

A \$2 Billion Decision

The Case for Reforming New York's Charter School Law

This review of public records shows why New York's charter school law must be strengthened to increase accountability and transparency for how students are served and public dollars spent. Reform is essential before the state's current cap of 200 charter schools can be lifted. Fixing New York's flawed charter school law would protect taxpayers and ensure fairness to students and teachers in existing charters as well as in regular public schools.

CONTENTS

ABOUT THIS REPORT	PAGE 3
EXECUTIVE SUMMARY.....	PAGE 4
INTRODUCTION.....	PAGE 8
I. REFORM IS NEEDED TO ENSURE GREATER FINANCIAL ACCOUNTABILITY	PAGE 9
• WHY LOCAL AUDITS AREN'T ENOUGH	
• QUESTIONS ABOUT FOR-PROFIT OPERATORS	
• A CASE STUDY RAISES QUESTIONS: CHARTER OPERATORS AWARD CONTRACTS TO COMPANIES THEY CONTROL	
II. REFORM IS NEEDED TO ENSURE STUDENTS ARE FAIRLY SERVED AND TEST COMPARISONS ARE VALID	PAGE 18
• CHARTERS UNDER-ENROLL STUDENTS WITH DISABILITIES	
• CHARTERS UNDER-ENROLL STUDENTS WHO ARE ENGLISH LANGUAGE LEARNERS	
• NEW STATISTICS SUGGEST A STUDENT "CHURN RATE" OF 8-10 PERCENT A YEAR	
• CHARTERS RESULT IN MORE ETHNIC AND RACIAL SEGREGATION	
III. CHARTER AUTHORIZERS LACK THE CAPACITY TO PROVIDE COMPREHENSIVE OVERSIGHT.....	PAGE 24
IV. SUPPORTING DETAILS	PAGE 26
V. RECOMMENDATIONS: AN IMPORTANT DECISION WITH A \$2 BILLION PRICE TAG.....	PAGE 33
• THE LAW MUST BE FIXED TO PROVIDE FAIR FUNDING FOR CHARTERS AND REGULAR PUBLIC SCHOOLS	
• THE LAW MUST BE FIXED TO SAFEGUARD TAX DOLLARS AND ELIMINATE QUESTIONABLE FINANCIAL DEALS BY CHARTER MANAGEMENT	
• THE LAW MUST BE FIXED TO ENSURE STUDENTS ARE SERVED FAIRLY AND RESULTS ARE VALID	
• WE NEED TO KNOW <i>WHY</i> A CHARTER SCHOOL SUCCEEDS	
APPENDICES	
• SPECIAL EDUCATION ENROLLMENT IN CHARTER SCHOOLS.....	PAGE 38
• ENROLLMENT OF ENGLISH LANGUAGE LEARNERS IN CHARTER SCHOOLS.....	PAGE 41
• CHARTERING FAIRNESS PROPOSAL.....	PAGE 45

ABOUT THIS REPORT

NYSUT members include teachers in both charter and regular public schools across New York state. This review of public records came in response to concerns voiced by teachers, in some cases with their jobs on the line, who raised important questions about charter management practices and spending. Teachers who work in charter schools, like their counterparts in regular public schools, are deeply committed to their students and their schools. When they raise concerns, it is not to sink their schools, but to improve them. When a union questions management practices, as NYSUT does in this report, it is part of a healthy system of checks and balances that improves accountability.

Because current state law does not ensure charter operators are fairly enrolling or serving all students, it undercuts the efforts of educators in both types of schools who are dedicated to ending the achievement gap for children at risk. Because the law fails to provide comprehensive accountability for taxpayer dollars, the promise of charter schools is undermined by instances of financial mismanagement and ethical lapses that place profits ahead of students.

Quality charter schools have much to gain from reforming the law to ensure all charter operators are fair in admitting and serving students, and accurate and transparent in reporting practices, results and finances.

The information in this report is based on a review of hundreds of public records, including a number obtained through the Freedom of Information Law. School districts, the State University of New York's Charter Schools Institute and New York State Education Department also provided information and records, including never-before collected statewide data on special education enrollment at charter schools and data on "churn" rates — reflecting the number of students who are discharged from or leave charters and return to schools in their districts. All sources, including newspaper and other media reports, are referenced.

More than 10 years of experience with charters makes it clear that current law fails to reliably protect against financial abuses; it fails to ensure that charters fairly serve children most at risk of failure; and it fails to ensure that teachers in all schools can rely on results to identify best practices that advance student learning.

EXECUTIVE SUMMARY

There are 141 charter schools now operating in New York State, and others in the pipeline could bring the state to its authorizing limit of 200 later this year.¹ As the state approaches its statutory cap of 200, charter management is lobbying vigorously for the cap to be lifted without any changes in the law governing their operations. New York State United Teachers, which represents teachers in both charter and regular public schools, is steadfast in saying that any lifting of the cap must be accompanied by needed reforms to the law — reforms that would more fairly fund both charters and regular public schools; require charter management to more fully disclose finances and eliminate conflicts of interest; and require charter management to be fair and transparent about student enrollment and testing.

NYSUT believes that charter schools can have an important place in public education — including the vital, but as-yet-unrealized mission of partnering with regular public schools in identifying what works and what can be replicated to advance learning for students at risk. Far too many charter operators have eroded the promise of charter schools by under-serving students most in need. In some cases, charter operators have put profits, their personal financial interests or their business interests ahead of student learning and public transparency.

Now, more than 10 years into New York’s charter experiment, there are more questions than answers about this seismic shift in public education.

This report identifies some of the questions that must be answered, and some of the changes needed in the law, before the charter cap can be lifted. It relies on public records, many obtained through Freedom of Information requests, to identify important questions about current practices at a number of New York State’s charter schools.

Records for approximately 60 of the state’s 141 charters have been reviewed to date. Charter schools are authorized to operate either primarily by the SUNY Board of Trustees and its Charter Schools Institute; the state Board of Regents; and the New York City Board of Education. For this report, information was sought on charter authorizations by all three entities; details must be considered preliminary due to lack of accessible online reporting for all schools. The SUNY Charter Schools Institute and New York City Board of Education make many of their records – including financial audits and school visit reports – available online and this report focuses on those available. The Regents do not currently publish school inspection reports and other charter reports on line, but did make several charter documents available upon request. The State Education Department’s Office of Public School Choice said it plans to increase accountability and transparency by publishing charter documents on the department’s website in the near future.

The challenge of amassing comprehensive information on the academic and financial practices of charter operators underscores the need to reform the law.

Key findings:

- I. **Reform is needed to ensure greater financial accountability. The lack of strong, systematic financial oversight in New York’s charter law has resulted in instances of misallocation of funds; ethical lapses; no-bid contracts; conflicts of interest; and profiteering at student and public expense. Analysis of hundreds of**

¹ New York State Education Department, Office of Public School Choice

documents shows some charter founders sit on multiple charter boards, refer business to companies they control, and resist the accountability and disclosure expected of regular public schools.

- II. Reform is needed to ensure students are fairly served and test comparisons are valid. New data on student enrollment reveals the vast majority of charters are failing in one of the movement's primary missions: to serve all students fairly, with a "special emphasis on expanded learning for students who are at-risk of academic failure."² Thomas Carroll, president of the Brighter Choice Foundation, concedes this point, writing, "New York charters need to address better special education and English-language-learner populations."³ Charter operators, both upstate and in New York City, significantly under-enroll students with disabilities and students who are English language learners, a shortfall that also calls into question the reliability of comparing school test scores. In addition, new data obtained from Albany, Buffalo, Syracuse, Rochester and other school districts with large charter school populations indicates that charter operators routinely discharge students back to district schools, including many who are expelled for behavior or academic reasons, with an estimated churn, or turnover, rate of 8 percent to 10 percent. Mid-year migration, of course, also occurs in reverse, with students leaving district schools to enroll in charter schools. This revolving door student enrollment, along with the under-enrollment of special education students and English language learners, undermines the reliability of test score data. The record raises questions about the statistical validity of head-to-head comparisons of student performance between charter schools and regular public schools.
- III. This review of available data and the management problems it identifies suggests that charter authorizers currently lack the capacity to provide comprehensive financial and operational oversight for an expanded number of charter schools. This is a particular concern because, by law, charter operators are exempt from checks and balances that exist in regular public schools, such as elected school boards; city and state comptroller audits; and school budget votes by the public. All three charter authorization entities are hampered by budget and staffing restraints and have responsibility for a larger educational agenda.

Quality charter schools benefit everyone. Students win when they attend charter schools which are accountable and transparent in their operations, and which devote resources to programs meant to advance their learning. Charter operators that are sources of accurate financial and performance-based information are more likely to win community support and to identify best practices that can be replicated. But without greater charter transparency and accountability, how do parents, taxpayers and school authorizers know which charters adhere to the highest ethical, operational and financial standards, and which do not?

Now, more than 10 years into this experiment and before the cap is lifted in a \$2 billion decision, reliable data is needed on what works for students. When a charter school succeeds

² Education Law section 2850 (2)(b). See also, Education Law section 2852 2(d) which provides that "In reviewing applications, the charter entity is encouraged to give preference to applications that demonstrate the capability to provide comprehensive learning experiences to students identified by the applicant as at risk of academic failure." The "New York State charter schools act of 1998" may be found at Education Law sections 2850-2857.

³ New York *Post*, March 30, 2010

brilliantly, is it because of a particular curriculum? Longer school day and school year? Is it because students wear uniforms or because their teachers receive intensive professional development?

Or is the charter school succeeding in comparison to district schools because it is educating far fewer students who have learning disabilities?... who are learning English?... or who have behavioral problems?

Answers to these questions are needed because they will help all of us — in charter schools and regular public schools — do our very best for all our students.

Reforms to the New York State Charter School Act must include:

- **Transparency and Accountability:** The charter statute should be amended to conform with the Court of Appeals decision in *New York State Charter Schools Association v. DiNapoli* and allow both financial and operational audits for charter schools by city and state comptrollers, and that such data should be made public and readily available under the state's Freedom of Information Law. Transparency of charter methods, results, resources and practices is essential to inform policy and strengthen public education.
- **Ethics Reform:** Charter school board members and employees should be subject to the exact same financial disclosure requirements and conflict-of-interest prohibitions as other public officials and employees. For-profit operators should be banned from owning or operating charter schools, and management fees and charter operator salaries should be publicly disclosed. Charter school employees should be protected from anti-union animus.
- **Equity:** Charter operators must commit to serve at least the district-wide average of neediest students, including – but not limited to – English Language Learners and special education pupils. The lottery process for charter attendance should be centralized and overseen by a neutral third party. In order to ascertain charter effectiveness, records must document student migration, reasons why students are “discharged,” student populations and how this affects test results.
- **Over-saturation:** The debilitating effect of charter proliferation on Albany, Buffalo, New York City and other local school districts is clear. Charter school reform must include a remedy to address co-location and over-saturation of new charters, which would undercut existing quality charter schools and regular public schools, and undermine a shared mission to provide quality public education for all.
- **Fair funding:** The charter law must be modified to ensure fairness in funding, so that both charter schools and regular schools can provide a quality education for all students. Fairness in resources means charter school funding cannot come at the expense of neighborhood public schools. (*For a complete list of proposed reforms, see Index, “Chartering Fairness,” New York State United Teacher’s legislative proposal.*)

The New York State Charter School Association, the lobby group for charter schools, has opposed these and other reforms, even as charter advocates on the national level have, ironically, embraced greater monitoring of their schools for admissions procedures, academic standards and financial stewardship.⁴

“Without strong practices in place, a (charter) school drifting off course quickly becomes a disaster for its students, parents and the public,” said Greg Richmond, president of the National

⁴ “As U.S. Aid Grows, Oversight is Urged for Charter Schools,” *New York Times*, February 25, 2010

Association of Charter School Authorizers, which represents institutions that oversee public charter schools on behalf of the public. In recent testimony before Congress, Richmond noted that since the mid-1990s, the federal government had spent \$2 billion to finance new charter schools, but less than \$2 million – one-tenth of 1 percent – to ensure they were held to high financial and educational standards.⁵

“It’s as if the federal government had spent billions for new highway construction but nothing to put up guardrails alongside those highways,” Richmond said. “New highways will allow drivers to get where they are going faster, but the lack of guardrails will sometimes lead to horrible accidents.”⁶

⁵ Testimony of Greg Richmond, House Committee on Education and Labor, Feb. 24, 2010

⁶ Testimony of Greg Richmond, House Committee on Education and Labor, Feb. 24, 2010

INTRODUCTION

There are 141 charter schools currently operating in New York State, serving 44,577 students.⁷ Another 29 charters are approved to open in September 2010, and three more will begin enrolling students in 2011.⁸ (Fourteen charter schools have closed or never opened and two more, New Covenant CS and East New York Preparatory CS, are slated to shut their doors in June 2010).⁹ School districts this year will send about \$530 million to charter schools in the form of tuition payments.¹⁰ As already approved charter schools add grades, enrollment in existing schools will grow.

The New York State Charter School Act gives charter operators great autonomy for how they spend and account for the public tax dollars they receive. Charter operators are exempt from having to issue property tax report cards; do not hold public votes on their school budgets or elect independent school board members in a public vote.¹¹ Charter operators, who receive more than 95 percent of their revenue from public funds, currently are also exempt from audits by the Office of the State Comptroller, which recently completed audits of all other regular public schools. This financial autonomy sets them apart from other public schools in the state. Similarly, students enrollment is by lottery and operators can discharge students, two factors which also differentiate charters from neighborhood public schools.

Created as alternatives to regular public schools, charters were freed of many public school requirements and charged with developing innovative, replicable practices to advance student learning, with a “special emphasis on expanded learning experience for students who are at-risk of academic failure.” Many parents report great satisfaction with their charter school experience. Others say charters have counseled out their children or usurped space in district schools, increasing class sizes in regular public schools. Quality charters enjoy the support of the Obama administration and a number of legislators in New York state, but many elected officials question whether the charter experiment has been fair; whether charter claims of superior results can be validated; and whether adding charters without adding accountability is the right use of public dollars. This report demonstrates the need for quantifiable answers that greater charter transparency and accountability can provide.

⁷ New York State Education Department Office of Public School Choice and Office of Information Reporting

⁸ New York Charter School Institute, e-mail from Cynthia Proctor

⁹ New York State Education Department, Office of Public School Choice

¹⁰ Estimate based on charter school tuition payments and SED charter school enrollment data, 2009-10

¹¹ See, Education Law section 2854 1(b) which provides that: “ A charter school shall meet the same health and safety , civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in this article. *A charter school shall be exempt from all other state and local laws, rules, regulations or policies governing public or private schools, boards of education and school districts, including those relating to school personnel and students, except as specifically provided in the school charter or in this article.*” [Emphasis added].

I: REFORM IS NEEDED TO ENSURE GREATER FINANCIAL ACCOUNTABILITY

Reviews of Internal Revenue Service Form 990, tax forms required of non-profit corporations, audits and other financial records shows the state's charter law and lack of rigorous oversight have opened the door to instances of mismanagement, no-bid contracts, conflicts of interest, excessive profits and questionable financial deals at some charter schools.

Just as the deregulation of Wall Street led to the economic and sub-prime mortgage crisis, the Madoff scandal and excessive executive bonuses, deregulating public education and turning over taxpayers' dollars to private operators without sufficient accountability and transparency has created opportunities for mismanagement and abuses, including:

- A Brooklyn charter school is the “sole member” or parent organization of a charitable bridal boutique operated by its founder and board president, a Manhattan real estate developer.¹² The bridal shop sells its donated designer wedding gowns for the benefit of the students of the Brooklyn charter school. However, the Bridal Garden (The Wedding Garden, Inc.) paid its executive director more than \$144,000 in 2007-08; paid nearly \$60,000 in other salaries; incurred more than \$600,000 in write-offs and other expenses, and donated only \$35,000 to the charter school.¹³ (In a recent letter, the founder of the charter school and chairman of The Wedding Garden said the bridal shop had additionally contributed \$109,000 and \$50,000 for the fiscal years ending June 30, 2009, and June 30, 2010)¹⁴ Meanwhile, in taking on The Wedding Garden as a subsidiary, it appears the charter school has also assumed legal and financial liability for the bridal boutique's operations.
- A Long Island charter school for at least three years paid its founder and board president \$5,000 per month to be a consultant to the school and another board member \$40 an hour to provide accounting services.¹⁵ The charter school paid its board president and another trustee \$141,200 in 2008-09, and \$84,479 in 2007-08.¹⁶ The SUNY Charter School Institute in March 2010 stipulated the two could not remain on the board if they continued to accept consulting fees.¹⁷
- Charter schools in Albany's Brighter Choice network have awarded contracts to a non-profit testing and data company operated by Albany charter board members. Four contracts obtained so far through the Freedom of Information Law indicate all four contracts were approved without competitive bidding. Contracts between Albany charters and the company, School Performance Inc., show that the company oversees the reporting of test score data which charters then submit to authorizers for their renewals.¹⁸ Other board members at Brighter Choice charter schools have benefited from contracts to provide software, advertising and public relations services for charter schools in the Brighter Choice network.¹⁹

¹² Audited Financial Statement, June 30, 2009, pg. 3, NYS Department of State, Division of Corporations data base.

¹³ 2007 form 990, Statement 7 and Statement 8, 2007 Sheltering Arms Bridal and Couture 990, line 43a

¹⁴ Letter from Henry Lambert to Sen. Bill Perkins, April 8, 2010

¹⁵ Charter School has to separate jobs, *Newsday*, March 17, 2010

¹⁶ Audited Financial Statement, June 30, 2009.

¹⁷ Charter School has to separate jobs, *Newsday*, March 17, 2010

¹⁸ Contracts with Albany Community CS and Albany Preparatory CS, September 28, 2008.

¹⁹ www.dynamicapps.com/news and board minutes, Henry Johnson CS, May 27, 2008

- The board president of the Oracle Charter School, with three business partners, holds the mortgage on the charter school building. In a complicated real estate transaction, the Oracle Building Corporation owns the school building, a historic mansion, but the \$875,000 building is being financed by the partnership — which includes the board president — at interest rates ranging from 7 to 20 percent.²⁰ Records show the charter school will pay — through a building corporation -- at least \$4 million to the board president’s partnership.²¹ A \$300,000 grant from the SUNY Charter School Institute was used to renovate the charter school.²²
- Charter schools are entangled in the operations of non-profits, including several with religious ties. The Bronx Family Life Charter School is located in and pays rent to the Latino Pastoral Action Center, a ministry operated by the school’s founder and member of the charter school board.²³
- For-profit charter management companies collect fees of up to 50 cents on every dollar. For example, the for-profit management company National Heritage Academy charges the Southside Academy CS in Syracuse \$485,204 for “executive administration”; \$182,573 in “professional fees” and \$77,293 for “board oversight,” while the school has reported class sizes of 34 students in the middle school grades.²⁴ For-profit companies provide education services for the fees they collect, but some of the charges and apparent profits — in the absence of checks and balances from elected boards and independent audits — raise questions about where the funds go and who benefits.

Charter school financial records, including publicly available tax returns, audits and school inspection reports, suggest additional taxpayer protections and stronger oversight are needed, and that charter authorizers — the Regents, SUNY Board of Trustees and New York City Board of Education — are failing to hold operators sufficiently accountable. Indeed, the insulation from outside public scrutiny raises serious questions about whether public dollars are being spent appropriately; whether charter managers are fairly enrolling students and reporting results; and whether charter operators are providing students with the services they need.

WHY OPERATOR AUDITS AREN’T ENOUGH

The charter corporate arm successfully fought to prevent charter operators from being audited by the state comptroller. The New York State Charter School Association argued charters are “education corporations” and the New York Constitution does not authorize the comptroller to audit education corporations. The charter lobby defends current practice, in which charter finances are reviewed annually by accounting firms they hire to examine their books and issue reports. These audits are filed with charter authorizers. However, as public records show, there is a significant difference between an audit by the Office of the State Comptroller and the typical internal audit conducted for a charter school.

Charter operators, like regular public school districts, hire auditors to review the schools’ books and ensure they comply with accounting guidelines. Because this kind of audit is, in essence, tallying columns to make sure that Column A balances against Column B, these auditors are not hired, or

²⁰ Audited financial statement, June 30, 2009

²¹ Audited Financial Statements, June 30, 2009 and June 30, 2008. Buffalo *Business First*, March 10, 2005.

²² Buffalo *Business First*, March 10, 2005.

²³ Audited financial statement, June 30, 2009,

²⁴ Audited Financial Statement, June 30, 2009, State Education Department School Report Card.

paid, to look for misuse of funds or whether proper financial controls are in place. For this reason, New York state also audits school districts by the Office of the State Comptroller.

The Office of the State Comptroller, which by law audits every other public school district in the state, specifically examines the books not just to see whether they balance, but whether taxpayers' money is being spent appropriately. The comptroller's audits look for waste, fraud, conflicts of interest and whether the schools have adequate safeguards to protect the public's money.

In several cases where local audits required of charters did reveal questionable financial transactions, the critical findings were often reported as a footnote or in "side letters" that were not made public.²⁵

Before the Charter School Association went to court to block the State Comptroller from conducting audits and from having oversight authority for how charters spent public funds, the Office of the State Comptroller did complete a handful of charter audits that found:

- The KIPP Academy Charter School's director took the entire teaching staff on a five-day Caribbean retreat at the end of the school year for two years in a row. School personnel lodged at an all-inclusive resort that provided meals, alcoholic beverages, and overnight lodging, and the school paid for the airfare for the staff. The Comptroller's audit said, "There was scant evidence that any educational type of program was provided during the trip, or that any learning activities were involved." School officials contended that these trips were an appropriate use of donated funds, although they could not document that the trips were paid for by using donated funds. The audit also found the school director granted a 19 percent pay raise to the school's chief financial officer without board approval.²⁶
- Funds were misappropriated at the Western New York Maritime Charter School, including the purchase of big-screen televisions, computer equipment and security devices that were delivered to the homes of school employees. Auditors found the operator's failure to carefully monitor school activities resulted in the employment of an individual with a criminal record; the misappropriation of school funds; and the awarding of contracts where it was unclear the school received value for the money spent. In addition, the comptroller's audit found that school officials and employees exploited weaknesses in the internal control system and, as a result, the school paid for \$95,000 in goods or services that were either not delivered to the school or were misappropriated after they were delivered.²⁷
- The Enterprise Charter School in Buffalo spent nearly \$85,000 without approvals or paperwork, including payments for liquor and theater tickets. Enterprise had a two-year, \$60,000 consulting contract with its former CEO, and paid \$7,700 in costs for the former CEO while he was employed by another charter school. The audit also found the school had been making unauthorized, insufficiently documented and inaccurate salary, separation and contractual payments totaling \$34,000 to its former CEO in what the comptroller said appeared to be an attempt to manipulate the former CEO's reported salary and hide salary payments by making them through the school's accounts payable system.²⁸
- Public records for the Niagara Charter School show a disconnect between the positive result of local audits and persistent financial mismanagement documented in an on-site visit. In a December 4, 2009, memorandum to the Board of Regents, senior staff wrote that the Office of

²⁵ Audited financial statement, Brooklyn Charter School, June 30, 2009 and others

²⁶ Office of the State Comptroller, Report 2006-N-15, News Release, December 6, 2007

²⁷ Office of the State Comptroller, Report 2007-M-307

²⁸ Office of the State Comptroller, Report 2007M-134

Public School Choice's monitoring review of the school revealed a number of fiscal and governance concerns: "Among them were misallocation of funds and a lack of adherence to the Board's own internal controls."²⁹

The State Education Department comprehensive monitoring review itself concluded, "While the school's overall educational program may appear to be adequate, it remains that this is a school in disarray. There is, at the very least, the pervasive appearance of fiscal mismanagement and less than ethical behavior on part of the Board of Trustees and school administration. The School's continual delays in responding to the Department's requests for information and its unwillingness to provide the specific information requested by the Department, lead to the inevitable conclusion that either the School is deliberately engaging in obfuscation, or its management and oversight by the Board and/or administration are woefully inept..."³⁰

"A school must be both educationally and fiscally sound, and competent governance and leadership are a fundamental component of both. This School demonstrates neither."³¹

Yet State Education Department staff provided to the Regents as "Evidence of Fiscal Soundness" the following finding: "The School has received a clean, unqualified audit report each year of its operation and no material weaknesses have been found."³²

Based in part on the "clean, unqualified" audit, staff recommended and the Regents approved a three-year renewal of the Niagara Charter School's charter.³³

While the charter corporate arm continues to oppose comptroller audits, all 733 of the state's regular public schools and Boards of Cooperative Educational Services were audited by the Office of the State Comptroller from August 2005 through February 2010. These audits disclosed instances of excess funds held in reserve accounts; missed cost savings, no-bid contracts, and questionable payments by school districts across the state.³⁴ Clearly, comptroller's audits identify problems and help schools improve their financial management, while protecting taxpayers' dollars. Charter operators, who currently receive some \$530 million in state and local tax dollars, should be audited by the comptroller and required to meet the same financial and operational standards of accountability and transparency as all other public schools. This is particularly important because charter governance is by appointed boards, not those elected by the public; and because charter budgets are not put before the public for a vote.

QUESTIONS ABOUT FOR-PROFIT OPERATORS

²⁹ Memorandum to EMSC Committee, December 4, 2009, Proposed First Renewal for Niagara Charter School

³⁰ Comprehensive Monitoring Report, March 11-12, 2008, p. 37

³¹ Comprehensive Monitoring Report, March 11-12, 2008, p. 37

³² Memorandum to EMSC Committee, December 4, 2009, p. 5

³³ Memorandum to EMSC Committee, December 4, 2009 and minutes of the January meeting, Board of Regents

³⁴ Office of the State Comptroller report, February 9, 2010

Just before New Year's, parents and teachers protested outside the Merrick Academy Charter School in Queens, calling for immediate improvements at their for-profit charter school affiliated with Victory Schools.³⁵ Victory's contract with Merrick Academy CS entitles it to a management fee of \$2,000 per student – money that is paid to Victory “off the top” from per-pupil aid. Records show Victory collected at least \$1.36 million in management fees in 2008-09, about 21 percent of Merrick Academy's total revenue. Victory also charged other fees, and made a loan to the school at 9.85 percent interest.³⁶

Yet, Victory required teachers photocopy academic material that students needed because of a shortage of supplies. Parents, meanwhile, expressed outrage that the school board chairman asked for donations of copy paper because, he said, the school did not have enough funds.³⁷

At the Buffalo United Charter School, which is managed by National Heritage Academies, the parent-teacher organization is reluctant to hold bake sales, magazine sales and other fund-raisers to support student learning because under the terms of the school's management contract, every penny collected by Buffalo United – 100 percent of all revenue – must be sent to the charter company's headquarters in Grand Rapids, Mich.³⁸ NHA collects 100 percent of the revenue at each of the three charter schools it manages in New York state. It, too, owns the buildings in which its charter schools are located. NHA's contracts in New York stipulate that NHA “leases” its teachers, as well as the entire scope of its instructional operations, back to the school and keeps what it doesn't spend as profit. Agreements like the one below are common:

“The Board of Trustees of the School has entered into a management agreement with National Heritage Academies, Inc. which requires NHA to provide administration, strategic planning and all labor, materials, equipment, and supervision necessary for the provision of educational services to students. As part of the consideration received under the agreement, NHA also provides the facility in which the school operates...”³⁹

Because NHA is privately held, it is impossible to learn how much it earns in profits as a percentage of school revenue and which, if any, charter founders or board members, are put on NHA's payroll as consultants. Financial records offer a glimpse, however, of how National Heritage Academy operates.

The Buffalo United CS paid nearly \$7.2 million in tax dollars it collected in the form of tuition payments to NHA in the 2008-09 school year. Of that, NHA charged Buffalo United – a school with 49 teachers and support staff, and 578 students.⁴⁰

- \$1.34 million for the school to operate in the building NHA owns,
- \$976,000 for executive administration,
- \$361,000 in “professional fees,”
- \$175,000 for board oversight,
- \$188,000 in accounting fees,
- \$272,000 for technology,
- \$86,000 in miscellaneous fees,
- \$67,000 for travel,

³⁵ *Queens Chronicle*, December 31, 2009

³⁶ Audited financial statement, June 30, 2009, Note 10

³⁷ “Merrick school protestors: for-profit isn't for children,” *Queens Chronicle*, December 31, 2009

³⁸ Audited Financial Statement, June 30, 2009, Note 1

³⁹ Audited Financial Statement, Buffalo United Charter School, June 30, 2009, Nature of Operations 1

⁴⁰ Audited financial statement, June 30, 2009

- \$33,000 for marketing and business development.

NHA collected nearly \$3.6 million in charges and management fees. The school spent \$2.7 million on salaries, benefits, food service and instruction.⁴¹

At the Southside Charter School in Syracuse, National Heritage Academies' 100 percent share of revenue totaled \$6.64 million in 2008-09.⁴² The school's federal tax return, Form 990, was also filed out of Grand Rapids, Mich. and included occupancy charges of \$1.8 million, \$485,000 for "executive administration," \$183,000 in "professional fees," as well as \$197,000 for supplies, \$118,000 for technology services, \$112,000 for human resources and \$77,000 for "school board oversight." These and other fees totaled about \$3.1 million of the school's \$6.64 million in revenue.⁴³

It is common for NHA, Victory Schools, as well as other management companies, to own the school buildings that house their charter schools. Victory Schools and other EMOs have made loans to its charter schools at higher-than-market interest rates. A lawsuit filed by Victory Schools against the Roosevelt Children's Academy CS shows that Victory made two loans to the charter school for its building and some management fees, the first for \$669,817 at an interest rate of 9.85 percent per annum compounded monthly.⁴⁴ Audits show the South Bronx Charter School for International Cultures and the Arts owed Victory \$1,132,206 as of last June.⁴⁵ When the Bronx Academy of Promise was preparing to open its doors, it borrowed money from its then for-profit EMO, Imagine Schools. The \$1.4 million in principal and interest were required to be paid off in five years at 12 percent interest.⁴⁶

(Large *non-profit* management companies – i.e. Uncommon Schools, Inc. and Lighthouse Academies Inc. – also collect fees and in some cases contract with privately held companies in which they have ownership. Uncommon Schools, which manages charters in Rochester, Troy and New York City, typically collects 9 percent to 10 percent of all revenue as its management fee. Tax records for Uncommon Schools show the EMO provided development, facilities, financial, technology, special education, program counsel and design, start-up and other services to its schools and received additional fees for those services.⁴⁷ Uncommon Schools has a 100 percent ownership stake in several privately held real estate companies -- including True North Rochester Real Estate, Uncommon Property Manager and Uncommon Properties – worth an estimated \$10 million.⁴⁸ Because these subsidiary companies are privately held, there is little detail in the public record about those transfers from a charter to a related subsidiary.)

It is important to note that fees collected by for-profit charter management companies are not the same as profits. Victory Schools, National Heritage Academies and Uncommon Schools provide administrative services to the schools they operate. In contrast to regular public schools, which are audited by the state comptroller; elect school board members; hold budget hearings; allow scrutiny of budgets and hold public votes on school budgets, what happens inside for-profit charters is effectively shielded from public view. The lack of parallel accountability makes it impossible to assess or in some instances track the use of public funds.

Public policy questions include:

⁴¹ Buffalo United Charter School, Audited Financial Statement, June 30, 2009

⁴² Audit filed with New York State Charter School Institute, 2008-09

⁴³ Audited Financial Statement, June 30, 2009

⁴⁴ Victory Schools Inc. v. Roosevelt Children's Academy, State Supreme Court, Index. No. 08601561

⁴⁵ Audited financial statement, June 30, 2009, New York Daily News, April 8, 2010

⁴⁶ Proposed charter of the Bronx Academy of Promise; Memo to Board of Regents, Feb. 8, 2008, p. 7

⁴⁷ IRS Form 990, 2007-08

⁴⁸ IRS Form 990, Uncommon Schools, Inc. 2008

- With charters self-selecting their board members; no school budget votes and no independent audits, what protections exist to ensure that tax dollars are spent appropriately?
- How can the public be assured that for-profit charter operators are putting students' needs first, and serving all students fairly?
- How does the public know the profit margins and management fees charged by for-profit and non-profit management companies – and additional fees charged for using their curriculum, software, legal services, accounting services, etc. – are reasonable?

A CASE STUDY: WHEN CHARTER OPERATORS AWARD CONTRACTS TO COMPANIES THEY CONTROL

A case history illustrating how charter operators have awarded contracts to companies they control can be found a few blocks from the state Capitol, where School Performance, Inc. is headquartered. School Performance (SPNY) is a non-profit charter consulting, data and testing company providing standardized test support and other services to Albany charters. It was incorporated in Albany on February 1, 2005. The initial board of directors of SPNY⁴⁹ included:

- Thomas W. Carroll, president of the Brighter Choice Foundation; chairman of four Brighter Choice Charter Schools in Albany, and chairman of the Foundation for Education Reform and Accountability.
- M. Christian Bender, executive director of the Brighter Choice Foundation and chairman of the Achievement Academy Charter School; chairman of the Green Tech Charter School; and vice president of the Brighter Choice CS for Boys and Brighter Choice CS for Girls.
- Bill Phillips, president of the New York State Charter School Association.
- Peter Murphy, secretary of the Henry Johnson Charter School and the Brighter Choice CS for Boys and Brighter Choice CS for Girls.

As of June 2008, directors of School Performance, Inc. included other board members at Albany charter schools⁵⁰, including Brian Backstrom, vice president of the Foundation for Education Reform and Accountability and chair of the Albany Preparatory Charter School; John Carl, trustee of the Albany Preparatory Charter School; and SPNY's president, Paul Thallner, trustee of the Albany Community Charter School.

Board minutes obtained through the Freedom of Information Law show SPNY being awarded contracts based on motions entered or seconded by School Performance directors or former directors. Available records show, for example:

At a meeting of the Henry Johnson Charter School on January 25, 2008, former SPNY founding director Peter Murphy moved to have the school enter into a \$10,000 contract with SPNY. Board minutes from that meeting do not reflect any discussion of his past role in creating the company or any potential conflict of interest.⁵¹

On Sept. 26, 2007, the Albany Preparatory Charter School entered into a contract with SPNY based on a discussion led by board trustee John Carl and seconded by Brian Backstrom. There is no

⁴⁹ Certificate of Incorporation, New York Department of State

⁵⁰ IRS Form 990, 2008 (latest filed), Murphy is apparently no longer a director.

⁵¹ Board minutes, Henry Johnson Charter School, January 25, 2008

record of either Carl or Backstrom recusing themselves from the vote to avoid a conflict of interest. Both voted on the motion, even though School Performance's IRS Forms for 2007-08 show both Backstrom and Carl served on SPNY's board of directors that year.⁵²

In at least one instance, Carroll and Thallner properly recused themselves from votes because of conflicts.⁵³ The Brighter Choice Boy's and Brighter Choice Girl's charter schools – which Carroll founded, and where he serves as chairman of the board of trustees – said in response to FOIL requests that no records of board minutes exist for the awarding of School Performance contracts. Both Brighter Choice charter schools said they did not have records related to competitive bids for contracts related to School Performance.⁵⁴

Contracts, e-mails, board minutes and cancelled checks obtained through the Freedom of Information law between Albany charter schools in Carroll's Brighter Choice network and School Performance say SPNY compiles and manages student test results and issue reports which charter schools present to charter authorizers. Charter authorizers use test results to determine, among other decisions, whether charters earn renewals. SPNY's contract with the Albany Preparatory Charter School, for example, reads: "The goal of this agreement is to contribute to your school's ability to make informed decisions using student achievement data. To that end, SPNY will provide detailed data reports and analysis that will help your school address and report on proficiency targets. Moreover, the analysis SPNY produces is designed to satisfy reporting requirements to your board of trustees, property owners, authorizer, benefactors, research institutions, other public agencies and the general public."⁵⁵

SPNY contracts with Albany Preparatory Academy Charter School, as well as similar contracts between the Albany Community Charter School and Brighter Choice charter schools says:

- School Performance uses student test data scores to provide historical testing information for teachers. It measures the types of questions that students answer correctly and incorrectly; notes changes in performance levels and provides tables and bar graphs showing individual student and class growth.⁵⁶
- Fees paid by Albany charters to School Performance vary. Available contracts show Albany charters have paid as much as \$50,000 annually for SPNY's testing services,⁵⁷ and as little as \$5,000. SPNY reports revenue of nearly \$1 million, with much of that coming from grants from the Walton Family Foundation, the charitable arm of the Wal-Mart family. The Walton Family Foundation contributed \$605,593 to SPNY in 2008, and \$607,663 in 2007.⁵⁸
- In contracts between SPNY and the Albany Community and Albany Preparatory charter schools, School Performance is permitted to share student testing data with the Foundation for Education Reform and Accountability, which is headed by Carroll.⁵⁹
- School Performance, Inc. provides practice tests and scores the tests, sometimes sub-contracting the test-scoring work to Educational Vistas, Inc., a privately held company.⁶⁰

⁵² Board minutes, Albany Preparatory Charter School, September 26, 2007, IRS Form 990, 2007

⁵³ Board minutes, Albany Community Charter School, March 12, 2008

⁵⁴ Letter from Brighter Choice Boy's/Brighter Choice Girl's Charter Schools, March 24, 2010

⁵⁵ Contract between School Performance, Inc. and Albany Preparatory Charter School, September 25, 2008

⁵⁶ Contract between School Performance, Inc. and Albany Community Charter School, September 25, 2008

⁵⁷ Invoice for Brighter Choice Boy's CS, 2007-08

⁵⁸ www.waltonfamilyfoundation.org, listing of 2008 and 2007 charter school grants.

⁵⁹ Contracts between School Performance, Inc. and Albany Community, Albany Preparatory CS, both September 25, 2008

⁶⁰ Contract between School Performance, Inc. and Albany Community Charter School, September 25, 2008

School Performance provides resource binders, professional development to charter teachers and other consulting and management services to the Albany charter schools.

Dynamic Applications, a computer software company, was hired by the Brighter Choice Foundation and the Brighter Choice charter schools to provide a “learning standards management system.”⁶¹ John P. Reilly, president of Brighter Choice’s KIPP Tech Valley Charter School in Albany, is president of Dynamic Applications.

Mason Tolman, currently treasurer of Brighter Choice’s Albany Community Charter School and president of Mason Tolman LLC, an advertising company, won a nearly \$14,000 contract “upon recommendation of the principal” to produce brochures and radio and print ads for Brighter Choice’s Henry Johnson Charter School.⁶² There is no evidence of competitive bidding, but the board minutes read, “The firm has done exceptional work for other charter schools and previously with the Brighter Choice Foundation on behalf of the Henry Johnson Charter School...”⁶³

It would be wrong to conclude from one case study that practices such as this are widespread, or that the contracts do not produce valid work. However, this case study raises questions about these practices and the failure of the law to provide transparency and accountability for the public. The reality is it is currently impossible for ordinary citizens to determine whether their tax dollars are being well-spent and whether the spending and results are appropriate.

⁶¹ www.dynamicapps.com/News.aspx

⁶² Board Minutes, Henry Johnson CS, January 28, 2008.

⁶³ Board Minutes, Henry Johnson CS, January 28, 2008

II. REFORM TO THE LAW IS NEEDED TO ENSURE THAT STUDENTS ARE FAIRLY SERVED AND THAT TEST COMPARISONS ARE VALID.

New data obtained on student enrollment and migration reveal a charter movement not succeeding in one of its primary missions — to serve students fairly, with a “special emphasis on expanded learning experience for students who are at-risk of academic failure.”⁶⁴ Charter operators, both upstate and in New York City, significantly under-enroll students with disabilities and students who are English language learners.

New data provided by the State Education Department shows 2,627 students in charter schools received special education services in the 2008-09 school year, a period in which 36,566 students were enrolled in charters.⁶⁵ This means that, statewide, just 7.2 percent of students in charter schools are students with disabilities.

An accompanying chart (see appendix, pg. 38) shows, on average, charters enroll fewer than half the special education populations of regular district schools. In New York City, 9.4 percent of charter students receive special education services, compared to 16.4 percent in district schools throughout the five boroughs.⁶⁶

In individual communities, the special education enrollments at charter schools and district schools can be so disparate, relative comparisons of student performance are called into question. For example:

Despite a random lottery, the Brighter Choice Boy’s and Brighter Choice Girl’s charter schools in Albany enroll a combined 13 students with disabilities out of a total enrollment of 443, for a special education rate of 2.9 percent.⁶⁷ Albany’s special education population is 14.6 percent.⁶⁸ Brighter Choice Charter Schools were recently found not in compliance with their charter for inquiring about students’ special education needs on their application form. The State Education Department report instructed Brighter Choice, “As the child’s special education status is not relevant to admissions, please provide an updated lottery application.”⁶⁹

The four charter schools that make up the Harlem Success Academy charter network enroll 13 students total with disabilities, out of a total enrollment of 944 students, for a special education rate of 1.3 percent.⁷⁰ City schools in District 4-5 have an overall special education population of about 15 percent.⁷¹

Teachers in both regular public schools and charter schools have reported anecdotally that some charter operators have advised parents that their children with learning disabilities would not be a “good fit” for a particular charter school. At the Ross Global Academy CS, parents have charged

⁶⁴ Education Law section 2850 (2)(b). See also, Education Law section 2852 2(d)

⁶⁵ Data from Inni Barone, New York State Education Department, March 9, 2010, e-mail Excel files

⁶⁶ Report by United Federation of Teachers, Separate but Unequal, December 2009

⁶⁷ New York State Education Department, BEDS data files, students with disabilities, 2008-09

⁶⁸ New York State Education Department, School Report Card, 2008-09

⁶⁹ SED Charter School Monitoring Matrix, November 4, 2009

⁷⁰ State Education Department BEDS data files, 2008-08

⁷¹ United Federation of Teachers

that charter operators have encouraged them to withdraw their special-needs children, who can lower a school's test scores and who cost more to educate.

Mariama Sanoh, a vice president at the New York Charter Parents Association with children who attend the school, said administrators often try to "counsel out" kids who require special-education services -- including her youngest son. "They're saying they don't have the resources to deal with kids with [a] disability," Sanoh told a newspaper recently. "Instead of helping me, they're trying to push him out to a real public school that will give him what he needs."⁷²

A parent whose child attended Harlem Success Academy II CS said he was told he might have to look for another school for his son because the boy had special needs and required the help of a teaching assistant.⁷³

The failure of charter schools to serve their share of special education students may be a result of decision-making in program planning; charters' pre-screening prospective students before the random lottery; a flawed lottery; charters discharging those who are most expensive and most difficult to educate; parental choice; or random skewing. Charter management says it resists classifying students and that regular public schools over-classify students with disabilities.

Regardless of the cause, the charter industry's record of under-serving students with disabilities also calls into question comparisons of charter and district test results, especially when charters also fail to enroll representative percentages of students who do not speak English fluently.

Test result comparisons should be made using comparable populations of general education students in order to make fair comparisons between charter schools and regular public schools. When the comparisons are done, performance between charter schools and regular public schools are similar, as earlier reports have shown.

CHARTER OPERATORS UNDER-ENROLL STUDENTS WHO ARE ENGLISH LANGUAGE LEARNERS

In New York City, just 3.8 percent of students in charters are English language learners, compared to 14.2 percent in district public schools.⁷⁴ As low as that number is, New York City charters serve greater percentages of students for whom English is a second language than in the rest of the state.⁷⁵ Charter schools in Albany, Rochester, Buffalo and other upstate cities report even fewer English language learners. A review of School Report Card data shows that at least 38 of the 141 currently operating charters report enrolling zero English Language Learners.⁷⁶ (see appendix, pg. 41)

Eight Buffalo charter schools report zero ELL students at a time when the district's ELL population is 8 percent.⁷⁷ In Rochester, where the ELL student population is 9 percent, two of the city's four charter schools serve no English Language-learning students. Three percent of the students at the Charter School for Educational Excellence in Yonkers are classified as ELL, a fraction of the district's 15 percent ELL population. In Roosevelt on Long Island, the Children's Academy CS's student population is 4 percent, while 20 percent of students in the regular district schools are ELL students.⁷⁸

⁷² New York *Post*, February 22, 2010

⁷³ New York *Daily News*, July 18, 2009

⁷⁴ *Separate and Unequal*, United Federation of Teachers, January 2010

⁷⁵ Analysis of School Report Card data for charter schools, district schools

⁷⁶ New York State Education Department, School Report Card data, 2008-09 (some schools did report ELL population)

⁷⁷ New York State Education Department, School Report Card data, 2008-09 (latest available)

⁷⁸ New York State Education Department, School Report Card data, 2007-08 (latest available)

In summary, state School Report card data clearly shows charter schools are failing to proportionately enroll English language learners and students who require special education services. In contrast, regular district schools are required by law to serve all students equally. While the enrollment gaps are enough to call into question test-score comparisons between charter and regular public schools, charters and district schools also experience a “churn rate” that affects who gets taught and who gets tested.

NEW STATISTICS SUGGEST A STUDENT “CHURN RATE” OF 8-10 PERCENT A YEAR

Charter operators have almost unilateral authority to “discharge” students and return them to regular public schools. The State Education Department recently revoked the charter of the East Preparatory CS in New York City because, in part, the school had discharged 48 students before standardized testing began, including seven low-scoring third-graders.⁷⁹ A New York City principal last year publicly accused charter operators of pushing low-performing students out just before state exams.⁸⁰ The SUNY Charter School Institute criticized Brighter Choice’s Albany Preparatory Charter School for screening potential students to weed out those with academic challenges, noting, “The extent, specificity, and sources of the allegations are unprecedented,” its report reads. “And the complainants all linked the alleged behavior to attaining higher scores on the state assessments in light of a pending (charter) renewal decision.”⁸¹

Precise statistics have been difficult to come by because school districts have only recently begun to accumulate authoritative statistics on student migration between charters and regular public schools. The Albany, Syracuse, Rochester, Yonkers, Niagara Falls and Buffalo city school districts – which together account for more than 30 charter schools – provided records which suggest that, at a minimum, 8 percent to 10 percent of charter students return to their city’s schools annually. Students also migrate during the school year from regular district schools to charter schools, although statistics were not available; and in some cases from one charter to another.

Nearly 150 students have returned from Albany charter schools to the city school district during this current school year.⁸² The district began compiling data on students who returned in late November. The chart below, in which parents explain to the district why their students are returning from Albany charters, offers a glimpse at the turnover, or “churn”.⁸³

⁷⁹ Letter from New York City Department of Education, January 25, 2010; Gotham Schools, March 19; *New York Post*, Jan. 26, 2010

⁸⁰ *New York Daily News*, July 18, 2009

⁸¹ *Albany Times Union*, February 22, 2010

⁸² Director of Communications, Albany School District, e-mail, February 17, 2010

⁸³ Director of Communications, Albany School District, e-mail, February 17, 2010

Leaving Albany Charters

Reasons provided to Albany School District September 2009 to March 2010

Grade	Charter School Attended	Date returned	Reason returning
5	Albany Prep	11/30/2009	Student has special needs
7	Albany Prep	11/25/2009	Accused of having a BB gun
6	KIPP	12/4/2009	Unhappy with Charter program
5	New Covenant CS	12/18/2009	Unhappy with Charter program, having problems with the school
6	Achievement Academy CS	12/18/2009	Student has special needs
7	KIPP	12/8/2009	Unhappy with Charter program
4	Albany Community CS	12/14/2009	Unhappy with Charter program
5	AACS	12/23/2009	Student has special needs
5	AACS	12/24/2009	Unhappy, failing, lack of communications from CS Teachers
1	NCCS	1/5/2010	Unhappy with Charter program, child needs more care and has not been properly evaluated
4	NCCS	1/5/2010	Unhappy with Charter program
2	NCCS	1/8/2010	
6	AACS	1/11/2010	
7	AACS	1/12/2010	ACSD offers unique program
2	NCCS	1/14/2010	Unhappy with Charter program and focused on behaviors instead of academic work
6	NCCS	1/14/2010	Unhappy with Charter program and focused on behaviors instead of academic work
8	Albany Prep	1/21/2010	Unhappy with Charter program
6	KIPP	1/29/2010	Unhappy with Charter program
9	Green Tech Valley	2/1/2010	Unhappy with Charter program
6	Albany Prep	2/2/2010	Child wasn't happy
9	Green Tech Valley	2/21/2010	Asked to leave (Expelled)
9	Green Tech Valley	2/25/2010	Child wants to attend public school
K	Brighter Choice for Boys	2/25/2010	Unhappy with Charter program/Unable to handle son
3	Henry Johnson CS	2/25/2010	None
3	Henry Johnson	3/2/2010	Unhappy with Charter program
1	Brighter Choice	3/3/2010	closer location

Sources: Albany City School District

Of the 146 students who have transferred to Albany city schools from charter schools as of Feb. 1, 2010, the numbers include 48 from the New Covenant CS; 22 from Brighter Choice's Achievement Academy CS and 16 from Brighter Choice's Albany Preparatory CS. The city school district also reports 14 students each (28 total) have left the Brighter Choice's Green Tech and Brighter Choice's KIPP Academy charter schools this year.⁸⁴

In 2008-09, 191 students transferred to district schools from Albany charter schools, about 9 percent of the city's total charter enrollment.⁸⁵ The largest number, 72, returned to city schools from the New Covenant Charter School that year, but 27 left Brighter Choice's Achievement Academy; 24 returned from the Brighter Choice Girl's and Boy's charters; and 23 were discharged from the Albany Preparatory Charter School.

Albany and its charter schools illustrate the inherent unreliability of comparing student test results, given the lack of comparable student bodies and the "churn" or mobility rate among schools.

⁸⁴ Director of Communications, e-mail of data, February 17, 2010

⁸⁵ Statistics provided by Office of Communications, Albany City School District

For both the regular public schools and charters, how is it possible to determine whether the students being taught are the same ones being tested?

Exemplifying the problem of “churn” – and the unreliability of test score comparisons – is the KIPP Tech Valley Charter School, which is now up for renewal from the SUNY Charter School Institute. In 2009, KIPP Tech Valley Charter School graduated its first cohort of students to go through all four years of its program. The school reports that 100 percent of its eighth-graders scored level 3 or Level 4 on the 2009 state math test, and 92 percent met state standards on the ELA test.⁸⁶ However, KIPP’s Class of 2009 also had a four-year graduation rate of 31 percent. District records show only 27 of the 88 students who attended the charter school as fifth-graders in KIPP’s first year completed the charter program four years later. Fifty-five students left the school, and six remain enrolled in 2009-10 after being held back. In 2008-09 alone, 14 KIPP students returned – or were removed – to Albany city schools.⁸⁷

The Syracuse City School District reports the city’s two charter schools have shed more than 600 students over the last four years. At least 357 students have returned to Syracuse city schools from the Southside Academy Charter School since the beginning of the 2005-06 school year, including 75 from September 2009 until February 2010. Southside enrolls about 400 students, meaning the school has lost — or returned — nearly 20 percent of its student body this year.⁸⁸ Syracuse school officials say 262 students have returned to city schools from the Syracuse Academy of Science Charter School over the same time period, including 38 — or about 10 percent of its enrollment — so far this school year.⁸⁹

In Buffalo, 192 students have returned from charter schools to city schools this school year, including at least 41— or 21 percent – discharged for behavior, poor academics or because they require special education services.⁹⁰

Twenty-six students left the Oracle Charter School, included 14 who are listed as “expelled.” At the Western New York Maritime Charter School, administrators forced out 23 of the 26 students who returned to Buffalo city schools so far this current school year. Forty-three Buffalo United students – or about 7.4 percent – returned to city schools, although all are listed as “parent’s choice.”⁹¹

Rochester city schools report 142 students returned to district schools from the city’s four charter schools in the past year, about 14 percent of the city’s charter enrollment. Aloma Cason, of the city school’s Office of Accountability, said the district does not track the reasons students return but, “We assume most of them return because of behavior.”⁹²

The Niagara Falls School District reports that 146 students have returned from the city’s single charter school – the Niagara Charter School – from September 2007 until March 2010, a return rate of about five per month. The school is located in the Niagara-Wheatfield School District.⁹³

Records from New York City could not be obtained, but the New York *Daily News*, in data attributed to the New York City Board of Education, reported last year about 550 charter school

⁸⁶ Albany Superintendent’s letter to the Charter Schools Institute, March 2010

⁸⁷ Albany Superintendent’s letter to the Charter Schools Institute, March 2010

⁸⁸ Syracuse City School Records, Office of Information Technology, March 2, 2010

⁸⁹ Syracuse City School District records, Department of Information Technology, March 2, 2010

⁹⁰ Gloria Walker, Central Placement Office, Buffalo City School District, February 2010.

⁹¹ Gloria Walker, Central Placement Office, Buffalo City School District, February 2010

⁹² Rochester City Schools’ Office of Accountability

⁹³ Data from Marcia Capone, Administrator for Assessment/ CIO, March 25, 2010

students transferred from charters to regular city schools between October 31, 2008, and June 1, 2009 – a period of seven months.⁹⁴

The continuing “churn” of students returning from charters to regular public schools – and the movement of students from district schools to charter schools – calls into question test score comparisons of schools. Neither charter schools nor the sending/ receiving school districts are testing the students they are responsible for educating. They are not testing the same cohort of students from year to year.

Education researcher Diane J. Ravitch summed up the issue recently: “Charter evaluations frequently note that as compared to neighboring public schools, charters enroll smaller proportions of students whose English is limited and students with disabilities. The students who are hardest to educate are left to regular public schools, which makes comparisons between the two sectors unfair. The higher graduation rate posted by charters often reflects the fact that they are able to ‘counsel out’ the lowest performing students; many charters have very high attrition rates (in some, 50%-60% of those who start fall away). Those who survive do well, but this is not a model for public education, which must educate all children.”⁹⁵

CHARTER SCHOOLS RESULT IN MORE RACIAL AND ETHNIC SEGREGATION

Statistical data shows that charter schools create more racial and ethnic isolation, segregating African-American and Latino students in a separate school system. More than 50 years after *Brown v. Board of Education*, charters are increasing segregation in education. Recent studies have shown that unregulated school choice introduces systemic bias and undermines the pluralism and diversity that is the foundation of public education.

Of the 34 charter schools outside New York City studied, 23 had student populations more than 85 percent African-American or Latino. The following chart details the level of ethnic and racial segregation in charter schools outside New York City.

This chart represents the percentages of African-American, Latino (and multi-racial, if significant) students in charter schools and regular district schools.⁹⁶

Albany

Achievement Academy CS	98	Albany City School District 75 percent African-American, Latino and multi-racial
Albany Community CS	94	
Albany Preparatory CS	85	
Brighter Choice CS Boy's	99	
Brighter Choice CS Girl's	95	
Henry Johnson CS	97	
KIPP Tech Valley	96	
New Covenant CS	97	

Data for Green Tech HS CS not available.

Buffalo

Buffalo Academy of Science CS	84	Buffalo City School District 72 percent African-American and Latino
Buffalo United CS	100	
CS Applied Technologies	57	
Community CS	99	
Elmwood Village SC	42	
Enterprise CS	96	

⁹⁴ New York *Daily News*, July 28, 2009

⁹⁵ *Why I Changed My Mind About School Reform*, Diane J. Ravitch, Wall Street *Journal*, March 9, 2010

⁹⁶ New York State Education Department, School Report Card data, 2007-08 (latest available.)

Oracle CS	84	
Pinnacle CS	95	
Sanofka CS	100	
South Buffalo CS	27	
Tapestry CS	40	
Westminster CS	97	
Western NY Maritime CS	89	

Syracuse

Southside Academy CS	92	Syracuse City School District 65 percent African-American, Latino
Syracuse Academy of Science	69	

Rochester

Genesee Community CS	27	Rochester City School District 86 percent African-American, Latino
True North Preparatory CS	99	
Urban Choice CS	86	
Eugenio Maria de Hostos	98	

Long Island

Child Development Center Hamptons	6	Wainscott SD: 37 percent Riverhead SD: 40 percent Roosevelt SD: 99 percent
Riverhead CS	83	
Roosevelt Children’s Academy CS	99	

Other Regions of the State

CS of Educational Excellence	99	Yonkers City Schools: 76 percent Troy City SD: 43 percent Niagara Falls City SD: 40 percent Schenectady City SD: 48 percent
Ark Community CS	88	
Niagara CS	85	
International CS of Schenectady	41	

III. CHARTER AUTHORIZERS LACK THE CAPACITY TO PROVIDE COMPREHENSIVE OVERSIGHT

Charter corporate management has gone to court in a number of instances to resist additional oversight or checks and balances on management practices.

The New York State Charter School Association, the management and lobbying arm for many operators, went to court to block financial and operational audits by the Office of the State Comptroller. Brighter Choice, a network of eight charters in Albany, has appealed to the Court of Appeals two rulings forcing it to disclose the names and salaries of its teachers under the Freedom of Information Law, information that is a required part of the public record for regular public schools to protect against nepotism and fraud. The for-profit National Heritage Academies is seeking to block teacher efforts to unionize as public employees, claiming that — despite the school’s public funding, and the protections afforded charter employees by the Taylor Law — they are “private-public employees.” This is a direct contravention of the charter school law. NHA’s legal effort – in the face of 100 percent of teachers signing cards seeking union representation in March 2009 -- suggests charter management wants to avoid the natural checks-and-balances that occur when teachers have a voice through a union.

Charter management's claim that the current accountability system is sufficient is belied by the record. In addition to shortfalls in local audits detailed earlier, the record shows that specific management and operational deficiencies or ethics violations too often are not disclosed publicly, sometimes not even in detail to those voting on renewals. Charter authorizers do not currently have the budget and capacity to provide comprehensive financial and operational oversight for the current number of charter schools, raising questions about how the State Education Department and other authorizers will be able to oversee an expanded number of charters.

This is critical because, by law, charter operators are exempt from checks and balances that exist in regular public schools, such as elected school boards; comptroller audits; and school budget votes by the public. Some of the problems identified in this report have never been reported publicly. While regular on-site reviews of charters can and do identify problems ranging from minor to significant, the standards for recommending approval or renewal of charters appear to vary widely and disclosure of problems also varies widely.

For example, when State Education Department staff recommended the renewal of Western New York Maritime Charter School's charter, the supporting memorandum praised the school's new-found stability – an oblique reference to four principals, or commanders, in four years. The SED staff memo said the school had “faced and met many challenges” and had “learned from its experiences.” “The school has promptly and satisfactorily addressed any and all issues identified in its annual audits and by the Office of the State Comptroller,” the SED memo stated. “The School has implemented (and will continue to implement) strong fiscal monitoring procedures and internal controls.”⁹⁷

The State Education Department memo, however, did not reference the fact that the Erie County district attorney had filed criminal charges against management for misappropriating \$95,000 from 2005 to 2007; that the school could not account for nearly \$10,000 in federal grants; that the school's parent-teacher group had complained that its funds had been stolen; and that charter management had hired an administrator with a criminal record.⁹⁸

Five months ago, the State Education Department recommended the renewal of the Niagara Charter School's charter, despite a finding of “misallocation of funds.” The monitoring report, which was not made public,⁹⁹ called the Niagara Charter School “a school in disarray” and noted, “There is, at the very least, the pervasive appearance of fiscal mismanagement and less than ethical behavior on part of the Board of Trustees and school administration.”¹⁰⁰ Staff recommended and the Regents approved a three-year renewal of the Niagara Charter School's charter.¹⁰¹

This case raises the question of how the public can be assured that only high-quality charters are renewed, when the public did not have access to the full record of this school's history.

All three of the charter authorizers in New York state are hampered by budget and staffing restraints and have a responsibility for a larger and more far-reaching educational agenda. Their inability to provide comprehensive financial and operational oversight for the current number of charter schools raises questions about how the authorizers — both in New York City and throughout the rest of the state — will be able to oversee an expanded number of charter schools.

- How can the public be assured that its tax dollars are being spent appropriately without greater transparency from authorizers?

⁹⁷ SED staff memo to Board of Regents recommending charter renewal, December 8, 2008.

⁹⁸ *Buffalo News*, March 18, 2010

⁹⁹ Record made available by State Education Department upon specific request, following school's renewal

¹⁰⁰ State Education Department, *Comprehensive Monitoring Report*, March 11-12, 2008

¹⁰¹ Memorandum to EMSC Committee, December 4, 2009 and minutes of the January meeting, Board of Regents

- How can the public be assured that quality charters are being permitted to open, and to have their charters renewed? What should be the standard for allowing a charter to continue to operate; be put on probation; or have its doors closed?
- Will the State Education Department and Charter School Institute be funded with the appropriate budget and staff to ensure comprehensive oversight for how schools operate and for how public dollars are spent?
- And, how would the Regents and other authorizers provide rigorous oversight and ensure accountability at 460 charter schools when there are already significant lapses in oversight of 140 charter schools?

IV. SUPPORTING DETAILS

Below, in alphabetical order, is a summary of some of the financial and operational problems in specific charter schools. This is an initial analysis that reviewed records of approximately one-third of the charter schools currently in operation. As the footnotes show, sources include state documents and media reports. These specific examples do not in any way suggest that all charter operators have operational and financial problems, but they do clearly make the case for greater accountability and transparency, based on the problems they reveal and the questions that cannot be answered because of a lack of information.

Achievement Academy Charter School

One teacher resigned in protest and another teacher was fired at this Brighter Choice charter school after they discovered hidden cameras, covered by a sweater, in a bookshelf in their classrooms. A teacher said she quit after the videotaping incident because, “I don’t want to be part of a school that thinks they can violate the laws of the land just because they’re a charter school.” Although the charter board chairman said teachers had been aware of the videotaping, the teacher questioned why the cameras were hidden in a bookshelf under a sweater. The teachers also accused Achievement Academy administrators of telling teachers to allow students to see assessments 48 hours to a week in advance so it would appear their test scores would be higher than other Albany public schools. “I was not willing to let them cheat. They wanted teachers to feed test answers to kids. That’s not really a true measurement of education. It’s a charade for the charter review of the school,” the teacher said.¹⁰²

Albany Preparatory Charter School

The Albany Preparatory Charter School is facing probation for screening out those with academic challenges. A report by the Charter School Institute found that an administrator trying to improve the school’s test scores denied admission to – or wait-listed – students with learning disabilities. The school also “pre-tested” students, and the parents of those who did not score well were counseled that Albany Prep was “not a good fit.” Charter School Institute inspectors also found that Albany Prep under-reported teacher attrition as well as its number of violent incidents. Although some parents were told there was a waiting list, the school is, in fact, under-enrolled. The report also found that the school’s principal threatened to fire teachers who came forward to blow the whistle. “The extent, specificity and sources of the allegations are unprecedented. The complainants all linked

¹⁰² Secret or Open?: 2 teachers taped, Albany *Times Union*, October 7, 2009 and “Ex-teachers blast charter school,” Troy *Record*, October 8, 2009

the alleged behavior to attaining higher scores on the state assessments in light of a pending (charter) renewal decision.”¹⁰³

Brighter Choice Boy’s Charter School Brighter Choice Girl’s Charter School

Albany’s Brighter Choice Charter Schools have touted their longer school year and foreign language instruction offered as early as kindergarten. Yet, the State Education Department found that Brighter Choice unilaterally reduced the length of the schools’ year by five days and stopped offering foreign language instruction to students. A November 2009 inspection report showed Brighter Choice also was screening lottery applications by asking parents if their children required special education services. The inspection report also noted the schools’ very high teacher attrition rate and other areas of non-compliance, including hiring uncertified teachers, failing to provide required instruction to suspended students and appointing board members without approval from the charter authorizer. The State Education Department ordered Brighter Choice schools to comply with the terms of their charter.¹⁰⁴

Bronx Academy of Promise Charter School

The Bronx Academy of Promise Charter School’s founders have close financial ties to a non-profit, Urban Youth Alliance, whose board shares members with the charter school’s board. For several years, the Bronx Academy of Promise was managed by a for-profit management company, Imagine Schools, Inc., which charged the charter school \$358,388 in management fees, about 12 percent of its total expenses. Imagine also loaned the school \$1.44 million to begin its operations – at 12 percent interest. This financial arrangement was “on the table” – known to and approved by – the Board of Regents when it granted the school its charter.¹⁰⁵ Records show that a lawsuit was filed over the school’s decision to terminate its relationship with Imagine Schools. The school has had difficulty recovering important financial records from its management company.¹⁰⁶

Bronx Lighthouse Charter School

The Bronx Lighthouse Charter School is managed by the non-profit Lighthouse Academies, which collected at least \$182,000 in management fees and bonuses in 2007 and \$127,000 in management fees and bonuses in 2008. Lighthouse Academies has also extended the school a \$230,000 loan. The Lighthouse CEO serves on the charter school’s board of trustees, as does a management consultant who is also on Lighthouse Academy’s national board. Another Bronx Lighthouse board member was paid as a consultant by the school to prepare its renewal application.¹⁰⁷

Brooklyn Charter School

Tax records and audit reports show that in 2008, the Brooklyn Charter School became the “sole member” or parent organization of The Wedding Garden Inc., a non-profit charitable bridal boutique founded by school’s chairman. The bridal boutique, which has garnered considerable publicity, was set up to benefit the Brooklyn Charter School.¹⁰⁸ Records show the Wedding Garden paid nearly \$209,000 in consulting fees in 2007, and \$144,400 to its executive director, but contributed just \$35,000 to the charter school. (In a letter dated April 8, 2010, the board chairman said

¹⁰³ Albany *Times Union*, February 23, 2010

¹⁰⁴ SED Comprehensive Monitoring Matrix, November 2009

¹⁰⁵ Proposed Charter for Bronx Academy of Promise CS, NYS Board of Regents, February 8, 2008

¹⁰⁶ Audited financial statement, June 30, 2009

¹⁰⁷ NYC Board of Education, audit report.

¹⁰⁸ Form 990, The Wedding Garden Inc. 2007

the Wedding Garden had contributed an additional \$159,000 to the school in 2009 and 2010,¹⁰⁹ but records that would more fully explain the bridal boutique's and charter school's financial relationship for those years are not yet available.)

Buffalo United Charter School

National Heritage Academy and the Buffalo United Charter School teaching staff are embroiled in a legal dispute that stems from NHA's efforts to block teachers from forming a union. In March 2009, 100 percent of the school's teachers signed union authorization cards seeking to affiliate with New York State United Teachers – a process repeated in March 2010 when more than 90 percent of the staff also signed union cards. NHA has gone to the New York State Public Employment Relations Board to block unionization, declaring that although it receives nearly 100 percent of its revenue from local, state and federal tax dollars – and the Charter School Act clearly says that charter teachers are covered by the Taylor Law -- PERB does not have jurisdiction over NHA. Meanwhile, a judge in Brooklyn has ruled that administrators at the Brooklyn Excelsior Charter School, also managed by NHA, are public school teachers covered by the Taylor Law and are permitted to organize under PERB.

Carl Icahn Charter School

Seventeen of 18 contracts worth \$258,000 awarded by the Carl Icahn Charter School were “no-bid contracts.” Some contracts were awarded to a relative of a school administrator. The audit found the school paid \$6,163 for staff parties, including \$1,288 on alcoholic beverages. In addition, the board voted to authorize \$167,500 in employee bonuses but, when questioned, could not provide policies or procedures governing the authorization and payment of bonuses. Some bonuses to teachers and staff were never paid.¹¹⁰

East New York Preparatory Charter School

Inspectors found that the East Preparatory Charter School principal changed her title to “superintendent” and authorized a pay hike for herself from \$120,000 to \$180,000 plus a \$20,000 bonus.¹¹¹ The principal's actions were apparently part of a pattern of mismanagement at East New York Preparatory Charter School, where inspectors found more than 40 percent of the Board's members have material interests in the school.¹¹² The Education Department, responding to parent complaints, also found that East New York Prep offered 12 fewer days of instruction than approved, and that charter management returned 48 students to regular public schools in the 2008-09 school year, including seven low-performing third-graders prior to state testing.¹¹³ The charter school has been ordered closed by the New York City Board of Education, but the superintendent/founder is appealing.

Eugenio Maria de Hostos Charter School

The Eugenio Maria de Hostos Charter School in Rochester is an example of the entangled relationships that sometimes exist between non-profits and charter schools. The charter school is sponsored by the Ibero-American Action League, a community group in Rochester, which has a number of interconnected subsidiaries, including the Ibero Housing Corp., the Ibero American Investors Corp., the Ibero American Development Corp. and others.¹¹⁴ The school pays \$334,000 in rent to the IAAL.¹¹⁵ The charter school's board of trustees has in common at least four board

¹⁰⁹ Letter from Henry Lambert, board chairman, Brooklyn Charter School and Wedding Garden, April 8, 2010

¹¹⁰ Office of the State Comptroller, audit, 2007-S-70

¹¹¹ School Flunks Out, New York Post, January 26, 2010

¹¹² Notice of Intention to Terminate Charter, NYC Board of Education letter, January 25, 2010

¹¹³ School Flunks Out, New York Post, January 26, 2010

¹¹⁴ Form 990, Ibero American Action League

¹¹⁵ Audited financial statement, June 30, 2009

members of the IAAL or its affiliated non-profits.¹¹⁶ The charter board's president's sister is the school's highest earner at more than \$116,000. The board president's daughter also teaches at the school; another board member's wife is the charter's education coordinator at \$78,000 per year. The school's audit found that accurate enrollment data was not provided to the Rochester city schools, resulting in overpayments to the charter school.

Enterprise Charter School

Management at the Enterprise Charter School in Buffalo used some of the school's funding to support the financially ailing Niagara Charter School. Enterprise Charter School's board paid at least \$7,700 in health insurance premiums for its former CEO while he was CEO of the Niagara Charter School. Enterprise's board also overpaid the CEO by at least \$34,000 and later gave him a \$60,000 consulting contract – with 25 percent, or \$15,000, paid up front. School officials could not document what consulting services he provided to the school. Enterprise board members also spent \$85,000 without paperwork or approvals, including thousands of dollars in charges for parties, alcohol, tickets to the theater in Toronto, travel and personal expenses.¹¹⁷

Explore Charter School

The founder of the charter school also serves as executive director of his charter school, collecting a compensation package of \$152,664 in 2007. In addition, a related foundation – the Friends of Explore Charter School – paid the founder an additional \$13,316 that year. In addition, the school's chief finance officer earned \$99,298 plus an additional \$8,666 from the school's foundation. Explore's latest tax records report the school spent \$286,449 on "outside services," but the purpose of those services – and who provided them – is unknown.¹¹⁸

Family Life Academy Charter School

The Family Life Academy CS is located in and financially inter-connected with a holistic ministry. The Family Life Academy CS is located inside a pastoral center, and pays the pastoral center more than \$400,000 annually in rent.¹¹⁹ The pastoral center's website features a bible and the charter school notes its strong commitment to service and community "through our practices and partnership" with the center. The pastor and the center's treasurer are on the school's board of trustees. The charter school's audit notes the school's principal is the wife of the pastoral center's president.¹²⁰

Harlem Day Charter School

The chairman of the board of the Harlem Day Charter School has selected his brother – founder and board president of the Brooklyn Charter School – and his son-in-law to serve on the school's board. An external visit report from the Charter School Institute found poor instructional leadership; disciplinary problems; failure to use the school's curriculum; and failure to use data to improve instruction.¹²¹ This school of 18 teachers and 250 students paid \$180,000 in salary to the school's executive director¹²² and the Harlem Day board paid out some \$360,000 in consulting fees to unidentified consultants – more than \$1,000 per student.

International Charter School Schenectady

The Charter School Institute closed the International Charter School in Schenectady in June 2008 because of what trustees called "systemic failure." The SUNY trustees found a lack of cohesion

¹¹⁶ Comparison of charter school board and Form 990s, IAAL

¹¹⁷ Office of the State Comptroller, audit, November 28, 2007

¹¹⁸ IRS Form 990, 2007, latest available.

¹¹⁹ IRS Form 990, 2007 and audited financial statements

¹²⁰ Audited financial statement, June 30, 2009 and IRS Form 990, 2007

¹²¹ External Evaluation Report, Charter Schools Institute, May 2009

¹²² IRS Form 990, 2007

in the curriculum and quoted one teacher as saying that she was “making things up for myself” because of a lack of guidance from Victory Schools, its for-profit management company. Documents obtained also revealed allegations of violence, mismanagement, coaching of students before visits by inspector teams and grade tampering. These were investigated by the Charter School Institute and referred to the State Education Department. When the International Charter School shut its doors, enrollment had fallen from 693 students to 587 students, and the school faced more than \$7 million in debts.¹²³

KIPP Academy Charter School-Bronx

Management at the KIPP Academy Charter School-Bronx used \$68,000 of taxpayers’ money to fund five-day staff retreats to resorts in the Bahamas and Dominican Republic, as well as on alcohol and parties. The school sent 21 staffers to the town of Punta Cana in the Dominican Republic at a cost of \$1,119 per person and 49 employees to the Radisson Cable Beach in Nassau, the Bahamas, for \$907 per person. KIPP officials told auditors the retreats were educational and the agenda included “reflection sessions” and “solutions conversations.” In response to claims by KIPP the money came from private donations, the auditors said it was impossible to verify where the money came from because of sloppy bookkeeping.¹²⁴

Merrick Academy Charter School

Conflicts of interest and profits at the expense of students have raised questions at the Merrick Academy Charter School. A Merrick Academy board member earned \$19,675 for legal work while serving on Merrick’s board. Recent newspaper reports say elected officials with connections to the charter school have benefited from campaign contributions. The SUNY Charter School Institute investigated allegations of grade tampering on state math, social studies and English language arts tests in 2008 and referred the case to the State Education Department. Victory Schools, a for-profit management company, collected more than \$1.36 million in management fees (21 percent of revenue) and charged \$800,000 for rent for the school building in 2008-09.¹²⁵

New Covenant Charter School

State University of New York trustees voted in March 2010 to close the New Covenant Charter School, which opened in Albany’s Arbor Hill section in 1999 and is the second-oldest charter school in the state. Managed by the for-profit company Victory Schools, New Covenant had suffered from high student and teacher turnover, problems with school governance and financial instability. New Covenant’s expenses exceeded revenues by \$1,700 per student. Student attrition was also an issue for evaluators: Of 118 children in third grade in 2005, only 30 remained last year as sixth graders. New Covenant is scheduled to shut down in June. New Covenant’s closure will leave bondholders with a \$15 million mortgage and has been a painful experience for students and teachers who fought to improve test results in the face of mounting financial pressures.¹²⁶

Niagara Charter School

Four months ago, the Board of Regents granted the Niagara Charter School its first renewal of its charter for three additional years despite a report which revealed “misallocation of funds and a lack of adherence to the Board’s own internal controls.” A State Education Department report said the Niagara Charter School paid its CEO more than his contract allowed; permitted him to spend school money on alcohol and lunches on “an almost daily basis;” gave him the sole authority to take out a bank loan; and also spent excessively on consultants. In one instance, the report noted, “The hiring of a consultant for duties that could have been performed by personnel at the School, and the hiring of

¹²³ Albany *Times Union*, March 12, 2008

¹²⁴ New York *Daily News*, December 7, 2007

¹²⁵ Audited financial statement, June 30, 2009

¹²⁶ Albany *Times Union*, March 24, 2010; New York *Times*, March 8, 2010

personnel for the equivalent of \$160,000 per year, would appear to be extravagant and wasteful.”¹²⁷ The State Education Department report called Niagara Charter School a “school in disarray.” It said, “There is, at the very least, the pervasive appearance of fiscal mismanagement and less than ethical behavior on the part of the Board of Trustees and school administration.”¹²⁸ Underscoring the critical need for comptroller’s audits, the same State Education Department document also noted, “The School has received a clean, unqualified audit report each year of its operation, and no material weaknesses have been found.”¹²⁹

Oracle Charter School

Records show the charter school, through its related Oracle Building Corporation, purchased a historic Buffalo building in February 2005 for \$875,000.¹³⁰ The Oracle Charter School pays rent to the Oracle Building Corp, which in turn pays the mortgage on the building to KBSD, LLP – a partnership that includes the board president. The school’s building corporation has also paid KBSD, LLP at least \$267,352 in developer fees. Oracle’s 2008 audit filed in November 2009 with SUNY’s Charter School Institute confirms, “The building owner entered into an agreement with the developer, KBSD, LLP, who holds a mortgage on the building. KBSD, LLP is also a related party, as a trustee of the school has a direct ownership interest in KBSD.” Documents filed with the SUNY Charter School Institute indicate the charter school – through its building corporation -- will pay more than \$4 million to the partnership over the course of the school’s lease. In addition, Oracle – and KBSD – has received more than \$400,000 in state grants to renovate Oracle’s building, a historic mansion on Buffalo’s Delaware Avenue.

Peninsula Academy Charter School

Where once students at the Peninsula Preparatory Charter School enjoyed new science labs, a new \$1 million playground, a nice cafeteria and ample space, students now learn in cramped, dilapidated trailers. Charter management moved the school out of the city’s Middle School 53 and into trailers that sit on property being developed by a campaign donor to a key state senator, the New York *Daily News* reported. The developer is using the proximity of the charter school in selling his real estate. The New York City Board of Education and MS 53’s principal say there is ample space at MS 53, and that the charter operator never sought additional space before moving to the developer’s lot and placing students in trailers.¹³¹

Roosevelt Children’s Academy

After paying Victory Schools millions of dollars in management fees only to see the business relationship sour and end up in court the Roosevelt Children’s Academy board hired its board president and charter founder and another board trustee as consultants.¹³² For more than three years, the board president received \$5,000 a month in consulting fees, while the other board member received \$40 an hour -- more than \$70,000 last year -- to provide business services to the charter.¹³³ When questions were raised by New York State United Teachers and *Newsday*, the SUNY Charter School Institute sought to stop the arrangement, telling the board members in March 2010 they could not remain on the board while also accepting consulting fees. The SUNY staff report concluded that, on balance, “the conflict of interest is too great for the dual relationship not to be remedied.”¹³⁴

Ross Global Academy Charter School

¹²⁷ Comprehensive Monitoring Report, March 11-12, 2008, p. 25

¹²⁸ Comprehensive Monitoring Report, March 11-12, 2008

¹²⁹ Proposed First Renewal for Niagara Charter School, EMSC Committee of SED, December 4, 2009.

¹³⁰ *Business First* article, March 10, 2005

¹³¹ *New York Daily News*, March 21, 2010

¹³² Audited financial statement, June 30, 2009

¹³³ *Newsday*, March 17, 2010

¹³⁴ Audited financial statement, June 30, 2009. *Newsday*, Charter has to separate jobs, March 17, 2010.

New York City Board of Education investigators say 91 of 410 students at the Ross Global Academy CS have left during this current school year, continuing a trend in which at least 20 percent of its students – and at least 42 percent of its teachers – have left every year since the school’s creation in 2006. Parents have charged that charter operators have encouraged them to withdraw their special-needs children, who can lower a school’s test scores and who cost more to educate.¹³⁵

South Buffalo Charter School

The South Buffalo Charter School collected \$7.6 million in tuition, state and federal grants in 2008-09 for its 621 students.¹³⁶ It also reports a fund balance of \$7.8 million in unrestricted funds and a \$4.9 million cash surplus.¹³⁷ Last school year, the board of trustees eliminated two physical education positions and laid off an art teacher, while reducing instruction in the arts from 33 times a year to 22 times a year. Physical education classes have as many as 75 students in one small gym.¹³⁸ There is not enough equipment for all students to participate so many stand around and watch. Despite its cash reserves, the board of trustees is eliminating the positions of a school counselor; a remedial teacher; a special education teacher and reducing to part-time the jobs of teachers of Spanish, art, technology and music. Two of those slated to lose full-time positions make up the union leadership at the school. The Board also routinely adjourns into executive session to conduct most of its business.¹³⁹

South Bronx Charter School for International Culture and the Arts

A state assemblywoman gave \$1.5 million in taxpayer-funded member item grants to the South Bronx Charter School for International Culture and the Arts, where her grandson was chairman of the board. The assemblywoman’s relative resigned from the charter board and from the board of the NYC Charter High School for Architecture, Engineering and Construction, after he was charged with stealing \$200,000 from a non-profit group in the Bronx and using the money to pay for designer clothes, restaurant meals and trips. Newspaper reports have linked the charter school’s principal to allegations of cheating on state exams. The assemblywoman’s grandson was allowed to serve as board chairman for two charter schools at the same time.¹⁴⁰

Western New York Maritime Charter School

An audit which accompanied an investigation by the Erie County District Attorney’s Office found insider dealing as well as widespread theft and misappropriation of funds at the Western New York Maritime Charter School. The audit found payments totaling nearly \$134,000 to a maintenance company owned by a former office administrator; \$56,000 paid for services not approved by the board or included in any contracts, and which may not have been delivered. In addition, the school bought \$24,000 worth of surveillance cameras from a business owned by a school employee, and \$85,000 in computer equipment from the same employee, who manipulated the orders so that some of the equipment – including high-definition, big screen televisions and digital cameras – were diverted to his home. In a separate incident, the school paid \$68,265 for computer and electronic equipment from a different vendor, but none of the items purchased could be found in the school.¹⁴¹ Records provided by the Buffalo City Schools show Western New York Maritime Charter School has discharged 23 students so far in the 2009-10 school year, including at least 20 expelled by the principal’s office, out of a student enrollment of approximately 320.¹⁴²

¹³⁵ New York *Post*, February 22, 2010

¹³⁶ IRS Form 990, 2007-08

¹³⁷ Audited financial statement, June 30, 2009

¹³⁸ Memo, Ed Bradley, president of the South Buffalo Charter School Instructional Staff Association, March 26, 2010

¹³⁹ www.southbuffalocs.org

¹⁴⁰ New York *Daily News*, June 12, 2009; New York *Post*, June 14, 2009

¹⁴¹ Office of the State Comptroller, 2007M-307, April 2008

¹⁴² Gloria Walker, Central Placement Office, Buffalo City School District, February 2010.

Just six months after the Regents renewed Western New York Maritime's charter in January 2010, two administrators tampered with students' answer sheets on Regents' exams in Geometry and Integrated Algebra. The State Education Department investigation found "serious findings of tampering" with test results, in which charter administrators changed between four and 10 incorrect responses for 21 students to correct answers. The State Education Department invalidated the students' scores and required them to re-take Regents' exams, noting, "Due to the tampering which occurred with the answer papers, some students who took the June or August 2009 Regents examinations in Integrated Algebra may not have been correctly identified as in need of academic intervention services in mathematics." The State Education Department banned two school administrators responsible for the oversight; administration and scoring of the Regents exams from any participation in the Regents testing process until at least January 2012.¹⁴³

V. RECOMMENDATIONS

AN IMPORTANT DECISION, A \$2-BILLION PRICE TAG

New York taxpayers have repeatedly demonstrated their support for schools, even if it means paying higher taxes.¹⁴⁴ Yet, New Yorkers are understandably wary of waste, fraud, mismanagement and abuse.

If, as Gov. David Paterson has proposed, the charter cap is raised to 460, New York would more than triple the number of schools, students and public tax dollars under private operation. Assuming school sizes remain constant, by the end of this decade New York could have more than 145,000 students in charter schools – considerably more than the student populations of Albany, Buffalo, Rochester, Syracuse, Binghamton and Yonkers combined.¹⁴⁵

With 460 charters, the state would be dedicating some \$2 billion in state and local education funding annually to charter schools. Clearly, the authorizing of 460 charters would create a new, \$2

¹⁴³ Letter from State Education Department to Lt. Col. Lawrence Astyk, November 9, 2009

¹⁴⁴ Siena Research Institute poll; February 22

¹⁴⁵ Extrapolations based on current school sizes, enrollment, numbers of charters

billion-a-year school system that not only would parallel the state's existing public education system, but would not be as accountable or transparent as regular public schools.

Lifting the cap on charters would be profoundly far-reaching — a decision that must not be made in haste like the enactment of the initial charter school law a decade ago. It is a \$2-billion-dollar question, with enormous impact for taxpayers, teachers and students in both charter schools and regular public schools.

Evidence has shown that the process of funding charter schools is deeply flawed on many levels and that our students and taxpayers are paying the price, most notably in Albany and Buffalo.

In these school districts, year-to-year increases in charter school payments often exceed the increase in state aid or local taxes, but voters are unable to vote on charter school payments. The charter school process is unaccountable to the local community that pays the taxes to support these schools. This results in significant funding losses for the school district while property taxes continue to rise — truly taxation without representation.

Charter schools are also creating huge inefficiencies that cost property taxpayers money. Overhead costs, administrative costs, and management fees that go to for-profit companies are coming straight out of property taxpayers' pockets. In Buffalo, there are such inefficiencies that city school district officials estimate they could educate the same number of pupils that currently attend charter schools for \$35 million *less* than it is sending to charter schools annually.

What's more, evidence has shown that approximately 30 percent of the costs transferred to charter schools are fixed costs that can never be recovered by the sending public school district. In part, this is because 1/25th of a teacher cannot be laid off each time a child leaves to attend a charter school. It is not true, as charter management asserts, that home districts are "held harmless" financially when charter operators receive a portion of their students and funding. A proliferation of charters destabilizes a home district even as it typically faces great challenges in serving students at risk of academic failure.

When a charter school opens, it may draw 15 students from public school A; 10 from public school B, and three from public school C. It draws a random number of students from each grade. The home district sends funds to the charter operator for each student it loses — but the district must still maintain its regular public schools, the same number of grades and required courses, and transportation system and services, since students do not migrate en masse from one school or even one grade.

Similarly, when a charter expels students midyear, or when a charter closure sends a large influx of children back to the district schools, the district's capacity must be there to welcome them back. Our public schools must always stand ready to take back any and all students should a charter school close at the last minute. This has happened around the state. The sending public school must therefore maintain extra capacity should these students return.

The New York State Legislature must not continue to force school districts and property taxpayers to absorb the fiscal impact of charter schools in their community at the expense of most of the state's students.

Existing charter schools now are starting to feel the same destabilizing pressure that affects districts over-saturated with charters. In Buffalo, one well-regarded charter school is worried about a new charter soon to open across the street — and wonders how it can plan, and maintain services, without knowing how many students it will lose or how many might migrate back. In fairness to existing charter and regular public schools, the charter law needs to be fixed to provide better

planning and oversight, and to create separate funding streams to prevent continued destabilization of public education in New York state.

Meanwhile, the Legislature must also insist that charter operators live up to the Act's prohibition against discrimination in enrollment.

This report demonstrates that, upstate as well as in New York City, charter schools do not serve students with special needs or English Language Learners at anywhere near the same percentages as regular public schools.

There is evidence to suggest that some charter operators “pre-screen” students to learn which ones may require special education or be low-scorers on standardized tests.¹⁴⁶ These schools then counsel parents that the charter school may not be a “good fit” for their child. Charters, in addition, can and do expel students who are behavioral problems or prove to be more difficult to educate. There is evidence that “discharges” of students – including some right before state testing – are not isolated cases. The data, in fact, shows that thousands of students leave charters – voluntarily and involuntarily – each year and return to regular public schools.

Charter operators are clearly violating the Act's directive that, in exchange for more autonomy, their schools open their doors to all students, with “special emphasis on expanding learning for students who are at-risk of academic failure.”

This is the most important failing of the state charter law. It needs to be fixed to ensure students have fair and equal opportunities, and to ensure that schools are fairly serving all. Equity is essential to advance a primary mission of the charter movement: to experiment and ascertain what works to help students at risk.

WE NEED TO KNOW *WHY* A CHARTER SCHOOL SUCCEEDS

Now, more than 10 years into this experiment, and before the cap is lifted, we need reliable data on what works for students. When a charter school succeeds brilliantly, is it because of a particular curriculum? Longer school day and school year? Is it because students wear uniforms or because their teachers receive intensive professional development?

Or is a charter school succeeding in comparison to district schools because it is educating far fewer students who have learning disabilities ... who are learning English ... or who have behavioral problems?

Or, is a charter succeeding because of the laudable efforts of philanthropists who have invested resources to support students in a particular school – support that perhaps should developed for other public schools?

We need answers to these questions because they will help all of us — in charter schools and regular public schools — do our very best for our students.

Greater transparency, accountability and clarity – for how public money is spent, and how all students are served -- would not be a “poison pill” for charter schools. Rather, a strengthened charter school law would infuse new confidence in the direction the charter school movement is heading.

¹⁴⁶ Albany *Times Union*, February 23, 2010, State Education Department monitoring reports, Brighter Choice CS-Boys and Brighter Choice Charter School-Girls

APPENDIX

Special Education Enrollment In New York Charter Schools, 2008-09

Statewide, just 7.2 percent of students in charter schools are students with disabilities, less than half the special education populations of Albany (14.6 percent); Syracuse (20.3 percent); Rochester (16.4 percent); and Buffalo (17.2 percent). In New York City, 9.4 percent of charter students receive special education services, compared to 12.5 percent in district schools throughout the five boroughs.

Charter School	Charter Count	Enrollment	Percent
ACHIEVEMENT ACADEMY CHARTER SCHOOL	11	173	6.36%
ACHIEVEMENT FIRST BROWNSVILLE CHARTER SCHOOL	5	179	2.79%
ACHIEVEMENT FIRST BUSHWICK CHARTER SCHOOL	17	513	3.31%
ACHIEVEMENT FIRST CROWN HEIGHTS CHARTER SCHOOL	22	741	2.97%
ACHIEVEMENT FIRST EAST NEW YORK CHARTER SCHOOL	6	420	1.43%
ACHIEVEMENT FIRST ENDEAVOR CHARTER SCHOOL	8	259	3.09%
ALBANY COMMUNITY CHARTER SCHOOL	8	231	3.46%
ALBANY PREPARATORY CHARTER SCHOOL	14	173	8.09%
ALOMA D JOHNSON COMMUNITY CHARTER SCHOOL	17	99	17.17%
AMBER CHARTER SCHOOL	6	354	1.69%
ARK COMMUNITY CHARTER SCHOOL	14	185	7.57%
BEDFORD STUYVESANT COLLEGIATE CHARTER SCHOOL	9	80	11.25%
BEGINNING WITH CHILDREN CHARTER SCHOOL	21	452	4.65%
BRIGHTER CHOICE CHARTER SCHOOL FOR BOYS	7	217	3.23%
BRIGHTER CHOICE SCHOOL FOR GIRLS	6	226	2.65%
BRONX ACADEMY OF PROMISE CHARTER SCHOOL	2	178	1.12%
BRONX CHARTER SCHOOL FOR BETTER LEARNING	16	345	4.64%
BRONX CHARTER SCHOOL FOR CHILDREN	21	384	5.47%
BRONX CHARTER SCHOOL FOR EXCELLENCE	19	298	6.38%
BRONX CHARTER SCHOOL FOR THE ARTS	42	285	14.74%
BRONX COMMUNITY CHARTER SCHOOL	2	96	2.08%
BRONX GLOBAL LEARNING INSTITUTE FOR GIRLS CHARTER SCHOOL	1	102	0.98%
BRONX LIGHTHOUSE CHARTER SCHOOL	22	374	5.88%
BRONX PREPARATORY CHARTER SCHOOL	35	631	5.55%
BROOKLYN ASCEND CHARTER SCHOOL	6	213	2.82%
BROOKLYN CHARTER SCHOOL (THE)	16	223	7.17%
BROOKLYN EXCELSIOR CHARTER SCHOOL	10	720	1.39%
BUFFALO ACADEMY OF SCIENCE CHARTER SCHOOL	26	431	6.03%
BUFFALO UNITED CHARTER SCHOOL	70	597	11.73%
CARL C ICAHN BRONX NORTH CHARTER SCHOOL	2	146	1.37%
CARL C ICAHN CHARTER SCHOOL (THE)	8	313	2.56%
CARL C ICAHN SOUTH BRONX CHARTER SCHOOL	2	101	1.98%
CHARTER SCHOOL FOR APPLIED TECHNOLOGIES	185	1563	11.84%
CHARTER SCHOOL OF EDUCATIONAL EXCELLENCE	8	358	2.23%
CHILD DEVELOPMENT CENTER OF THE HAMPTONS CHARTER SCHOOL	25	74	33.78%
COMMUNITY CHARTER SCHOOL	42	291	14.43%
COMMUNITY PARTNERSHIP CHARTER SCHOOL	26	289	9.00%
COMMUNITY ROOTS CHARTER SCHOOL	19	202	9.41%
DEMOCRACY PREPARATORY CHARTER SCHOOL	11	319	3.45%
DREAM CHARTER SCHOOL	8	99	8.08%
ELMWOOD VILLAGE CHARTER SCHOOL	25	172	14.53%
ENTERPRISE CHARTER SCHOOL	67	405	16.54%
EUGENIO MARIA DE HOSTOS CHARTER SCHOOL	13	312	4.17%
EXCELLENCE CHARTER SCHOOL OF BEDFORD STUYVESANT	17	288	5.90%
EXPLORE CHARTER SCHOOL	32	438	7.31%
FAMILY LIFE ACADEMY CHARTER SCHOOL	10	290	3.45%
FUTURE LEADERS INSTITUTE CHARTER SCHOOL	12	329	3.65%
GENESSEE COMMUNITY CHARTER SCHOOL AT THE ROCHESTER MUSEUM	21	210	10.00%
GIRLS PREPARATORY CHARTER SCHOOL OF NEW YORK	7	218	3.21%
GLOBAL CONCEPTS CHARTER SCHOOL	44	523	8.41%
GRAND CONCOURSE ACADEMY CHARTER SCHOOL	23	380	6.05%
GREEN DOT NY CHARTER SCHOOL	13	122	10.66%
GREEN TECH HIGH CHARTER SCHOOL	15	80	18.75%

Continued

Charter School	Charter Count	Enrollment	Percent
HARBOR SCIENCE AND ARTS CHARTER SCHOOL	13	213	6.10%
HARLEM CHILDREN'S ZONE PROMISE ACADEMY CHARTER SCHOOL	12	677	1.77%
HARLEM CHILDREN'S ZONE PROMISE ACADEMY II CHARTER SCHOOL	5	296	1.69%
HARLEM DAY CHARTER SCHOOL	11	258	4.26%
HARLEM LINK CHARTER SCHOOL	6	270	2.22%
HARLEM SUCCESS ACADEMY CHARTER SCHOOL	4	398	1.01%
HARLEM SUCCESS ACADEMY CHARTER SCHOOL 2	5	183	2.73%
HARLEM SUCCESS ACADEMY CHARTER SCHOOL 3	3	186	1.61%
HARLEM SUCCESS ACADEMY CHARTER SCHOOL 4	1	177	0.56%
HARLEM VILLAGE ACADEMY CHARTER SCHOOL EHVACS	14	286	4.90%
HARRIET TUBMAN CHARTER SCHOOL	12	459	2.61%
HELLENIC CLASSICAL CHARTER SCHOOL	16	309	5.18%
HENRY JOHNSON CHARTER SCHOOL	8	201	3.98%
HYDE LEADERSHIP CHARTER SCHOOL	35	449	7.80%
INTERNATIONAL LEADERSHIP CHARTER SCHOOL	8	227	3.52%
JOHN V LINDSAY WILDCAT ACADEMY CHARTER SCHOOL	49	471	10.40%
KING CENTER CHARTER SCHOOL	17	103	16.50%
KINGS COLLEGIATE CHARTER SCHOOL	16	137	11.68%
KIPP ACADEMY CHARTER SCHOOL	21	255	8.24%
KIPP AMP CHARTER SCHOOL	8	262	3.05%
KIPP INFINITY CHARTER SCHOOL	15	274	5.47%
KIPP SUCCESS THROUGH TEAMWORK ACHIEVE & RESPON COL PREP CHARTER SCH	10	258	3.88%
KIPP TECH VALLEY CHARTER SCHOOL	15	295	5.08%
LA CIMA CHARTER SCHOOL	6	139	4.32%
LEADERSHIP PREPARATORY CHARTER SCHOOL	11	248	4.44%
LEADERSHIP VILLAGE ACADEMY CHARTER SCHOOL	14	208	6.73%
MANHATTAN CHARTER SCHOOL	2	197	1.02%
MERRICK ACADEMY-QUEENS PUBLIC CHARTER SCHOOL	13	498	2.61%
MOTT HAVEN ACADEMY CHARTER SCHOOL	2	92	2.17%
NEW COVENANT CHARTER SCHOOL	7	634	1.10%
NEW HEIGHTS ACADEMY CHARTER SCHOOL	12	468	2.56%
NEW YORK CENTER FOR AUTISM CHARTER SCHOOL	14	28	50.00%
NIAGARA CHARTER SCHOOL	31	336	9.23%
"NYC CHARTER HS-ARCHITECTURE, ENGINEERING, CONSTRUCTION INDUSTRIES"	4	121	3.31%
OPPORTUNITY CHARTER SCHOOL	170	329	51.67%
ORACLE CHARTER SCHOOL	39	346	11.27%
PAVE ACADEMY CHARTER SCHOOL	6	89	6.74%
PENINSULA PREPARATORY ACADEMY CHARTER SCHOOL	15	299	5.02%
PINNACLE CHARTER SCHOOL	78	477	16.35%
RENAISSANCE CHARTER SCHOOL (THE)	46	528	8.71%
RIVERHEAD CHARTER SCHOOL	16	232	6.90%
ROCHESTER ACADEMY CHARTER SCHOOL	13	155	8.39%
ROOSEVELT CHILDREN'S ACADEMY CHARTER SCHOOL	19	501	3.79%
ROSS GLOBAL ACADEMY CHARTER SCHOOL	19	323	5.88%
SISULU-WALKER CHARTER SCHOOL OF HARLEM	8	261	3.07%
SOUTH BRONX CHARTER SCHOOL-INTER CULTURES AND ARTS	7	325	2.15%
SOUTH BRONX CLASSICAL CHARTER SCHOOL	12	232	5.17%
SOUTH BUFFALO CHARTER SCHOOL	200	650	30.77%
SOUTHSIDE ACADEMY CHARTER SCHOOL	41	580	7.07%
ST HOPE LEADERSHIP ACADEMY CHARTER SCHOOL	28	148	18.92%
SYRACUSE ACADEMY OF SCIENCE CHARTER SCHOOL	25	333	7.51%
TAPESTRY CHARTER SCHOOL	48	424	11.32%
TRUE NORTH ROCHESTER PREPARATORY CHARTER SCHOOL (THE)	17	215	7.91%
UFT CHARTER SCHOOL	27	718	3.76%
URBAN CHOICE CHARTER SCHOOL	30	349	8.60%
VOICE CHARTER SCHOOL OF NEW YORK	2	92	2.17%
WESTERN NEW YORK MARITIME CHARTER SCHOOL	100	318	31.45%
WESTMINSTER COMMUNITY CHARTER SCHOOL	62	547	11.33%
WILLIAMSBURG CHARTER HIGH SCHOOL	28	644	4.35%
WILLIAMSBURG COLLEGIATE CHARTER SCHOOL	19	248	7.66%
Total	2,627	36,380	7.22%

Source: New York State Education Department, 2007-09 School Year

Enrollment of Students with Disabilities in Selected New York District Schools

School	Town	Students with disabilities
Albany City School District	Albany	14.6%
Buffalo City School District	Buffalo	17.2%
East Hampton Union Free School District	East Hampton/Wainscott	11.4%
Kenmore-Tonawanda Union Free School District	Buffalo/Tonawanda	14.5%
Lackawanna City School District	Lackawanna	17.2%
New York City Department of Education*	NYC	12.5%
Niagara Falls City School District	Niagara Falls	15.8%
Niagara-Wheatfield Central School District	Niagara Falls	9.8%
Riverhead Central School District	Riverhead	8.3%
Rochester City School District	Rochester	16.4%
Roosevelt Union Free School District	Roosevelt	11.7%
Syracuse City School District	Syracuse	20.3%
Troy City School District	Troy	14.1%
Yonkers City School District	Yonkers	13.1%

Source: New York State Education Department, 2008-09 School Year

Enrollment of English Language Learners in New York Charter Schools, 2008-09

Charter School	Town	Limited English Proficient
Achievement Academy Charter	Albany	0%
Achievement First Brownsville Charter School	Brooklyn	0%
Achievement First Bushwick Charter School	Brooklyn	3%
Achievement First Crown Heights Charter School	Brooklyn	0%
Achievement First East New York Charter School	Brooklyn	0%
Achievement First Endeavor Charter School	Brooklyn	1%
Albany Community Charter School	Albany	2%
Albany Preparatory Charter School	Albany	2%
Aloma D. Johnson Community Charter School	Buffalo	0%
Amber Charter School	New York	7%
Ark Community Charter School	Troy	0%
Bedford Stuyvesant Collegiate Charter School	Brooklyn	0%
Beginning With Children Charter School	Brooklyn	4%
Believe Northside Charter School	Brooklyn	N/A
Believe Southside Charter School	Brooklyn	N/A
Brighter Choice Charter School For Boys	Albany	1%
Brighter Choice School For Girls	Albany	7%
Bronx Academy Of Promise Charter School	Bronx	7%
Bronx Charter School For Better Learning	Bronx	1%
Bronx Charter School For Children	Bronx	10%
Bronx Charter School For Excellence	Bronx	2%
Bronx Charter School For The Arts	Bronx	8%
Bronx Community Charter School	Bronx	6%
Bronx Global Learning Institute For Girls Charter School	Bronx	13%
Bronx Lighthouse Charter School	Bronx	9%
Bronx Preparatory Charter School	Bronx	7%
Brooklyn Ascend Charter School	Brooklyn	0%
Brooklyn Charter School (The)	Brooklyn	0%
Brooklyn Excelsior Charter School	Brooklyn	0%
Buffalo Academy Of Science Charter School	Buffalo	4%
Buffalo United Charter School	Buffalo	0%
Charter School For Applied Technologies	Buffalo	3%
Charter School Of Educational Excellence	Yonkers	3%
Child Development Center Of The Hamptons Charter School	Wainscott	0%
Community Charter School	Buffalo	0%
Community Partnership Charter School	Brooklyn	0%
Community Roots Charter School	Brooklyn	0%
Democracy Preparatory Charter School	New York	6%
Dream Charter School	New York	1%
East New York Preparatory Charter School	Brooklyn	0%
Elmwood Village Charter School	Buffalo	0%
Enterprise Charter School	Buffalo	9%
Eugenio Maria De Hostos Charter School	Rochester	5%
Excellence Charter School Of Bedford Stuyvesant	Brooklyn	0%
Explore Charter School	Brooklyn	2%
Family Life Academy Charter School	Bronx	39%
Future Leaders Institute Charter School	New York	2%
Genesee Community Charter School At The Rochester Museum	Rochester	0%
Girls Preparatory Charter School Of New York	New York	2%
Global Concepts Charter School	Lackawanna	0%
Grand Concourse Academy Charter School	Bronx	6%
Green Dot NY Charter School	Bronx	9%
Green Tech High Charter School	Albany	0%

Continued

Charter School	Town	Limited English Proficient
Harbor Science And Arts Charter School	New York	1%
Harlem Children's Zone Promise Academy Charter School	New York	2%
Harlem Children's Zone Promise Academy II Charter School	New York	2%
Harlem Day Charter School	New York	3%
Harlem Link Charter School	New York	2%
Harlem Success Academy Charter School	New York	2%
Harlem Success Academy Charter School 2	New York	2%
Harlem Success Academy Charter School 3	New York	2%
Harlem Success Academy Charter School 4	New York	1%
Harlem Village Academy Charter School Ehvac	New York	2%
Harriet Tubman Charter School	Bronx	3%
Hellenic Classical Charter School	Brooklyn	3%
Henry Johnson Charter School	Albany	1%
Hyde Leadership Charter School	Bronx	5%
Icahn Charter School 1	Bronx	3%
Icahn Charter School 2	Bronx	4%
Icahn Charter School 3	Bronx	28%
International Leadership Charter School	Bronx	16%
John V Lindsay Wildcat Academy Charter School	New York	5%
King Center Charter School	Buffalo	0%
Kings Collegiate Charter School	Brooklyn	0%
Kipp Academy Charter School	Bronx	6%
Kipp Amp Charter School	Brooklyn	0%
Kipp Infinity Charter School	New York	11%
Kipp Success Through Teamwork Achieve & Respon Col Prep Charter School	New York	7%
Kipp Tech Valley Charter School	Albany	0%
La Cima Charter School	Brooklyn	2%
Leadership Preparatory Charter School	Brooklyn	2%
Leadership Village Academy Charter School	New York	2%
Manhattan Charter School	New York	1%
Merrick Academy-Queens Public Charter School	Queens Village	0%
Mott Haven Academy Charter School	Bronx	11%
New Covenant Charter School	Albany	2%
New Heights Academy Charter School	New York	18%
New York Center For Autism Charter School	New York	0%
Niagara Charter School	Niagara Falls	0%
NYC Charter Hs-Architecture, Engineering, Construction Industries	Bronx	12%
Opportunity Charter School	New York	4%
Oracle Charter School	Buffalo	0%
Our World Neighborhood Charter School	Astoria	7%
Pave Academy Charter School	Brooklyn	2%
Peninsula Preparatory Academy Charter School	Arverne	0%
Pinnacle Charter School	Buffalo	0%
Renaissance Charter School (The)	Jackson Heights	4%
Riverhead Charter School	Calverton	20%
Rochester Academy Charter School	Rochester	5%
Roosevelt Children's Academy Charter School	Roosevelt	4%
Ross Global Academy Charter School	New York	2%
Sankofa Charter School	Buffalo	N/A
Sisulu-Walker Charter School Of Harlem	New York	2%
South Bronx Charter School-Inter Cultures And Arts	Bronx	18%
South Bronx Classical Charter School	Bronx	11%
South Buffalo Charter School	Buffalo	0%
Southside Academy Charter School	Syracuse	0%
St Hope Leadership Academy Charter School	New York	9%
Syracuse Academy Of Science Charter School	Syracuse	0%

Continued

Charter School	Town	Limited English Proficient
Tapestry Charter School	Buffalo	0%
The Equity Project Charter School	New York	N/A
The Ethical Community Charter School	New York	N/A
True North Rochester Preparatory Charter School (The)	Rochester	0%
UFT Charter School	Brooklyn	2%
Urban Choice Charter School	Rochester	0%
Voice Charter School Of New York	Long Island City	9%
Western New York Maritime Charter School	Buffalo	2%
Westminster Community Charter School	Buffalo	0%
Williamsburg Charter High School	Brooklyn	3%
Williamsburg Collegiate Charter School	Brooklyn	6%

Source: New York State Education Department School Report Cards, 2008-09

Enrollment of English Language Learners in Selected New York District Schools

School	Town	Limited English proficient
Albany City School District	Albany	5%
Buffalo City School District	Buffalo	8%
East Hampton Union Free School District	East Hampton/Wainscott	12%
Kenmore-Tonawanda Union Free School District	Buffalo/Tonawanda	1%
Lackawanna City School District	Lackawanna	5%
New York City Department of Education*	New York City	14.1%
Niagara Falls City School District	Niagara Falls	1%
Niagara-Wheatfield Central School District	Niagara Falls	0%
Riverhead Central School District	Riverhead	10%
Rochester City School District	Rochester	10%
Roosevelt Union Free School District	Roosevelt	18%
Syracuse City School District	Syracuse	9%
Troy City School District	Troy	2%
Yonkers City School District	Yonkers	15%

*Varies by district from 3-37%

Source: New York State Education Department School Report Cards, 2008-09

STATE OF NEW YORK

6469

IN SENATE

January 18, 2010

Introduced by Sen. PERKINS -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to charter schools

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative Intent. New York's charter school law was
2 enacted 11 years ago in an effort to create new learning opportunities
3 for all students, to encourage different and innovative teaching methods
4 and to provide parents and students with expanded choice within the
5 public schools. Eleven years provides the state with enough information
6 to make judgments about changes that are needed in the law to ensure the
7 public knows how their tax dollars are being spent and to ensure public
8 schools serving the majority of students have the resources needed to
9 provide a quality education to all students. This legislation is
10 intended to clarify the transparency and accountability of charter
11 schools and provide fiscal relief to the school districts where charter
12 schools are located.

13 § 2. Subdivision 1 of section 2851 of the education law, as added by
14 chapter 4 of the laws of 1998, is amended to read as follows:

15 1. An application to establish a charter school may be submitted by
16 teachers, parents, school administrators, community residents or any
17 combination thereof. Such application may be filed in conjunction with
18 a college, university, museum, educational institution, not-for-profit
19 corporation exempt from taxation under paragraph 3 of subsection (c) of
20 section 501 of the internal revenue code [~~or for-profit business or~~
21 ~~corporate entity authorized to do business in New York state. For char-~~
22 ~~ter schools established in conjunction with a for-profit business or~~
23 ~~corporate entity, the charter shall specify the extent of the entity's~~
24 ~~participation in the management and operation of the school], and
25 provided that under no circumstances shall an application to establish a
26 charter school or approval to operate a charter school be granted to a
27 for-profit business or corporate entity authorized to do business in
28 this state nor in any manner whatsoever shall they have an involvement
29 in the management and operation of a charter school. The application~~

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD15479-01-0

S. 6469

2

1 shall include the amount of any management fee to be paid to any not-
2 for-profit corporation working in conjunction with the applicants.
3 Salaries of the employees of such not-for-profit corporation may not

4 exceed the salaries for comparable positions in the school district of
5 location.

6 § 3. Paragraphs (d), (h), (p) and (v) of subdivision 2 of section 2851
7 of the education law, as added by chapter 4 of the laws of 1998, are
8 amended to read as follows:

9 (d) Admission policies and procedures for the school, which shall be
10 consistent with the requirements of subdivision two of section twenty-
11 eight hundred fifty-four of this article. For charter renewals, such
12 policies and procedures shall include plans for ensuring the student
13 enrollment of the charter school includes a comparable percentage of
14 students on free lunch, students with disabilities and English language
15 learners as the school district in which the charter school is located.

16 (h) The rules and procedures by which students may be disciplined,
17 including but not limited to expulsion or suspension from the school,
18 which shall be consistent with the requirements of due process and with
19 federal laws and regulations governing the placement of students with
20 disabilities. Such rules and procedures shall include the provision of
21 educational services to any student on long term suspension or expul-
22 sion.

23 (p) The term of the proposed charter, which shall not exceed five
24 years during which instruction is provided to pupils.

25 (v) A code of ethics for the charter school, setting forth for the
26 guidance of its trustees, officers and employees the standards of
27 conduct expected of them. Such code of ethics shall be in compliance
28 with section eight hundred six of the general municipal law.

29 § 4. Paragraph (a) of subdivision 4 of section 2851 of the education
30 law, as added by chapter 4 of the laws of 1998, is amended to read as
31 follows:

32 (a) A report of the progress of the charter school in achieving the
33 educational objectives set forth in the charter. Such report shall
34 include disaggregated student performance data for all student
35 subgroups.

36 § 5. Paragraph (d) of subdivision 2 of section 2852 of the education
37 law, as added by section 2 of part D-2 of chapter 57 of the laws of
38 2007, is amended to read as follows:

39 (d) in a school district where the total enrollment of resident
40 students attending charter schools in the base year is greater than five
41 percent of the total public school enrollment of the school district in
42 the base year [~~(i) granting the application would have a significant~~
43 ~~educational benefit to the students expected to attend the proposed~~
44 ~~charter school or (ii) the school district in which the charter school~~
45 ~~will be located consents to such application]. For purposes of this
46 paragraph, in a city having a population of one million or more, the
47 school district shall be the community school district.~~

48 § 6. Subdivision 2 of section 2852 of the education law is amended by
49 adding two new paragraphs (e) and (f) to read as follows:

50 (e) the application for the charter school is approved by the board of
51 education of the school district where the charter school is to be
52 located; and

53 (f) the charter entity shall not approve an application that would
54 have the effect of increasing the racial isolation of a school district.

55 § 7. Subdivision 5-b of section 2852 of the education law, as added by
56 chapter 4 of the laws of 1998, is amended to read as follows:

S. 6469
3
1 5-b. If the board of regents returns a proposed charter to the charter
2 entity pursuant to the provisions of subdivision five-a of this section,
3 such charter entity shall reconsider the proposed charter, taking into
4 consideration the comments and recommendation of the board of regents.

5 Thereafter, the charter entity shall resubmit the proposed charter to
6 the board of regents with modifications, provided that the applicant
7 consents in writing to such modifications, resubmit the proposed charter
8 to the board of regents without modifications with an explanation why
9 the modifications are not being made, or abandon the proposed charter.
10 The board of regents shall review each such resubmitted proposed charter
11 in accordance with the provisions of subdivision five-a of this
12 section[~~, provided, however, that it shall be the duty of the board of~~
13 ~~regents to approve and issue a proposed charter resubmitted by the char-~~
14 ~~ter entity described in paragraph (b) of subdivision three of section~~
15 ~~twenty-eight hundred fifty-one of this article within thirty days of the~~
16 ~~resubmission of such proposed charter or such proposed charter shall be~~
17 ~~deemed approved and issued at the expiration of such period~~].

18 § 8. Subdivision 7 of section 2852 of the education law is amended by
19 adding a new paragraph (c) to read as follows:

20 (c) When a revision of a charter involves an increase in enrollment
21 which brings total enrollment in charter schools in the school district
22 of location above five percent the revision shall be denied unless the
23 school district of location approves the revision or the residents of
24 the school district approve the revision through a referendum of the
25 eligible voters to be held in conjunction with the annual budget vote.
26 For purposes of this paragraph in a city having a population of one
27 million or more the school district of location shall be the community
28 school district where the charter school is located.

29 § 9. Subdivision 10 of section 2852 of the education law, as added by
30 section 3 of part D-2 of chapter 57 of the laws of 2007, is amended to
31 read as follows:

32 10. Except in the case of a charter school formed by a school district
33 as a charter entity pursuant to paragraph (a) of subdivision three of
34 section twenty-eight hundred fifty-one of this article, a charter school
35 formed by approval of the regents or by operation of law on or after
36 [~~March~~ January fifteenth in any school year shall not commence instruc-
37 tion until July of the second school year next following.

38 § 10. Subdivision 2 of section 2853 of the education law, as added by
39 chapter 4 of the laws of 1998, is amended to read as follows:

40 2. The board of regents and charter entity shall oversee each school
41 approved by such entity, and may visit, examine into and inspect any
42 charter school, including the records of such school, under its over-
43 sight. Oversight by a charter entity and the board of regents shall be
44 sufficient to ensure that the charter school is in compliance with all
45 applicable laws, regulations and charter provisions. The department
46 shall include charter schools in any review or audit of state assessment
47 administration or scoring.

48 § 11. Paragraph (a) of subdivision 3 of section 2853 of the education
49 law, as amended by section 4 of part D-2 of chapter 57 of the laws of
50 2007, is amended is to read as follows:

51 (a) A charter school may be located in part of an existing public
52 school building, in space provided on a private work site, in a public
53 building or in any other suitable location, provided, however, a charter
54 school shall not be located in any part of an existing school building
55 when such sharing would impact the public school's ability to meet the
56 class size targets established pursuant to section two-hundred eleven-d

S. 6469

4

1 of this chapter. Provided, however, before a charter school may be
2 located in part of an existing public school building, the charter enti-
3 ty shall provide notice to the parents or guardians of the students then
4 enrolled in the existing school building and shall hold a public hearing
5 for purposes of discussing the location of the charter school. A charter

6 school may own, lease or rent its space. For purposes of local zoning,
7 land use regulation and building code compliance, a charter school shall
8 be deemed a nonpublic school.

9 § 12. Subdivision 3 of section 2853 of the education law is amended by
10 adding two new paragraphs (d) and (e) to read as follows:

11 (d) Notwithstanding any law to the contrary, any capital facility, or
12 other improvements made in public school buildings or equipment with a
13 period of probable usefulness of five or more years, with public or
14 private funds, to accommodate charter schools, shall require matching or
15 comparable improvements be made for other district schools located in
16 the same building.

17 (e) Notwithstanding any law to the contrary, any construction or capi-
18 tal improvement made in accordance with this article shall be made in
19 accordance with and subject to the provisions of articles eight and nine
20 of the labor law.

21 § 13. Paragraphs (c) and (e) of subdivision 1 of section 2854 of the
22 education law, paragraph (c) as amended by chapter 267 of the laws of
23 2005, and paragraph (e) as added by chapter 4 of the laws of 1998, are
24 amended to read as follows:

25 (c) A charter school shall be subject to the financial audits, the
26 audit procedures, and the audit requirements set forth in the charter
27 and ~~[shall be subject to audits of the comptroller as set forth in~~
28 ~~section thirty-three of the general municipal law]~~ may be subject to
29 audits by the state comptroller or by the charter entity. Such proce-
30 dures and standards shall be consistent with generally accepted account-
31 ing and audit standards. Independent fiscal audits shall be required at
32 least once annually.

33 (e) A charter school shall be subject to the provisions of articles
34 six and seven of the public officers law in the same manner as public
35 school districts.

36 § 14. Subdivision 1 of section 2854 of the education law is amended by
37 adding a new paragraph (f) to read as follows:

38 (f) A charter school shall be subject to the provisions of section
39 eight hundred six of the general municipal law.

40 § 15. Subdivision 2 of section 2854 of the education law, as added by
41 chapter 4 of the laws of 1998, paragraphs (a) and (b) as amended by
42 section 5 of part D-2 of chapter 57 of the laws of 2007, is amended to
43 read as follows:

44 2. Admissions; enrollment; students. (a) A charter school shall be
45 nonsectarian in its programs, admission policies, employment practices,
46 and all other operations and shall not charge tuition or fees; provided
47 that a charter school may require the payment of fees on the same basis
48 and to the same extent as other public schools. A charter school shall
49 not discriminate against any student, employee or any other person on
50 the basis of ethnicity, national origin, gender, or disability or any
51 other ground that would be unlawful if done by a school. Admission of
52 students shall not be limited on the basis of intellectual ability,
53 measures of achievement or aptitude, athletic ability, disability, race,
54 creed, gender, national origin, religion, or ancestry; provided, howev-
55 er, that nothing in this article shall be construed to prevent the
56 establishment of a single-sex charter school or a charter school
S. 6469 5

1 designed to provide expanded learning opportunities for students at-risk
2 of academic failure; and provided, further, that the charter school
3 shall ~~[demonstrate good faith efforts to]~~ attract and retain a compara-
4 ble or greater enrollment of students with disabilities and limited
5 English proficient students when compared to the enrollment figures for
6 such students in the school district in which the charter school is

7 located. If a charter school is not successful in attracting a compara-
8 ble or greater enrollment of students with disabilities and limited
9 English proficient students as compared to the enrollment figures for
10 such students in the school district in which the charter school is
11 located such charter school shall provide the chartering entity with a
12 plan for improving the enrollment of such students in the following
13 year. Failure to comply with this requirement for two consecutive years
14 shall be subject to revocation in accordance with subdivision one of
15 section two thousand eight hundred fifty-five of this article. A charter
16 shall not be issued to any school that would be wholly or in part under
17 the control or direction of any religious denomination, or in which any
18 denominational tenet or doctrine would be taught.

19 (b) Any child who is qualified under the laws of this state for admis-
20 sion to a public school is qualified for admission to a charter school.
21 The school shall enroll each eligible student who submits a timely
22 application by the first day of April each year, unless the number of
23 applications exceeds the capacity of the grade level or building. In
24 such cases, students shall be accepted from among applicants by a random
25 selection process, provided, however, that an enrollment preference
26 shall be provided to pupils when the charter school is located within
27 one mile of the pupils' residence, pupils returning to the charter
28 school in the second or any subsequent year of operation and pupils
29 residing in the school district in which the charter school is located,
30 and siblings of pupils already enrolled in the charter school and
31 students on free lunch, and students with disabilities, and students
32 with limited English proficiency. For the purposes of this paragraph
33 and paragraph (a) of this subdivision, the school district in which the
34 charter school is located shall mean, for the city school district of
35 the city of New York, the community district in which the charter school
36 is located. The charter entity is responsible for ensuring the
37 selection process is conducted in accordance with this paragraph. If the
38 charter entity determines the process is not in compliance with this
39 paragraph, the charter entity shall conduct the process.

40 (c) A charter school shall serve one or more of the grades one through
41 twelve, and shall limit admission to pupils within the grade levels
42 served. Nothing herein shall prohibit a charter school from establishing
43 a kindergarten program.

44 (d) A student may withdraw from a charter school at any time and
45 enroll in a public school. A charter school must provide a report to the
46 chartering entity each year indicating the number of students leaving
47 the charter school, the months in which the students leave the school,
48 the reason the students leave the school and the school the student is
49 currently attending. A charter school may refuse admission to any
50 student who has been expelled or suspended from a public school until
51 the period of suspension or expulsion from the public school has
52 expired, consistent with the requirements of due process.

53 § 16. Paragraphs (b-1), (c) and (c-1) of subdivision 3 of section 2854
54 of the education law, paragraph (b-1) as amended by section 6 of part
55 D-2 of chapter 57 of the laws of 2007, and paragraphs (c) and (c-1) as
56 added by chapter 4 of the laws of 1998, are amended to read as follows:
S. 6469 6

1 (b-1) The employees of a charter school that is not a conversion from
2 an existing public school shall [~~not~~] be deemed members of [~~any~~] the
3 existing collective bargaining unit representing employees of the school
4 district in which the charter school is located, and the charter school
5 and its employees shall [~~not~~] be subject to any existing collective
6 bargaining agreement between the school district and its employees.
7 [~~Provided, however, that (i) if the student enrollment of the charter~~

8 ~~school on the first day on which the charter school commences student~~
9 ~~instruction exceeds two hundred fifty or if the average daily student~~
10 ~~enrollment of such school exceeds two hundred fifty students at any~~
11 ~~point during the first two years after the charter school commences~~
12 ~~student instruction, all employees of the school who are eligible for~~
13 ~~representation under article fourteen of the civil service law shall be~~
14 ~~deemed to be represented in a separate negotiating unit at the charter~~
15 ~~school by the same employee organization, if any, that represents like~~
16 ~~employees in the school district in which such charter school is~~
17 ~~located; (ii) the provisions of subparagraph (i) of this paragraph may~~
18 ~~be waived in up to ten charters issued on the recommendation of the~~
19 ~~charter entity set forth in paragraph (b) of subdivision three of~~
20 ~~section twenty-eight hundred fifty-one of this article; (iii) the~~
21 ~~provisions of subparagraph (i) of this paragraph shall not be applicable~~
22 ~~to the renewal or extension of a charter; and (iv) nothing in this~~
23 ~~sentence shall be construed to subject a charter school subject to the~~
24 ~~provisions of this paragraph or its employees to any collective bargain-~~
25 ~~ing agreement between any public school district and its employees or to~~
26 ~~make the employees of such charter school part of any negotiating unit~~
27 ~~at such school district. The charter school may, in its sole discretion,~~
28 ~~choose whether or not to offer the terms of any existing collective~~
29 ~~bargaining to school employees.] Provided, however, that a majority of~~
30 ~~the members of a negotiating unit within a charter school may modify, in~~
31 ~~writing, a collective bargaining agreement for the purposes of employ-~~
32 ~~ment in the charter school with the approval of the board of trustees of~~
33 ~~the charter school.~~

34 (c) The employees of the charter school [~~may~~] shall be deemed employ-
35 ees of the local school district for the purpose of providing retirement
36 benefits, including membership in the teachers' retirement system and
37 other retirement systems open to employees of public schools. The finan-
38 cial contributions for such benefits shall be the responsibility of the
39 charter school and the school's employees. The commissioner, in consul-
40 tation with the comptroller, shall develop regulations to implement the
41 provisions of this paragraph in a manner that allows charter schools to
42 provide retirement benefits to its employees in the same manner as other
43 public school employees.

44 (c-1) Reasonable access. (i) If employees of the charter school are
45 not represented, any charter school chartered pursuant to this article
46 must afford reasonable access to any employee organization during the
47 reasonable proximate period before any representation question is raised
48 in the same manner as any public employer; or

49 (ii) If the employee organization is a challenging organization,
50 reasonable access must be provided to any organization seeking to repre-
51 sent employees beginning with a date reasonably proximate to a challenge
52 period. Reasonableness is defined, at a minimum, as access equal to that
53 provided to the incumbent organization.

54 § 17. Subdivision 1 of section 2855 of the education law, as added by
55 chapter 4 of the laws of 1998, is amended to read as follows:
S. 6469

1 1. The charter entity, or the board of regents, [~~may~~] shall terminate
2 a charter upon any of the following grounds:

3 (a) When a charter school's outcome on student assessment measures
4 adopted by the board of regents falls below the level that would allow
5 the commissioner to revoke the registration of another public school,
6 and student achievement on such measures [~~has not shown improvement~~] has
7 not met annual yearly progress over the preceding three school years[+];

8 (b) Serious violations of law;

9 (c) Material and substantial violation of the charter, including

10 fiscal mismanagement and failure to meet student performance targets;
11 [~~or~~]

12 (d) When the public employment relations board makes a determination
13 that the charter school demonstrates a practice and pattern of egregious
14 and intentional violations of subdivision one of section two hundred
15 nine-a of the civil service law involving interference with or discrimi-
16 nation against employee rights under article fourteen of the civil
17 service law; or

18 (e) failure to enroll a comparable percentage of students qualifying
19 for free lunch, students with disabilities and English language learners
20 for two consecutive years.

21 § 18. Subdivision 1 of section 2856 of the education law, as amended
22 by chapter 378 of the laws of 2007, paragraph (a) as amended by section
23 12 of part A of chapter 57 of the laws of 2009, is amended to read as
24 follows:

25 1. (a) The enrollment of students attending charter schools shall be
26 included in the enrollment, attendance, membership and, if applicable,
27 count of students with disabilities of the school district in which the
28 pupil resides. The charter school shall report all such data to the
29 school districts of residence in a timely manner. Each school district
30 shall report such enrollment, attendance and count of students with
31 disabilities to the department. The school district of residence shall
32 pay directly to the charter school for each student enrolled in the
33 charter school who resides in the school district the charter school
34 basic tuition, which shall be an amount equal to one hundred percent of
35 the amount calculated pursuant to paragraph f of subdivision one of
36 section thirty-six hundred two of this chapter for the school district
37 for the year prior to the base year increased by the percentage change
38 in the state total approved operating expense calculated pursuant to
39 paragraph t of subdivision one of section thirty-six hundred two of this
40 chapter from two years prior to the base year to the base year;
41 provided, however, that for the two thousand nine--two thousand ten
42 school year, the charter school basic tuition shall be the amount paya-
43 ble by such district as charter school basic tuition for the two thou-
44 sand eight--two thousand nine school year. For the two thousand ten--
45 two thousand eleven school year and thereafter the state shall reimburse
46 school districts for the local share of the charter school tuition
47 payment of any students attending a charter school in the June payment
48 required by section three thousand six hundred nine-a of this chapter.
49 Such local share shall be calculated by deducting from the charter
50 school tuition payment the per pupil foundation aid amount attributable
51 to such pupil.

52 (b) The school district shall also pay directly to the charter school
53 any federal or state aid attributable to a student with a disability
54 attending charter school in proportion to the level of services for such
55 student with a disability that the charter school provides directly or
56 indirectly. Notwithstanding anything in this section to the contrary,
S. 6469

8

1 amounts payable pursuant to this subdivision from state or local funds
2 may be reduced pursuant to an agreement between the school and the char-
3 ter entity set forth in the charter. Payments made pursuant to this
4 subdivision shall be made by the school district in six substantially
5 equal installments each year beginning on the first business day of July
6 and every two months thereafter. Amounts payable under this subdivision
7 shall be determined by the commissioner. Amounts payable to a charter
8 school in its first year of operation shall be based on the projections
9 of initial-year enrollment set forth in the charter until actual enroll-
10 ment data is reported to the school district by the charter school. Such

11 actual enrollment shall be reported to the school district prior to each
12 payment following the initial July payment which shall be based on
13 projected enrollment. Such projections shall be reconciled with the
14 actual enrollment as actual enrollment data is so reported and at the
15 end of the school's first year of operation and each subsequent year
16 based on a final report of actual enrollment by the charter school, and
17 any necessary adjustments resulting from such final report shall be made
18 to payments during the school's following year of operation.

19 (c) Notwithstanding any other provision of this subdivision to the
20 contrary, payment of the federal aid attributable to a student with a
21 disability attending a charter school shall be made in accordance with
22 the requirements of section 8065-a of title twenty of the United States
23 code and sections 76.785-76.799 and 300.209 of title thirty-four of the
24 code of federal regulations.

25 § 19. Subdivisions 2 and 3 of section 2857 of the education law, as
26 amended by section 7 of part D-2 of chapter 57 of the laws of 2007, are
27 amended to read as follows:

28 2. Each charter school shall submit to the charter entity and to the
29 board of regents an annual report. Such report shall be issued no later
30 than the first day of August of each year for the preceding school year
31 and provided to the school district where the charter school is located
32 for display on the school district web site. The annual report shall be
33 in such form as shall be prescribed by the commissioner and shall
34 include at least the following components:

35 (a) a charter school report card, which shall include measures of the
36 comparative academic and fiscal performance of the school, as prescribed
37 by the commissioner in regulations adopted for such purpose. Such meas-
38 ures shall include, but not be limited to, graduation rates, dropout
39 rates, performance of students on standardized tests disaggregated for
40 subgroups, college entry rates, total spending per pupil and administra-
41 tive spending per pupil. Such measures shall be presented in a format
42 that is easily comparable to similar public schools. In addition, the
43 charter school shall ensure that such information is easily accessible
44 to the community.

45 (b) discussion of the progress made towards achievement of the goals
46 set forth in the charter.

47 (c) a certified financial statement setting forth, by appropriate
48 categories, the revenues from all sources and expenditures including the
49 salary of the school leader and any other salaries in excess of the
50 reporting requirements for public school districts contained in section
51 one thousand six hundred eight of this chapter and contracts with
52 consultants and vendors for the preceding school year, including a copy
53 of the most recent independent fiscal audit of the school.

54 3. The board of regents shall report annually by December first to the
55 governor, the temporary president of the senate, and the speaker of the
56 assembly and the public the following information:

S. 6469

9

1 (a) The number, distribution, and a brief description of new charter
2 schools established during the preceding year;

3 (b) The department's assessment of the current and projected program-
4 matic and fiscal impact of charter schools on the delivery of services
5 by school districts;

6 (c) The academic progress of students attending charter schools, as
7 measured against comparable public and nonpublic schools with similar
8 student population characteristics [~~wherever practicable~~];

9 (d) A list of all actions taken by a charter entity on charter appli-
10 cation and the rationale for the renewal or revocation of any charters;
11 and

Sections 2 Amends Paragraph 1 of Subdivision 1 of Section 2851 of the education law to remove for profit operators from the law and limits salaries of not for profit management companies to the comparable salaries of the school district.

Section 3 Amends Paragraphs (d), (h), (p), and (v) of subdivision 2 of section 2851 of the education law to require that charter schools up for renewal include a plan on how they will ensure student enrollment reflects local school district enrollment. Requires charter schools to show how they intend to provide services to students on long term suspension or expulsion. Allows charter schools to provide instruction for 5 years before renewal of the charter. Requires the board to adopt a code of ethics in compliance with the general municipal law.

Section 4 Amends Paragraph (a) of subdivision 4 of Section 2851 of the education law to require a charter school applying for renewal to include disaggregated student performance data in the progress report.

Section 5 Amends Paragraph (d) of Subdivision 2 of Section 2852 of the education law to remove the language allowing a charter entity to approve a charter where the enrollment would exceed 5 percent of the enrollment of the school district of location. For New York City, school district of location is the community school district. The current language allows approval if there is a significant educational benefit which has led the Regents to disregard the provision.

Section 6 Amends Subdivision 2 of Section 2852 of the education law by adding paragraphs (e) and (f) to require the approval of the application by the board of education.

Section 7 Amends Subdivision 5-b of Section 2852 of the education law to require SUNY to provide an explanation why they are not making modifications in a charter suggested by the Regents and removes the automatic approval of second submissions by SUNY.

Section 8 Amends Subdivision 7 of Section 2852 by adding a new paragraph (c) of the education law that requires charter entities to deny a charter revision that would increase charter school enrollment above 5 percent of the enrollment of the school district where the charter school is located and defines the school district of location as the community school district for New York City.

Section 9 Amends Subdivision 10 of Section 2852 of the education law to change the approval date from March 15 to January 15 in order for a school to open the following September. This provision gives school district more ability to plan in their budget process.

Section 10 Amends Subdivision 2 of Section 2853 of the education law to require State Education Department to include charter schools in any review or audit of state test administration and scoring.

Section 11 Amends Paragraph (a) of Subdivision 3 of Section 2853 of the education law to set limits on shared space when a school district is not meeting class size targets.

Section 12 Amends Subdivision 3 of Section 2853 by adding Paragraphs (d) and (e) of the education law to require charter school facility projects to follow the prevailing wage statutes and to require schools to make equitable improvements in shared facilities.

Section 13 Amends Paragraphs (c) and (e) of Subdivision 1 of Section 2854 of the education law to clarify that charter school boards must have a code of ethics in

conformance with the general municipal law and that charter schools are subject to audits by the charter entity.

Section 14 Amends Subdivision 1 of Section 2854 of the education law by adding Paragraph (f) to require charter schools to have a code of ethics.

Section 15 Amends Subdivision 2 Section 2854 of the education law and paragraphs (a) and (b) as amended by section 5 of Part-D2 of chapter 57 of laws of 2007 to require the charter school to develop a plan for enrolling students with disabilities and limited English proficient students at the same levels as the local school district. It requires Charter schools to give a preference to students on free and reduced price lunch, students with disabilities and students with limited English proficiency when conducting a lottery. It requires charter schools to provide a report to the chartering entity indicating the number students leaving the school, why they left and when they left. It requires the charter entity to ensure the random selection process of the lottery is conducted properly.

Section 16 Amends Paragraphs (b-1), (c) and (c-1) of Subdivision 3 of Section 2854 of the education law to clarify that charter schools employees are members of the local collective bargaining unit and that charter school teachers are members of the retirement system.

Section 17 Amends Subdivision 1 of Section 2855 of the education law to clarify that a charter shall be revoked if a school would be subject to registration revocation and had not met AYP in the last three years. The previous language only required growth rather than meeting AYP. It allows for revocation when the school does not meet performance targets contained in the charter and student demographics of the district of location for 2 years.

Section 18 Amends Subdivision 1 of Section 2856 of the education law to require the state to reimburse school districts for the local share of charter school tuition in the June State aid payment. This provision removes charter school funding from local school districts. School districts already receive state aid for these students so the only portion not paid by the state is the local share. We may have to phase in this change due to the state fiscal crisis but I think this is a good starting point. It leaves room for compromise. It also requires charter schools to provide actual enrollment counts after the initial payment each year.

Section 19 Amends Subdivisions 2 and 3 of Section 2857 of the education law to require that Charter school annual reports be placed on school district web sites. It requires the report to include disaggregated student performance data and additional financial information. It requires SED to do an annual report by December first of each year to include information on best practices.

Section 20 Amends Paragraph (a) of Subdivision 7 of Section 1608 of the education law to require that school districts include charter school payments in the property tax report card.

Section 21 Amends Paragraph (a) of Subdivision 7 of Section 1716 of the education law to require school districts to include charter school payments in the property tax report card.

Section 22 Amends Paragraph (t) of subdivision 1 of Section 3602 of the education law to adjust the formula used to compute approved operating expenses (AOE). When the state aid formula was revised in 2007-08, categorical grant programs were merged into a new Foundation Aid formula which has had the unintended consequence of artificially inflating AOE.

Section 23 is the effective date.

JUSTIFICATION:

New York's charter school law was enacted 11 years ago in an effort to create new learning opportunities for all students, to encourage different and innovative teaching methods and to provide parents and students with expanded choice within the public schools. Eleven years provides the state with enough information to make judgments about changes that are needed in the law to ensure the public knows how their tax dollars are being spent and to ensure public schools serving the majority of students have the resources needed to provide a quality education to all students. This legislation will clarify the transparency and accountability of charter schools and provide fiscal relief to the school districts where charter schools are located.

PRIOR LEGISLATIVE HISTORY:

New Bill.

FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:

This act shall take effect immediately.
