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SMART CHARTER SCHOOL CAPS

By Andrew J. Rotherham

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Public charter schools have experienced relatively rapid growth. Since 1992, when the first charter school opened, over 4,000 charters have opened their doors to underserved students.¹ Although charters still constitute just a small percent of public schools and public school students, considering the intense opposition to charters from education interest groups, this rapid growth is substantial. But rapid growth masks the stalemated political debate over charter schools that exists in many states, particularly those states with caps on the number of charter schools that can open.

Today, 25 states and the District of Columbia restrict the growth of charter schools in some fashion.² (See *Appendix*.) Some states place restrictions on individual authorizers; others limit the number of charter schools allowed to open. And, not surprisingly, in these states charter school opponents—generally teachers unions and school administrators—and charter school supporters go back and forth, arguing whether or not to have a cap or how many schools should be allowed under existing caps.³

But as these opposing sides tirelessly debate charter caps, parents are denied good public education opportunities in their communities.⁴ In New York, for instance, the debate over charter schools for years largely centered on whether to lift the cap of 100 schools, focusing little attention on broader issues of charter school policy.⁵ And while the Legislature debated the cap, 12,000 students were on waiting lists to attend existing public charter schools.⁶ In Illinois 10,000 are on waiting lists, and in Massachusetts, 16,000.⁷

One might be willing to accept this pent-up demand if charter school caps, or the debate over them, were addressing the greater concern of charter school quality. But this is not the case. Statutory caps as they exist now are too blunt a policy instrument to sufficiently address quality. They fail to differentiate between good schools and lousy schools and between successful charter school authorizers and those with a poor track record of running charter schools. And, all the while, they limit public schooling options and choices for parents.

In all the attention to existing charter school caps, key questions are being left almost entirely unaddressed: What's the best way to encourage and ensure charter school quality? What's the most effective way to give parents and students more options within public education? Thus, instead of today's approach to charter school caps, policymakers should embrace "Smart Charter School Caps," which sensibly manage the growth of charter schools, while accelerating the supply of outstanding schools and fostering quality overall.

Smart Charter School Caps, by focusing on growth *and* quality, offer a political and substantive "grand bargain" to move beyond today's stalemated political debate. The experience of the past 15 years of charter schooling offers policymakers clear lessons and the opportunity to design more effective policies. This policy brief discusses charter schooling today and how smart charter caps would help states expand high-quality schooling options for underserved students.

Charter Schooling in Theory, Practice

Charter schools are open to all students and accountable to the public for their performance like other public schools. But charter schools introduce a diversity of schooling options into public education. Unlike traditional public schools, charter schools can be started by groups of teachers, parents, or community organizations in addition to school districts. They operate under public

contracts or “charters” that specify the results they are expected to meet. And if an insufficient number of parents choose to send their children to a public charter school, it will close. Over the last 15 years, some states have allowed parental demand and the supply of schools to determine how many charter schools opened and operated. In other states, political compromises have led to caps on how many charter schools could open.

Factors Influencing Quality

In theory, statutory caps are not necessary to control growth or ensure the presence of quality charter schools in a state. Instead, the marketplace *should* determine supply. Charter schools depend on state per-pupil funding, which follows students to the public school of their choice. Thus, in theory, if a school does not perform well, parents won’t send their children to it, and it will not have enough resources to remain open. But this is not always the case. In practice, there are a number of factors that influence the quality and growth of a state’s charter sector. Some of the most important are the capacity of those charged with authorizing and overseeing charter schools, state policies on key issues such as finance and facilities, a state’s political climate, and information available to parents. And, in different ways, all of these factors can exacerbate the presence of low-performing charter schools and limit the presence of outstanding ones.

Quality authorizing, for instance, is an intensive and data-driven process that requires resources and focus. What entities can authorize charter schools varies by state law, but school districts, state boards of education or other statewide institutions, and public universities are common authorizers.⁸ Research shows that the best authorizers dedicate substantial resources to the task and generally oversee multiple schools.⁹ But a 2005 analysis published by the National Alliance for Public Charter Schools found that 90 percent of authorizers were local school districts, and two-thirds lacked a dedicated office or staff to oversee charter schools. And half of all authorizers had authorized just a single school.¹⁰

Yet, while the capacity of authorizers and resources remain uneven, charter school authorizing is rapidly improving, due in part to the work of the National Association of Charter School Authorizers, a national organization working to represent charter school

authorizers and strengthen their work. As authorizers have become better at their work, they have become more select in who they allow to open schools, rejecting or substantially revising charter applications to ensure quality. Opening and operating high-performing public schools, especially ones serving disadvantaged students is challenging work, and not everyone seeking to open a charter school has sufficiently thought through and planned for the challenges or has the ability to run a high-performing school, especially in a high-poverty environment. The most successful authorizers recognize this. Indianapolis Mayor Bart Peterson, for instance, who is widely regarded as an excellent authorizer and who received the Harvard Innovations in American Government Award for his charter school work, has authorized only 19 of the more than 90 charter school applications he has received.¹¹

State policies that lead to inequitable funding for charter schools and inequitable support for facilities also create quality problems. A study by the Thomas B. Fordham Institute found that charter schools receive, on average, about 22 percent less funding than other public schools (with more substantial gaps in many urban communities).¹² The result is a two-fold problem. Obviously, resources matter to a school’s ability to deliver a quality instructional program. But, more subtly, charter school leaders spend time seeking out additional resources to close these gaps—time that could be spent on instruction or other issues. And in extreme cases, high-performing charter schools have been forced to close because of an inability to secure facilities, lessening the overall quality of the charter sector in that state.¹³

In addition to authorizing and funding issues, a state’s political climate impacts charter quality. A contentious political environment around charter schools creates perverse incentives for focusing on quality or closing low-performing charters. In an environment of politically constrained growth, made so by charter school caps, some charter school proponents and parents will fight against any effort to close charter schools, even those that are low-performing.¹⁴ Parents, in particular, understandably will fight to keep a low-performing school open if they perceive it to be the safest option in the neighborhood for their children. Meanwhile, some charter school advocates see quality as a secondary issue to growth when charter schools are almost constantly under attack by opponents of charter schooling. In theory, a cap

on the number of charter schools should make authorizers more willing to shut down low-performing schools to make room for others. But the challenges of closing schools—community politics, parental protests, and the messy legal and financial situations that closures often create—mean this is usually not the case.

Substantially expanded choice in education is a relatively new phenomenon, and the marketplace remains relatively undeveloped—another factor influencing charter quality. Today’s wave of choice-based reforms only dates to the early 1990s, and many parents are still learning to navigate a more choice-driven environment and struggling to find good information about schools in a format that is useful for them. In some cases, parents may have good reasons for sending their children to low-performing schools (e.g. safety), but sometimes parents choose poor quality schools because they do not have good information or simply because sometimes people make poor choices in any marketplace. While parents may want what is best for their children, a gap often remains between this desire and actual decision-making.

Charter School Performance

With so many factors affecting charter quality, charter schools have been a somewhat high-variance reform for outcomes. Charter school test scores on average are often no better than those of traditional public schools. Charter school opponents use this argument to advocate for caps on charter schools (or to argue against charter schools altogether). They point to evidence such as the recent Department of Education analysis of fourth-grade scores on the National Assessment of Educational Progress, which found that students in charter schools lagged slightly behind their peers in traditional public schools.

Yet analyses like these can tell policymakers little because they only measure achievement at a specific point in time and cannot account for the prior achievement of students.¹⁵ Low-performing students might be seeking charter schools at higher rates than other students, or charters might be depressing the achievement of students who would otherwise be performing better. It’s just impossible to know from “snapshot” analyses.

A more fine-grained look at the data shows that charter schools often make faster gains in student performance

than traditional public schools. Researcher Bryan Hassel conducted an analysis of charter school studies that track student gains over time. Of the 33 studies Hassel examined,

- Sixteen found that overall gains in charter schools were *larger* than other public schools
- Seven found charter schools’ gains are *higher in certain significant* categories of schools, such as elementary schools, high schools, or schools serving at risk students
- Six found *comparable gains* in charter and traditional public schools
- Four found that charter schools’ overall gains *lagged behind*.¹⁶

And within the charter school sector there is substantial performance variation. For instance, a 2007 report published by the California-based nonprofit EdSource found that in California, charters managed by Charter Management Organizations or “CMOs” generally outperformed other charter schools.¹⁷ CMOs are nonprofit networks of schools. Well known CMOs include high-profile organizations such as the Knowledge Is Power Program (KIPP) or Achievement First, but there are numerous smaller CMOs operating around the country. It’s also not uncommon, within states, to see charter schools at the very top and the bottom of state performance rankings.

Charter School Debate

Unfortunately, the debate about charter schools rarely accounts for such performance variation, just as charter caps do not differentiate between good schools and lousy schools. In both cases, this variance obscures a substantial number of higher performing charter schools and an opportunity for policymakers to expand schooling options for students while enhancing quality.

Almost from the inception of charter schools, the debate about them has been political. Some early charter school laws were compromises to head-off proposals to create private school voucher programs.¹⁸ And, school districts, teachers unions, and many state policymakers have, understandably, never embraced an idea that significantly alters the power arrangements in education as charter schooling does. Consider, for instance, teachers unions

and school districts in Washington who fought to overturn that state's charter school law before *even a single* school had a chance to open and demonstrate results. Charter caps are more reflective of this political debate than a measure for ensuring quality.

In the past 15 years, since the first charter school opened its doors in Minnesota and President Bill Clinton championed the idea as a way to expand choice within public education, researchers and policymakers have learned a great deal about charter schooling. Those lessons include better charter school authorizing, more effective accountability strategies, and a more in-depth understanding of how charter schooling works in practice. Those lessons can be applied to make charter school policies, including charter school caps, more effective for students than they are today and to move past the political stalemate that characterizes the charter school debate.

Smart Charter School Caps

As a public policy, some constraints on the absolutely unfettered growth of charter schools make sense. As evidence shows, the marketplace alone will not police quality. In fact, at the most general level, one characteristic of charter schooling that differentiates the reform from school vouchers is the greater public sector involvement and oversight. It is why, for example, public bodies make decisions about opening charter schools and subsequently renewing existing charters. To date, some states that have put few constraints on charter schools have experienced quality and accountability problems in their charter school sectors and been forced to revisit their laws.¹⁹ But, today's caps on charter schools at once are a crude and ineffective way to address those problems and unnecessarily limit available public schooling options for parents.

In states with arbitrary caps, policymakers should reform them by embracing the components of "Smart Charter School Caps." Smart charter caps allow for deliberate capacity-driven growth of charter schools, direct new resources to high-quality schools, and work within today's political reality, where charter schools remain a controversial and leading-edge reform. In states without existing caps, policymakers should refrain from imposing arbitrary ones but can incorporate some of the growth

and quality elements of smart charter caps. Overall, by applying the basic principle of intervention in inverse proportion to success, states can create a more vibrant charter sector and a higher-quality one.

Here's how Smart Charter School Caps would work:

- **Deliberately Support and Grow Proven Models:** Rather than today's absolute caps, states would eliminate any cap for "proven" schools that have demonstrated outstanding gains for students. There would be no cap, for instance, on schools that have demonstrated achievement in the top 15 percent of similar public schools or in the top quartile of public schools overall for several years. States could base their performance requirements on intrastate data only or could consider data from schools that have performed well elsewhere from the cap, for instance, interstate networks such as KIPP or Achievement First. At the same time, states would provide funding and support for facilities and planning to help such schools replicate and grow in underserved communities.
- **Be Realistic About Authorizer Capacity But Allow New Schools to Open:** States would impose or leave an annual cap on the number of new schools with no track record that can open. This cap would be based on authorizing capacity in the state, and, ideally, would be authorizer specific, so that authorizers with more capacity could open and oversee more schools annually. Alternatively, states could also eliminate any cap at all for authorizers that have a proven track record of opening high-quality charter schools meeting some performance threshold and closing persistently underperforming schools. Either way, it's important that states do not preclude "mom-and-pop" or "one-off" charter schools from opening—in other words, single schools with a plausible and well-developed application and operating plan but no track record yet—and also provide support for them through funding and ideas like charter school incubators.²⁰
- **Make Charters Part of Systemic Reform:** Smart Charter School Caps would result in the creation of more high-quality public charter schools, substantially more in some places where there are not good public options for parents now. This raises challenges for school districts that lose a

significant number of students to public charter schools. Transitional aid—funds to help these districts transition through the loss of students—is a reasonable intermediate step because school districts do have some temporarily fixed costs during transitional periods. But transitional aid should be linked to a requirement that school districts must make excess facilities available for new public charter schools. It’s unrealistic to expect public school districts to adapt overnight to a substantial loss of students, but it is just as unrealistic to expect taxpayers to essentially pay twice, by paying for a student to attend a new public school they have chosen while at the same time continuing to provide funding to their old school as well. A facilities-for-transitional aid swap addresses both problems at once. The threshold at which districts need and are eligible for transitional assistance is a reasonable one for when they should begin to adapt their operations and allow new public schools to use their facilities.

Some states already incorporate different aspects of Smart Charter School Caps, particularly the authorizer specific component. (See *Appendix*.) And small elements of these ideas exist around the country. Ohio, for example, grants flexibility on charter granting to schools with solid performance records. But no state has adopted an intentional policy to deliberately grow their charter school sector by adopting quality sensitive caps while aggressively supporting proven school models. Smart Charter School Caps do this, ensuring that the growth of charter schools, while still driven by parental demand, is steadier and eliminating the potential for a charter school “gold rush,” or a flurry to open new schools when caps are lifted or substantially modified.

Smart Charter School Caps initially would favor larger networks of charter schools like CMOs, but new schools aspiring to be “one-offs” rather than replicable networks could continue to open each year since the caps on new schools would be annualized rather than permanent. And authorizers would be able to focus more resources on working with such schools, increasing the likelihood of their success.

As importantly, Smart Charter School Caps take the politically driven argument that charters are no better than other public schools off the table by focusing on

quality and giving clear priority to proven models that have cleared the quality threshold. Against the backdrop of today’s educational challenges it is hard to argue for a ban on schools that have proven to be substantially better than average and much better than the status quo. Many charter advocates do not want any caps on charter schools, but by refocusing the debate on quality, smart charter caps offer a politically deft compromise.

As such, to be most effective, Smart Charter School Caps will need the cooperation of the federal government. To make determinations about quality, for instance, many states will have to improve their data systems. But, prodded by the federal No Child Left Behind Act and efforts like the Data Quality Campaign, states are moving rapidly in this direction and can increasingly make better evaluations of school performance.²¹ And the federal government could encourage states to adopt Smart Charter School Caps by favoring their major elements in grant criteria for the federal Public Charter Schools Program. The federal government could also launch a specific new schools strategy as a complement to existing programs.²²

Smart Charter School Caps will hardly eliminate all the challenges associated with charter schooling. But they are a step toward better public policy for charter schools and more options for parents and students. Smart charter caps offer something for all sides in the charter school debate. While charter advocates do not “win” the cap debate through the elimination of caps, they get a clear path to more high-quality public charter schools and a more deliberate strategy to open and replicate effective models while still allowing new “mom-and-pop” charter schools to thrive as well. Critics of charter schooling do not get the outright ban on charters that some seek, but do get a regulatory structure that emphasizes quality and manages charter school growth on a rational basis, which is what many ostensibly say they want.

Most importantly, students in underserved communities get the chance to have more good public schools open where they live. Considering the educational status quo, on-time high school completion rates of only about 50 percent for minority students and a four-grade-level racial achievement gap for 17-year-olds, the question for policymakers is not whether to expand schooling options in underserved communities, but how.²³ Smart Charter School Caps point a way.

Appendix. Charter School Caps By State

State	Schools in State	New Schools Per Year(s)	Schools Per Authorizer	Number/percentage of Students in Schools	Unique
AK	X				
AR	X				
CA	X	X			
CT				X	
DC		X	X		
HI	X				
ID		X			
IL	X		X		
IN		X	X		
IA	X				
LA	X				
MA	X			X	X

60 charters are allowed. 26 are open, with room for 34 more.

Limit of 24 start-up charters. With eight currently open, there is room for 16 more.

1,050 charters are allowed, with increases by 100 each year. There are currently over 600 charter schools open.

250 students per state board of education-authorized charter or 25 percent of the enrollment of the district in which the charter is located, whichever is less.

300 students per state board of education-authorized K-8 charter or 25 percent of the enrollment of the district in which the charter is located, whichever is less.

For charters with a demonstrated record of achievement, 85 students per grade.

Limit of 20 new charter schools per year – 10 authorized by the D.C. Board of Education and 10 authorized by the D.C. Public Charter School Board.

25 conversion charters are allowed. There are four conversions open, leaving room for 21.

23 start-up charters are allowed. That cap has been reached. Beginning in July 2007, though, the state board of education, with the recommendation of the charter school oversight panel, may authorize one new start-up charter school for each existing start-up charter school that has received a three or more year accreditation from the Western Association of Schools and Colleges or a comparable accreditation authority as determined by the charter school oversight panel.

Allows six start-up charters to open per school year, with not more than one start-up charter per district.

Limit of 60 charter schools, with a maximum of 30 in Chicago, 15 in the Chicago suburbs, and 15 in the rest of the state. These restrictions are a significant problem in Chicago, where there are currently 29 charters open, with room for one more. The lack of available charters will likely cause a delay in the mayor's initiative to close up to 70 low-performing schools and reopen them as 100 or more small schools, one-third of which will be charter schools.

The mayor of Indianapolis may approve no more than five charters per year.

Allows 20 conversion charters, with not more than one per district. There are currently nine conversion charters open, with room for 11 more.

Allows 42 charter schools. Those charters authorized in the statewide recovery school district by the state board of education, however, are exempt from this cap. There are currently 15 charters open outside of the statewide recovery school district, with room for 27 more.

Limit of 120 charters, with 48 reserved for Horace Mann charters and 72 reserved for Commonwealth charters. There are currently 59 charters open – eight Horace Mann charters and 51 Commonwealth charters.

Commonwealth charters cannot serve more than four percent of the state's public school population. They currently serve about two percent.

A school district's payments to charters cannot exceed nine percent of their net school spending. Approximately 250 of 500 districts are at or near this restriction.

Appendix. Charter School Caps By State (continued)

State	Schools in State	New Schools Per Year(s)	Schools Per Authorizer	Number/percentage of Students in Schools	Unique
MI			X		
MS	X				
MO					X
NH	X		X		
NM		X			
NY	X		X		
NC	X	X			
OH		X	X		
OK					X
RI	X			X	X
TN	X		X		X
TX	X		X		
UT		X		X	
WI			X	X	

State universities may authorize 150 charters, with no single university authorizing more than 50 percent of the 150. While the state universities have hit this cap, they may still authorize 15 charter high schools in the Detroit School District.

Six charters are allowed. One is open, with room for five more.

Only allows charter schools to open in the Kansas City and St. Louis school districts. While there is no cap on start-ups, no more than five percent of the existing public schools in each district may convert to charters. The biggest constraint on growth, though, is that the state prohibits charters from opening up in other districts.

Through a pilot program, the state board of education can grant up to 20 charters by June 30, 2013. Nine are open, with room for 11 more.

Separate from the pilot program, allows up to 10 charters approved by a local school board and the state board.

Allows 15 start-ups and five conversions per year and 75 start-ups and 25 conversions over five years. There are currently 64 charters open.

Cap of 100 start-up charters—50 by the State University of New York and 50 by the State Board of Regents. The state has reached its cap.

Allows 100 charters, with five charters per district per year. The state has reached its cap.

Allows 30 start-up charters authorized by non-district entities and 30 start-up charters authorized by districts above the number open as of May 5, 2005. All 30 non-district-authorized start-up charters are open; one-third of the district-authorized start-up charters are open. Operators of charter schools with a track record of success are not subject to these restrictions, though.

Only allows charters to open in 13 of its over 500 districts.

20 charters are allowed. Charter schools may serve no more than four percent of the state's school age population. The state board of regents cannot give final approval for any new charter school to begin operations in the 2007-08 school year.

Limit of 50 charters, 20 of which must be located in Memphis and four of which must be located within Shelby County. There are currently 10 charters open in Memphis and zero in Shelby County. Only allows charter schools to serve four types of students.

The state board of education can approve up to 215 charters. There are 204 active charters, leaving room for just 11 more charters under the cap.

The state charter school board may only authorize a maximum of five charter schools that will begin operation in the 2007-08 school year, with a ceiling of 5,000 students.

For the most part, there are no caps in Wisconsin. However, the University of Wisconsin-Parkside may only sponsor one charter school in the Racine School District that may not enroll more than 480 students. The university has sponsored its one school.

Source: Reproduced from Todd Ziebarth, "Peeling the Lid Off State Imposed Charter School Caps," National Alliance for Public Charter Schools, 2007.

Endnotes

- ¹ According to the National Alliance for Public Charter Schools, 40 states and Washington, D.C., have laws allowing charter schools in some form, and there are 1,144,758 students in 4,046 charter schools nationwide. National Alliance for Public Charter Schools Web site, accessed April 2007, available online at <http://www.publiccharters.org/content/publication/detail/2182/>.
- ² Todd Ziebarth, *Peeling the Lid Off State-Imposed Charter School Caps*, (Washington, DC: National Alliance for Public Charter Schools, 2007).
- ³ See, for instance, Lisa Stulberg, *Beyond the Battle Lines: Lessons From New York's Charter Caps Fight* (Seattle, WA: National Charter School Research Project, University of Washington, forthcoming).
- ⁴ Todd Ziebarth, *Peeling the Lid*.
- ⁵ *Ibid.*
- ⁶ *Ibid.*
- ⁷ *Ibid.*
- ⁸ See the National Association of Charter School Authorizers, www.qualitycharters.org, for more information. See also, Louann Bierlein Palmer, "Alternative" Charter School Authorizers (Washington, DC: Progressive Policy Institute, December 2006).
- ⁹ Sara Mead and Andrew J. Rotherham, *A Sum Greater Than the Parts: What States Can Teach Each Other About Charter Schooling* (Washington, DC: Education Sector, September 2007).
- ¹⁰ Gregg Vanourek, *State of the Charter Movement 2005: Trends, Issues, & Indicators*, (Washington, DC: National Alliance for Public Charter Schools, May 2005).
- ¹¹ Andrew J. Rotherham and David Harris, *Get Mayors In the Schooling Game* (Washington, DC: Education Sector, 2007), available online at http://www.educationsector.org/analysis/analysis_show.htm?doc_id=471201.
- ¹² Sheree Speakman and Bryan C. Hassel, *Charter School Funding: Inequity's Next Frontier* (Washington, DC: Thomas B. Fordham Institute, August 2005).
- ¹³ See, for instance, William Wan, "Growing Pains May Kill Charter School," *The Washington Post*, Friday, June 22, 2007.
- ¹⁴ Andrew J. Rotherham, "The Pros and Cons of Charter Closures," in *Hopes, Fears, & Reality: A Balanced Look at American Charter Schools in 2005*, eds., Robin J. Lake and Paul T. Hill (Seattle, WA: National Charter School Research Project, University of Washington, 2005).
- ¹⁵ "The Nation's Report Card: Mathematics Highlights 2003," NCES, U.S. Department of Education, NCES, 2003. (NCES 2004-451.)
- ¹⁶ Bryan C. Hassel and Michelle Godard Terrell, *Charter School Achievement: What We Know, Third Edition* (Washington, DC: National Alliance for Public Charter Schools, 2006).
- ¹⁷ Ed Source Online, available online at http://www.edsource.org/pub_abs_charterperf07.cfm.
- ¹⁸ Bryan C. Hassel, *The Charter School Challenge* (Washington, DC: Brookings Institution, 1999). See also, Lance D. Fusarelli, *The Political Dynamics of School Choice*, (New York: Palgrave Macmillan, 2003).
- ¹⁹ Bryan C. Hassel and Michelle Godard Terrell, *The Rugged Frontier: A Decade of Charter Schooling in Arizona* (Washington, DC: Public Policy Institute, 2004); Nelson Smith, *Texas Roundup: Charter Schooling in the Lone Star State* (Washington, DC: Public Policy Institute, 2005); Alexander Russo, *A Tough Nut to Crack in Ohio, Charter Schooling in the Buckeye State* (Washington, DC: Public Policy Institute, 2005). See also, Gary Miron, "Strong Charter Schools Are Those That Result in Positive Outcomes," (paper presented at AERA Annual Conference, April 11–15 2005).
- ²⁰ Charter school incubators are facilities where new schools can start, attract students, and subsequently move into larger and more permanent space.
- ²¹ See <http://www.dataqualitycampaign.org/>.
- ²² "Open New Schools in Low-Income Neighborhoods" in *Eight for 2008: Education Ideas for the Next President* (Washington, DC: Education Sector, 2007), available online at http://www.educationsector.org/research/research_show.htm?doc_id=464943.
- ²³ National Assessment of Educational Progress and *Education Week* Research Center.