stimulated by activity in Washington, where Katrina was widely seen as an opening for introducing choice into the system).
circumstances, schools will be returned to local control. The ambiguity of Act 35 regarding return standards has allowed the state to alter the purpose of the Act from a school reform to a school district reform. The recent school return recommendations from Superintendent Pastorek hinge return decisions more on changing OPSB than changing individual schools.²⁴⁷ The ambiguity also opened the door to allowing the state a permanent presence in the public schools. Because Act 35 lacks meaningful return criteria the state could, and in fact considering, allowing schools to choose whether to return to local control.²⁴⁸ This almost guarantees that the RSD, created as a temporary and contingent district for failing schools, becomes a permanent governance structure for many schools. These policies are not necessarily bad, but they should not be made in the political whirlwind of return decisions being made. Rather, they should be carefully considered and crafted before controversial decisions regarding individual schools are being considered.

Policies for return should utilize concrete objective standards (such as minimum levels of school performance or performance growth rates) that mandate return to local control. This allows all interested parties – the district, state, schools, parents, and students – to know up-front whether a state will give up control of a school. This reduces the opportunity for political posturing to determine whether schools are in the returned to local control rather than student outcomes. There should also be a cap on how long a school remains with the state. After a certain amount of time if the state has been unable to turn around a school there is little justification for retaining state control. Such policies do not exist in Louisiana and educators are bracing for politically ugly BESE meetings regarding return.

Policies should also be considered, in the early stages, for how to deal with changed governance structures of returned schools. If the state charters schools under its control it should have a mechanism in place for maintaining the continuity of the charter when the school is returned to local control. This can be accomplished by statutory provision permitting the transfer of the charter from the state to the local board,²⁴⁹ by allowing the state to retain the charter or by allowing the charter school to select its monitoring or oversight entity. Charter schools should not be left guessing as to their charter status when return decisions are made and the state should not have the opportunity to leverage charter renewal decisions into return decisions. Whatever policy is chosen should ensure continuity of policies and applicable monitoring regulations to prevent turmoil and dramatic change at the charter school.

If a state pushes decision-making down to the local school level - as has happened in the RSD and around the country - provision should be made for maintaining that school authority when the school is returned to local control. Schools that succeed by

²⁴⁷ PASTOREK, supra note __.
²⁴⁸ PASTOREK, supra note __, at 6.
²⁴⁹ Ironically, such an option appears to exist for schools taken over by the RSD state under traditional accountability, but no for schools taken over under Act 35. La. Rev. Stat. § 39732(B)(v)(aa).
controlling their budget and hiring should not be forced back into a centralized command and control bureaucracy without retaining some of the authority that made them succeed. The lack of decisional and governance continuity alone would be a strain on the returned school. Special provision would also have to be made in union collective bargaining agreements with districts to accommodate these “returned and re-organized” schools.

These tough decisions - whether to return schools to local control and how to maintain continuity of their governance structure once returned - must be made before the takeover process begins. If these policies are made while return decisions are pending, political pressure from interested groups will warp the resulting policies. Policies made during the political maelstrom of individual return decisions, with unique pressure exerted by unions, local school boards, parent groups or segments of the electorate, may likely not further accountability goals or be translatable to future return decisions.

The same is true for charter renewal decisions. Concrete procedures and renewal standards are essential if charter schools are to have any operational stability and for accountability to have teeth.250 The decision to close or renew a charter school, already fraught with political pressures, could become completely devoid of consideration of school performance if muddy and subjective standards are utilized. Poorly performing charters may remain open because of powerful political support whereas high-performing charters may close because of political opposition. The accountability that underlies the charter movement is undercut when political considerations, not school and student performance, are important in closure decisions. For charters and choice to work, poorly performing schools must be closed and review must be rigorous.251 The backbone of a choice system – accountability – works only if poor schools are shut down, which, to this point, has not occurred.252 Policies delineating objective criteria for renewal and closure are essential to de-politicize these important decisions. And, like policies for return decisions, they should be set long before charter renewal or closure decisions are pending. Louisiana accomplished this for the charter schools overseen by BESE, but has only minimal renewal requirements for charter schools overseen by local school boards.253

In order to de-politicize renewal and school closure decisions and create uniform standards there should be only one charter oversight and authorizing agency. A system with multiple charter authorizers, as exists in Louisiana, often leads to worse charter schools for several reasons.254 First, charter operators are able to “shop around” for the

250 See, e.g., O’Neill and Thukral, supra note __ at 340-41.
251 Trip Gabriel, Despite Push, Success at Charter Schools is Mixed, THE NEW YORK TIMES, May 1, 2010 (Charter school quality is linked directly to the rigor of the authorities that grant and monitor charters).
252 COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 26.
254 SCOTT S. COWEN INSTITUTE FOR PUBLIC EDUCATION AT TULANE UNIVERSITY, CREATING A GOVERNING FRAMEWORK FOR PUBLIC EDUCATION IN NEW ORLEANS: CHARTER SCHOOL AUTHORIZERS AND CHARTER SCHOOL GOVERNANCE 17, 26 (Nov.
most lenient authorizer and monitor, creating a race to the bottom. Second, uneven monitoring and renewal decisions impede the accountability aspect of charter schools and lead to allegations of unfair treatment and inequity. Third, utilizing one chartering agency will lead to experience and expertise in evaluating charter schools. Finally, a single state-level authorizing and oversight agency is more likely to judge schools based on performance rather than political influences. These factors work together to depoliticizes, to the greatest extent possible, the difficult renewal and closure decisions essential for accountability to work.  

Many experts recommend that the state, and not school boards, take over the sole role of charter oversight.

Finally, the problems of inequity that result from a balkanized school system must also be eliminated or reduced. Racial and socioeconomic segregation - or even the perception - threaten to undermine the validity of any reform effort. At the very least, the sorting of students results in calls of racism and classism that distort or divert the reform discussion. Districts moving toward charter schools or states moving toward school takeover under accountability laws must consider, up front, how to reduce sorting and segregation or risk undermining the legitimacy of the entire reform effort. The student sorting that has occurred in New Orleans schools is not inherent in choice or charter system. If choice and competition are to work and not be subject to allegations of creaming, tiering or stratification, a level playing field is essential. Such a level playing field does not exist in New Orleans.

One obvious step states can take is to be prepared to competently manage and run schools they take over. The RSD was not prepared, believing it would simply charter out its new schools, and the bottom tier of schools was instantly created. States must be careful what they wish for and be prepared, before takeover, for the difficult task of directly operating schools.

States and districts should also ensure that information on all the school options is readily accessible to parents, including illiterate parents. The success of a choice system hinges on an informed educational consumer. If parents choose schools by default instead of as discerning buyers, the free market accountability aspects of choice fail. It is critical that school “purchasing” information, such as curriculum information and school performance scores, reaches all parents.

It is also imperative that that the enrollment process is simple and accessible. A common application for all schools, charter or direct run, will help reduce student sorting.

255 COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 17.
256 Holley-Walker, supra note __, at 161-62; O’Neill and Thukral, supra note __ at 341; COWEN CHARTER AUTHORIZERS REPORT, supra note __, at 18, 26-27; COWEN GOVERNANCE MODELS REPORT, supra note __, at 20. Local school boards have proven the worst oversight agencies because of their reluctance to close charter schools. COWEN GOVERNANCE MODELS REPORT, supra note __, at 20. Even state agencies are not immune from political pressures, though. COWEN GOVERNANCE MODELS REPORT, supra note __, at 20.
257 THE INSTITUTE ON RACE AND POVERTY, supra note __, at 28-29.
Employing lottery admissions, instead of first come first served admissions, also ensures that parents without the resources or time to navigate a complex enrollment web have equal access to the schools. These two steps would go a long way to ensuring that students have an equal opportunity to attend all schools.

The issue of selective admission schools, which inherently cream the best students often by race and class, is a more intractable problem. Utilizing a simple, easy to complete common application removes the balkanization that follows from schools employing “implicit” selective admission criteria such as parent contracts and admission essays. Prohibiting schools from employing academic selective admission criteria is another easy means to eliminate creaming and segregation. But eliminating selective admissions might mean eliminating the highest performing schools in the district. Districts retaining academic selective admission schools but moving to a choice model must be prepared for the political fallout that results from the inevitable racial and socioeconomic stratification. They must also be prepared to determine whether retaining such schools limits school choice to the extent that free market accountability principals no longer function for the remainder of the schools.

V. Conclusion

According to Paul Pastorek, the Louisiana state education superintendent, “fixing a public-school system is not at its root a question of curriculum or personnel or even money. It is a question of governance.” Because governance decisions are inherently political, turning around districts and schools is a product of political forces. As a stark example, consider the contrast between the charter renewal policies and the policies governing return to local control. Powerful pro-charter advocates were able to push legislation creating concrete renewal and closure laws with automatic renewal provisions thus insulating charter schools from politicized decisions. No similar bright-line standards exist governing the return of schools to local control because vague and uncertain standards favor the politically powerful RSD over the distrusted OPSB, meaning schools will likely remain with the RSD past the five year mark. While school performance matters in creating district-wide and site-specific policies, it is but one arrow in the quiver of education reformers, politicians and educators. Understanding the broader political interests and how to lessen the inevitable divides and reduce friction is imperative for education reform to be effective.

The choice, accountability and charter movement will only work if the players are collaborative rather than combative. A critical underpinning of a free-market driven education system is the sharing of successful educational methodologies and programs between schools and between school systems. Accountability and charter schools were instituted to spawn innovation and for educational breakthroughs to be shared among

258 Tough, supra note __
schools, not used like trade secrets to “defeat” competitors as occurs in the economic free market. For example, the RSD direct run schools adopted many of the policies and practices of the highly successful charter program Knowledge Is Power Program, such as longer school days. But collaboration is rare in the new decentralized system, primarily because of the deep political divides that exist between districts and between schools. School districts and states moving towards the charter, choice and state takeover educational model must identify and reduce these political frictions if their schools are to thrive.

\footnote{Tough, supra note __.}

\footnote{Editorial, A Good Collaborative Effort, THE TIMES PICAYUNE, March 3, 2010; BOSTON CONSULTING GROUP, supra note __, at 15, 31-33, 35 (June 2007); COWEN 2008 REPORT, supra note __, at 48.}