

Public Accountability for Charter Schools: Common Sense Regulation and Oversight for the Future

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Over the past decade, the charter school sector nationally has grown exponentially. Charter enrollment has doubled three times since 2000; it doubled from 2000 to 2004, again from 2004 to 2008, and again from 2008 to 2014.¹ Today, there are an estimated 6,400 public charter schools enrolling over 2.5 million students nationwide.² New York State has 209 charter schools, 183 of which (88%) are in New York City. Over half of the city's charter schools have opened since 2007.³

As the sector has grown, so too have the number and scale of associated entities that manage, and/or provide a wide variety of services to charter schools. But this rapid expansion of the education market, fueled by the availability of hundreds of millions of federal, state, local and private dollars, has not coincided with a corresponding increase in accountability or oversight capacity.

Charter laws are state laws. But all stakeholders share the responsibility of providing the oversight necessary to ensure that our public school dollars are spent wisely. Under the state constitution, the Mayor of New York and the Department of Education (DOE) are responsible for providing *all* students, from the youngest pre-school children to high school students, with an equitable and effective free public education through the city's system of public schools, both traditional and chartered.

This report lays out a series of common sense and pragmatic recommendations for increased oversight and accountability of the growing charter sector in New York City. We include some specific examples of abuses that would be avoided with better oversight, and point to other states' practices in these areas.

We divide our recommendations into four areas: Governance and Transparency; Equitable Access; School Climate, and Facilities. The goal of these recommendations is not to hamstring charter schools or impede their ability to innovate and educate. Indeed, we believe that these policy suggestions would strengthen the charter sector, and help reduce the divisive and polarized debate over public education in New York City. Parents, students, educators and policymakers can agree that the city's system of public schools—both traditional and charter—should work together to contribute to equitable educational opportunities, safer communities, less poverty and a stronger, healthier New York.

Recommendations

EQUITABLE ACCESS

Charter schools are schools of choice—meaning that parents must apply for enrollment. However, state law requires that schools accept students on a first-come, first-served basis, unless more students register than there are seats available. In those cases, a lottery must be held to randomly select among applicants. New York State law prohibits charter schools from discriminating in their enrollment processes, and requires that the demographics of the school’s enrollment be comparable to that of surrounding traditional public schools.

State law notwithstanding, the widespread use of subtle yet exclusionary enrollment practices by individual schools is well documented.⁴ Policies such as requiring parents to volunteer during the school year, requiring Social Security numbers or other documentation at enrollment, or requiring student interviews are some of the practices designed to exclude or discourage families that pose certain challenges.

Charter schools also have higher student attrition rates than traditional public schools. Suspensions and expulsions are in some cases exponentially higher and are addressed later in this report. But higher generalized student turnover appears to be endemic in the nature of choice.

RECOMMENDATIONS

- Require all charters to publish detailed information about the school’s enrollment and registration procedures, to ensure that they will not foster exclusionary enrollment policies.
- Prohibit schools from requiring that students and/or parents sign “contracts” that require them to meet certain behavioral or academic standards, or require parents to volunteer a certain number of hours at the school or meet other requirements.
- Prohibit charter schools from requiring prospective students to produce Social Security Cards, Individualized Educational Plans or academic reports as a condition of enrollment.
- Monitor charter school enrollment and retention practices through uniform and consistent data requirements to ensure that charter schools are enrolling a proportionate share of students across subgroups.
- Require charter schools to “backfill” seats vacated through attrition by accepting students in the middle of the school year and in every grade, so that the graduating cohort is the same size as the entering cohort.
- Require charter schools to accept “over-the-counter” students who did not participate in the school choice process, just like district public schools.
- Establish a city-wide, cross-sector student identification system that allows the district to track student mobility and provide supports to students who move between schools during the course of the school year.
- Per pupil funding, provided to schools based on their enrollment, should follow students who enter district public schools after October 31st of the school year to allow those schools to best serve students who leave charter schools during the school year.
- Establish an Ombudsman position within the Department of Education. Parents of students who were discouraged from enrolling at a charter school, or feel that their student is being denied services or pressured to leave the school should be able to present their case and have the Ombudsman office immediately investigate. Any charter school found to engage in practices that result in fewer students with special needs being served should be required to end these practices, and should face sanction by the Department of Education.

The results of these practices are evident nationwide: students with disabilities and English Language Learners are under-represented in charter schools nationally, as well as in New York City. Other studies have also shown that students in charter schools—though statistically equivalent on measures of race or economic status—tend to come from better-resourced, and/or more educated families.⁵ In other words, our most vulnerable students are under-served by the charter sector:

- Charter schools in New York City enroll significantly lower percentages of students with disabilities (12%, versus 17% in the city’s traditional public schools) and English Language Learners (5% versus 14% in the City’s traditional public schools).⁶
- DNAInfo New York reported last year on enrollment practices at Citizens of the World Charter School in Crown Heights that seemed to favor white, affluent families over lower-income families of color for enrollment in the school. According to the report,⁷ an enrollment plan obtained by DNAinfo found explicit prioritizing of white and middle-income families in the recruitment plan for the Los Angeles-based charter organization.

SCHOOL CLIMATE

Many parents choose charter schools for their perceived advantages in school safety and climate and instructional quality. Some of these advantages seem elusive.

Across the country and in New York City, charter schools have been criticized for having rigid and harsh discipline policies that have proven counter-indicative to safe schools and rely on out-of-school suspension and expulsions to manage school climate. While charters are free under state law to design their own discipline policies, New York State’s Charter School Law requires those policies to include due process rights for students and parents. Minnesota’s law goes one step further by requiring that charter school parents be notified of suspensions by letter, that an informal conference must be held with the student, and that expulsions require a student hearing, which may be challenged by parents or students. Ensuring that these policies are available on the school’s website allows parents to fully understand the school’s rules and requirements before they register their child.

- Just five months ago it was reported that at KIPP Star Washington Heights charter school, children as young as five years old were placed in isolated and padded “cool down” closets, causing some children to anxiety attacks. The school defended the practice,⁸ though some parents withdrew their children when the reports surfaced.
- A 2012 report by the New York Civil Liberties Union found that some charter schools suspend students at rates many times higher than the city’s traditional public schools. For example, the report found that two Brooklyn Collegiate Charter Schools in the UnCommon Schools network suspend students at 35 and 40 percent rates, respectively. Achievement First, another charter network with strict behavior codes suspends 4 to 18 percent of its students at its five city schools, higher than the city’s average.⁹

The advantages of an experienced, highly trained teacher workforce are also incontrovertible. Yet most charter schools, both in New York City and nationally, employ educators on an “at will” basis and experience much higher teacher turnover than traditional public schools. Teacher turnover in and of itself has been shown to hinder academic progress among students.¹⁰

- Teachers in New York City’s KIPP and Success Academy networks, the average teacher tenure is approximately four years.¹¹
- District-wide, the rate of teacher turnover in 2011 in charter schools was 30%, as compared to 13% in the city’s traditional public schools.

- There was a wide gap in the average principal turnover rates as well. In the charter sector, the average turnover for principals between 2006-2011 was 18.7%, versus 3.6% in district schools.
- In the 2010-2011 school year, 29% of charter school teachers in New York had 3 years or fewer years of experience, compared to 5% of district teachers.¹²

Students benefit from a well-rounded teaching staff that is culturally diverse, and includes both experienced and novice educators who can learn from each other.

RECOMMENDATIONS

- Require charter schools to post their discipline policy online.
- Require charter school policies to include detailed provisions describing under what circumstances the school will use police in the enforcement of discipline or in response to student behavior.
- Require public documentation and reporting of student attrition throughout the school year, including date, reason and disposition. This should include all disciplinary actions (both in- and out-of-school suspensions, and referrals to law enforcement), “voluntary” and “involuntary” exits, and should be disaggregated by race/ethnicity, gender, grade, free and reduced price lunch status, disability status, and English proficiency status.
- Subject any charter school with a consistently higher rate of suspensions or expulsions to investigation and additional oversight by the Department of Education.
- Require district and charter schools to participate in mandatory public reporting of a wide range of indicators of school conditions and offerings that are reported by district public schools, including class size averages, access to art, music and physical education programs, facility quality and features, availability of advanced curricula, access to staffed school libraries, student attendance.
- Prohibit charter schools from imposing monetary fines on students for violations of the school’s discipline code.
- Require charter schools to annually report on their teacher and principal workforce, including years of experience, degrees held and turnover rates.
- Require that charter applications include language of neutrality and non-interference of teachers and school employees’ right to unionize and to bargain collectively over working conditions. These rights must include due process rights for all school employees as a condition for receiving and/or renewing a charter.

GOVERNANCE AND TRANSPARENCY

Charter schools in New York State are considered “independent and autonomous *public* schools” [emphasis ours] with powers granted for the “performance of essential public purposes and governmental purposes” of the State of New York.¹³

As public schools, charters must be held to the same standards of representative governance, full transparency and public stewardship as traditional public schools. The New York State Charter Schools Act subjects members of charter school governing boards to local code of ethics and disclosure regulations and requires a great deal of transparency and reporting, but does not speak to representation. There are examples of state laws that do: Minnesota’s charter law requires that within three years of opening, charter governing boards be elected by school staff and parents and include representation from each;¹⁴ the District of Columbia’s charter law requires at least two board members are parents of attending students.

Still, some troubling news stories out of New York’s charter sector suggest that additional requirements and increased compliance monitoring are necessary not only to discourage and quickly thwart malfeasance, but also to strengthen the public’s access to, and trust in chartering as a public good.

- A 2012 investigation uncovered multiple instances of nepotism in New York City charters, including cases where charter boards or administrators hired companies owned by spouses or family members to provide services to the school.¹⁵
- Executive salaries have been in the news as well: According to a report in the *New York Daily News*, the top 16 charter school executives in New York City earn more than the city’s schools chancellor, who oversees more than 1,600 public schools.

The NY State Legislature in 2010 prohibited any *new* charter schools from being opened or managed by for-profit education management organizations. But the amendment did not require existing charter schools to discontinue their contracts with those entities. Today, there are four charter schools in New York City managed by Michigan-based National Heritage Academies (NHA), which manages over 70 schools nationally; and as many as eight charter schools that have significant management or services contracts with the for-profit Victory Education Partners. The use of for-profit management organizations nationally has raised multiple concerns about lack of accountability for the use of public funds, and undercutting educational services or over-charging individual charter schools to maximize shareholder profits. Again, New York has confronted some of these concerns;

- A 2012 Audit by the Office of the State Controller noted that the office was unable to verify how public funds were used by National Heritage Academies. Reviewing the financial report of Brooklyn Excelsior Charter School, managed by NHA, the Controller could not determine whether the \$10 million in public funding that was provided annually to the school was benefiting students. When asked, officials at NHA refused to provide full financial reports, claiming the information was “private and proprietary.”¹⁶
- According to a *New York Post* investigation in 2012, National Heritage Academies leases a building from the Roman Catholic Diocese of Brooklyn for approximately \$264,000 per year and then rents it to Brooklyn Dreams Charter School in Kensington, which NHA manages, for \$2.76 million annually. Another NHA-managed school, Brooklyn Excelsior, pays over \$3 million *per year* for rent – nearly 30% of the school’s entire budget—on a building that was purchased by NHA in 2004 for just over that amount.¹⁷

It is incumbent upon the leadership of New York City to ensure that charter schools are fully accountable to the communities in which they operate, and the families they serve. Requiring representative gover-

nance, full transparency (for operators, governing boards and management companies) and eliminating all sub-contracts for full school management with for-profit entities would begin movement in the right direction.

RECOMMENDATIONS

- Require charter schools to report student enrollment disaggregated by race/ethnicity, gender, grade, free and reduced price lunch status, disability status, and English proficiency status.
- Require parent and teacher representation as voting members of all charter school governing boards.
- Require charter schools to create building-based school leadership teams with parent, teachers and staff representation, as New York City traditional public schools must do. These teams not only increase parent engagement in school programs, but create an additional layer of accountability for proper management.
- Minutes from charter school governing board meetings, school policies, and information about staff, instructional strategies, curriculum, school rules and discipline codes should be available on every charter school's website. .
- CEO and other leadership salaries and benefit packages at all charter schools and networks should be publicly disclosed on the school's website as well as by the DOE.
- Require all management companies, whether for-profit or non-profit, to fully disclose all financial information related to their use of public dollars for management of any charter schools in the City of New York.
- Require all charter schools to post details on any contracts over \$5,000 with any external corporate entity, for-profit or non-profit, on the school's website.
- Require charter school governing boards to fully comply with the state's competitive contracting practices for any contracts over \$5,000.
- Require that charter schools phase out existing contracts with for-profit corporate management companies.
- Require the DOE and charter schools to publicly identify the owners of any non-public property used to house a charter school, along with documentation of the rent amount paid, to whom payments are made and verification that there are no conflicts of interest between the school and the holder of the property.
- Charter school financial documents should be made available to the public annually on the authorizer's website. These documents should include detailed information about the use of both public and private funds by the school and its management entities.

FACILITIES

New York City has by far the highest incidence of co-location of traditional public and public charter schools in the country. About two-thirds of charter schools in New York City (115 out of 183) are co-located, as are the same percentage of traditional public schools.

There are several well-known concerns about co-locations in New York and elsewhere. First is the question of who bears the cost. Before 2014, state education law allowed districts to provide space to charters “at-cost” but co-located charters did not pay any fees or rent to the DOE. They did not share the costs of maintenance of the building and grounds, janitorial, security or other services that the co-located district public schools funded from their budgets throughout the building.

The changes in state law passed in March 2014 require the New York City DOE to either provide co-located space to new or expanding charters, or to subsidize their rent for private space, to a cost of up to \$40 million. After the city spends \$40 million, they are then responsible for 40% of all future facilities costs required under the law. The city is therefore now definitively obligated to cover the costs of facilities for charter schools—a substantial shouldering of costs for the DOE and the city. These funds come from funds that would otherwise support students in traditional public schools.

The second concern about co-location is fairness and equity. Co-location agreements are reached between the DOE and the charters themselves. The DOE is responsible for maintaining an “under-utilized space memorandum,” which lists school buildings that the DOE believes have enough space for a charter to co-locate. Calculations of space are made through use of the “Blue Book,” which prescribes amounts per pupil that public schools should have.

Parents, principals and teachers have challenged the formula used by the “Blue Book,” and stories abound of charter schools pushing their host schools in to smaller and smaller spaces, squeezing growing school populations into shrinking space. Additionally, because many charter schools receive very significant amounts of private funding to which the traditional public schools have less access, there is the concern that students in traditional public schools that are co-located with well-resourced charters, are confronted daily with vast disparities in resources, materials and equipment.

All public schools need safe and secure buildings with enough space for a full range of program offerings, small spaces for pull-out and one-on-one work with students, adequate school libraries, science labs, gym and athletic facilities and more. The challenge for city leadership is ensuring that charter schools have

RECOMMENDATIONS

- The State should provide a significant increase in capital and facilities funding to the New York City Public Schools, to ensure that all school buildings are updated and fully resourced, and to eliminate over-crowding, particularly in co-located schools.
- Co-location decisions should include review of the full financial resources of the charter school requesting space, including the availability of private funding, the school’s use of funds and its relationship with any management company. Schools with significant private resources should be required to make payments-in-lieu-of-rent contributions to help balance the resources of the co-located schools.
- Through the current Blue Book Working Groups and the School Space Working Group, conduct a thorough revision of the process for calculating the amount of space available in district school buildings.
- Require consultation and engagement with parents, educators and community members from both traditional public schools and charter schools for any decision to co-locate a charter school within an existing public school facility.

access to the space they need, but also that students in traditional public schools are not being squeezed into insufficient space, confronted with absurd inequities in resources and pushed out of schools that are neighborhood institutions.

CONCLUSIONS

New York City taxpayers support public schools by paying their taxes, sending their children to them, and welcoming them as part of the community. That goes for both traditional public, and public charter schools. Like families all across the country, they trust these schools to offer high quality educational services, provide a safe environment, and good stewardship of their public funding.

The ability of New York's public charter schools to innovate and operate autonomously from the Department of Education will be enhanced by common sense regulation designed to ensure that the city's public charter schools are governed openly and honestly, and that they are serving a cross-section of the city's students.

ENDNOTES

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- ² Source: National Alliance for Public Charter Schools 2014 Report, *Estimated Number of Public Charter Schools & Students, 2013-2014*. www.publiccharters.org/wpcontent/uploads/2014/02/New-and-Closed-Report-February-20141.pdf
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