

Changes to the State Charter Schools Law: A Guide for NYC Charter Schools

UPDATED September 29, 2010

As a reference for charter school leaders, this document summarizes the 2010 amendments to the New York State Charter Schools Act. *This is only a summary.* For additional information and guidance please visit: <http://www.nycCharterSchools.org/NewLaw/>

OVERVIEW

In May 2010, the New York State Legislature passed a series of changes to the charter schools law. As the product of months of negotiations and last-minute deal-making, these changes are positive in their overall effect though far from perfect.

The most significant change, of course, is that New York's statewide cap on charter schools has been increased to 460, which will allow the charter school sector to expand for years to come—serving more children, producing more innovation, and gaining more strength to withstand future attacks. Of the 260 new charters, a maximum of 114 may be issued to open schools in New York City.

The law's many other changes tend toward increasing regulatory and reporting requirements for charter schools. Most significantly, charter schools will now be held to specific target rates for the enrollment and retention of disabled, low-income, and ELL students. There are also stricter regulations of conflicts of interest among charter school board members, with the possibility of criminal penalties for noncompliance, and SED will now regulate how lotteries are conducted.

Fortunately, the law's new provisions do not generally intrude upon charter schools' core autonomies: your school's ability to manage your own budget, implement your own curriculum and programs, and make staffing decisions in the best interest of your students. In a significant *increase* in autonomy, networks of charter schools are now allowed to operate as a single entity.

School leaders will note a possible threat to autonomy in a new provision that purports to allow the comptroller to conduct fiscal and other audits of charter schools. In 2009, New York's highest court overturned a similar provision as unconstitutional, and we do not believe this new provision is any less so. The New York City Charter School Center will work with school leaders and the New York Charter Schools Association to determine the best strategy to address this issue, including the possibility of returning to court. In another erosion of autonomy, the NYC schools Chancellor is purportedly given authority to ensure the establishment of parent associations at each charter school; the actual authority the Chancellor has to do this is unclear.

A more detailed review of the provisions follows, together with a quick glance at how we will be helping schools deal with them in the near- and longer-term future.

CHARTERING

Statewide charter cap

The statewide limit on charter schools has been increased. In addition to the 200 charters authorized under the previous law, 260 *additional* charters may be issued: 130 by the SUNY Board of Trustees (through the Charter Schools Institute), and 130 by the Board of Regents (through the State Education Department (SED)). Of these new charters, a maximum of 114 may be issued for New York City (57 each for SUNY and the Regents). SUNY and the Board of Regents are each limited to issuing up to 32 or 33 charters per year through 2014, but these limits are unlikely to be approached and unused charters “roll over” into the following year. (Conversion charter schools continue to not count against the cap.)

The Chancellor’s role in approving applications and forwarding those applications to the Board of Regents is unchanged. The Chancellor will continue to act as the authorizer for those applications he or she approves for which charters are issued (monitoring them jointly with SED and approving application for renewal, subject to Board of Regents’ approval). It is unclear at this writing whether the Chancellor may forward approved applications to SUNY.

Charter approval processes

All 260 of the new charters will be issued through a Request for Proposal (RFP) process that will include specified criteria for evaluating charter school proposals and a new timeline. The implementation of the RFP process, and the actual timeline—particularly for the remainder of calendar year 2010—have yet to be established by the authorizers. SUNY has a draft RFP available for comment with a draft deadline of August 17, 2010 for applications in response to the RFP; SED has not released a draft but is accepting general comments. Final RFPs from both SUNY and SED will be available by August 2.

Ban on for-profit managers

None of the new 260 charters may be issued for schools that would be operated or managed by a for-profit entity. This ban does not apply to the 12 charters that SUNY has remaining under the state’s previous 200-charter cap; for these charters, eligible applicants may apply in conjunction with for-profit entities and enter into management contracts with them. Existing charter schools with for-profit managers are not affected.

Extending the charter period to five operating years

For charter schools approved pursuant to the new RFP process, a school’s charter can now have a longer term: instead of expiring five years from the date of the charter approval/renewal, the charter can cover a full five years after *the first day of school following approval/renewal*. Thus, if your school’s charter is issued on September 1, 2011 but you do not begin instruction until September 1, 2012, the charter could be extended until August 31, 2017. This simple fix will save schools and authorizers a lot of trouble, and keep schools that take a planning year from arriving at renewal after only three years of operation. The legislature did not extend this fix to existing schools and their renewal charters.

CHARTERING, CONT'D

Changes in application requirements

Consistent with the move towards the new RFP process, charter applications must now show how the school would meet specified criteria including the two new eligibility requirements: that a charter school has conducted a prescribed community outreach process and that it will be able to meet a set of target rates for the enrollment and retention of students with disabilities, English Language Learners, and students who are eligible for the free and reduced price lunch program. The Board of Regents and SUNY will now prescribe these targets, which will be “comparable” to the rates in the local CSD.

Applications must also include “a procedure for conducting and publicizing monthly board of trustee meetings at the charter school” and a code of ethics which covers conflicts of interest and which must be consistent with the General Municipal Law. Overall, it is not expected that the changes will result in a dramatically different application or application process. (SUNY’s initial draft RFP for the August 1 RFP round appears to confirm this.)

Renewal

A school seeking charter renewal is now required to show how it will meet the prescribed targets for the enrollment and retentions of students with disabilities, English Language Learners, and students who are eligible for the free and reduced price lunch program. Authorizers are required to consider the plan prior to approving the renewal application. It is possible and even likely that authorizers will take a school’s past performance into account when considering the plan’s effectiveness and/or make success in this area a benchmark for renewal.

New ground for revocation

A charter school’s “repeated failure to... meet or exceed” the enrollment targets described above can be grounds for charter revocation. Authorizers may make exceptions where a repeatedly failing school can demonstrate extensive efforts to both enroll and retain students in the relevant subgroup, including through academic supports, community outreach, and extensive publicity for admissions lotteries.

CHARTERING, CONT'D

Chartering: Key Questions

Will the five-year operating period be extended to existing schools?

This is among the technical fixes to the law that the Charter Center will advocate for.

Will the requirement of monthly board meetings become applicable to existing charter schools when they apply for renewal?

The Charter Center does *not* believe that this requirement will attach to schools upon renewal and will encourage the authorizers to adopt the same reading of the law.

How will authorizers set targets for “comparable” enrollment/retention?

No procedure has been announced, even in draft form. Setting targets in a way that ensures accountability without creating arbitrary punishments or perverse incentives turns out to be a very complicated business. The Charter Center is actively advocating for a process that is fair and methodologically sound.

What constitutes management of a charter school, and when do permissible vendor relationships between a school and a for-profit entity become impermissible management relationships?

There is as yet little guidance on this from the authorizers. Clearly, there are three factors that will weigh heavily in the Board of Regents' and SUNY's determinations: the extent of the services provided; the amount of control the for-profit entity exercises over executive functions; and the fee structure.

Chartering Resources at www.nycCharterSchools.org/NewLaw/

- A guide to the revised law's implications for new applicants
- Model examples of a Code of Ethics and a Conflict of Interest Policy that comply with the relevant provisions of the General Municipal Law
- The Center's recommendations to authorizers on setting enrollment/retention targets
- Links to SUNY's draft RFP materials (open for public comment through July 23)

STUDENT APPLICATIONS AND ENROLLMENT

Uniform application and lottery regulations

Applications for charter school admission will now be made using a uniform application, the form for which will be created by SED. Charter schools must make the application available in the languages predominantly spoken in each charter school's community. In addition, the state Commissioner of Education must issue regulations to ensure admission lotteries are transparent, equitable, well-publicized, and open to the public. These provisions take effect January 1, 2011 and will therefore affect student admissions for the 2011-12 school year.

Optional enrollment preferences for students with disabilities and ELLs

Charter schools are now explicitly allowed, but not required, to give admissions preferences for students with disabilities and English Language Learners. As always, a charter amendment is required to begin offering such a preference.

Applications and Enrollment: Key Questions

How will the uniform application and lottery regulations affect charter schools?

The application and lottery regulations have yet to be developed. The Charter Center understands that it is important that the new application can still reflect a charter school's brand and particular preference structures; that it be available to disseminate electronically; and that all regulations take schools' operational concerns into account, i.e., that the mandate works for schools and parents. The Charter Center is sharing these concerns with state officials and advocating for regulations that are workable.

Who is expected to translate the new application?

To the extent that the burden falls on charter schools, the Charter Center will provide translation services.

FACILITIES

Co-location process

There are new processes for locating or co-locating charter schools in NYC district buildings. These are in addition to the requirements already in place as a result of changes to the mayoral governance law which was reauthorized last summer, as well as the hearing requirements in the Charter Schools Act itself. The first of the new requirements is that the Chancellor now must publicly identify which buildings might be subject to a charter school location or co-location. Second, where a specific location or co-location has been identified, the Chancellor must prepare a detailed building usage plan which is incorporated into the Educational Impact Statement that the Chancellor is already required to create pursuant to the school governance law. The plan must lay out in great detail exactly what space will be given to the charter school as well as precisely how the shared spaces will be shared; it must also justify the allocations and show that they are feasible and equitable.

The plan must also show how safety and security will be handled and how the schools will communicate with each other. Each co-located building will be required to establish a “shared space committee” made up of three representatives from each co-located school: the principal, a parent and a teacher. This committee will meet at least quarterly to review how the usage plan is being implemented. Critically, the Chancellor retains final say over location decisions, but a location or co-location decision may be appealed on process grounds to the state Commissioner, e.g. if the Chancellor’s building usage plan did not lay out the specific classrooms the charter school and district school would each use. If appealed, the City has ten days to respond and the Commissioner has ten days to make a decision on the appeal.

Matching requirement for capital improvements

The Chancellor must now approve in advance any capital improvements or facility upgrades in excess of \$5,000 for schools either moving into co-located space or already in co-located space. Improvements and upgrades must be made to each co-located public school in the building in an equivalent amount. Where the upgrades/improvements are made to a school that is already co-located, the “matching” upgrades/improvements to the district school(s) must be made within three months.

Application of SED building code to private buildings that house charter schools

NYC charter schools chartered under one of the new 114 charters and which are located in a private space, will now have to abide by the same SED health, safety and sanitary requirements as traditional public schools in NYC.

FACILITIES, CONT'D

Facilities: Key Questions

Are more details available about the new co-location process?

The NYC Department of Education will issue additional guidance in the coming months. The Charter Center will work with the Department of Education to ensure that the process is consistent with the law and will withstand legal challenges.

Who will pay for the “matching” upgrades/improvements?

The law does not specify the source of funds. So far, the NYC Department of Education has indicated that it will seek to provide funds for this mandate—and has provided quick approval and matching funds for the vast majority of projects proposed for this summer. The Charter Center will continue to advocate for City funding, and against turning this provision into a one-sided and unfunded mandate for charter schools.

What constitutes an upgrade/improvement?

There are clearly some things which everyone agrees are upgrades, such as painting, putting in air conditioning, wiring, etc. And there are clearly things that aren't—buying new books and instructional materials. There is, however, a gray area around instructional fixtures such as smart boards. The Charter Center will advocate with the NYC Department of Education to have this provision interpreted reasonably.

Exactly which “health, safety, and sanitary” rules apply to charter schools in private buildings?

It is not clear. Though the Department of Buildings will continue to regulate charter school buildings in private space in NYC, this provision could represent a mere nuisance or be far-reaching, resulting in substantial increases in building costs. The Charter Center will work with the Department of Buildings, counsel, and other regulators to come to common agreement on the meaning and breadth of “health, safety and sanitary.”

The Center will also advocate for legislation to fix a drafting error in the law that leaves it unclear whether charter school buildings are to be generally treated as private schools for purposes of code compliance, land use regulation, and zoning.

GOVERNANCE

Multiple-site governance and consolidation to a single school

The legal details are unclear, but by the Charter Center's reading of the law, two or more charter schools can now choose to merge into a single school, managed by a single board—but operating multiple campuses with multiple charters. In other words: a charter district. Also, existing schools have a new option for replication: instead of filing a separate application for a new school and charter (still allowed), a school may file to amend its current charter to serve the same grades at a second site. (Both sites would count against the charter cap.)

New conflict of interest and reporting requirements

Charter school trustees, officers, and employees are now subject to certain provisions of the General Municipal Law covering conflicts of interest, bans on gift giving, and other topics to the same extent as school districts. Generally speaking, these complex rules are much more demanding than the previous requirements for charter schools. A wide range of conflicted transactions that were previously allowed—as long as they were disclosed and fair—are now prohibited. For example, charter schools may no longer pay board members for services rendered, nor hire for-profit entities in which board members or employees have a substantial interest. Because of these changes to the law, charter schools will need to adopt new conflict of interest policies.

Annual reporting

Charter schools' requirements for annual reporting will change for the August 2011 report (the August 2010 reporting requirements remain the same):

- Charter schools' annual reports must now describe efforts taken in the current year, and plans for the following year, to attract and retain high-need students.
- All charter schools will have to make their annual reports publicly available, including by posting them on their web sites. (Authorizers must also post schools' annual reports.)
- Charter schools' annual reports must now describe efforts taken in the current year, and plans for the following year, to attract and retain high-need students.
- All charter schools will have to send their annual SED report cards to local newspapers, and make them available for distribution at board meetings.

The requirement to post annual reports online is not retroactive and does not apply to the current year's annual report (2009-10).

Parent associations

In an amendment to the school governance law, the Chancellor must now ensure that each charter school located in NYC has a parent association and that meetings of the parent association are, among, other things, open to the general public. SUNY has stated, however, and the Charter Center concurs, that contrary to the language in this amendment, the Chancellor has no authority to require a charter school to form a parent association if 1) the school is not authorized by the Chancellor; and 2) the school is not housed in a DOE building. It is not clear the extent of the Chancellor's authority more generally, but it is prudent for SUNY-authorized charter schools in DOE facilities to form parent associations in anticipation that DOE

will require as much in its capacity as landlord.

(The Charter Center understands that charter school parent associations will not be subject to the NYC Chancellor's Regulations governing parent associations.)

Generally speaking, while we believe it is incumbent upon schools to set up robust avenues for parent input and communication, we believe that individual charter schools should be given the autonomy to determine how best to do that.

GOVERNANCE, CONT'D

Governance: Key Questions

How will multiple-site governance/consolidation work?

Exercising these options will require a great deal of thoughtful planning, as well as answers to many legal and practical questions. For example, what would such a charter amendment look like? What will authorizers require? How could authorizers close a single site but not the entire school? Will federal funding be affected?

The Center is convening an *ad hoc* working group on this topic and will retain legal counsel to facilitate the group's work; visit www.nycCharterSchools.org/NewLaw/ to join. We expect this work to begin in August and continue through the fall.

Given that most schools will be required to amend their conflict of interest policies and many their by-laws and board structures to come into compliance with the General Municipal Law, will such amendments require schools to undertake formal charter revision requests?

We hope not. There is precedent from the last revisions to the Charter Schools Act that where the law requires amendments to school policies, the school may revise those policies to conform to the new requirements without seeking formal revision. We expect authorizers to provide guidance to schools on this point.

Governance Resources at www.nycCharterSchools.org/NewLaw/

- Training materials about the new conflict of interest rules, including model examples of a Code of Ethics and a Conflict of Interest Policy that comply with the relevant provisions of the General Municipal Law
- Link to SED's guidance about annual reports for school year 2009-10
- Links to SUNY's draft RFP materials (open for public comment through July 23)

OVERSIGHT

Comptroller audits

The revised law now states that the State Comptroller may audit charter schools at his or her discretion. The previous law, which the New York State Court of Appeals struck down last year as unconstitutional, had required the Comptroller to audit charter schools.

Regents' reports

The Board of Regents must now provide annual reports on charter school closures, and on the best practices employed by charter schools.

Oversight: Key Questions

What will happen with regard to Comptroller audits?

The Charter Center does not believe that the new law is constitutional, a position that the New York Charter School Association shares.

If the Comptroller should move to audit any charter school, we will review our options, including seeking relief from the courts once again. In the meantime, the NYC Charter School Center has asked each authorizer to review its auditing procedures to ensure that collectively there is a robust audit process and environment in place for charter schools to guard against financial improprieties.

How will the Regents identify charter schools' best practices?

The Charter Center will work with SED to make sure the annual reports on best practices highlight charters' successes and do not create an undue burden.