



Charter Schools Institute
The State University of New York

Memorandum

To: Charter Schools Authorized by the Board of Trustees of the State University of New York

From: Dr. Jennifer G. Sneed, Senior Vice President, Charter Schools Institute

Subject: Changes in the Charter Schools Act that Affect Existing Schools

Date: April 20, 2007

While we are sure that each of you is aware that one of the very positive outcomes of this year's New York State budget process was a state-wide lift of the cap on new charter schools, you may not be aware that the budget legislation also made modifications to the New York Charter Schools Act of 1998 and broader State education law that have a significant impact on the operation of existing charter schools. This memorandum will outline those changes and other provisions of the new law. Some legal issues, however, may yet be subject to further interpretation. As always, the Institute's website, www.newyorkcharters.org, especially the "For Schools" section, is the best place for the latest information affecting charter schools authorized by the State University Trustees. We will provide more information to you as it becomes available.

The budget bill that contained the cap lift (S. 2107-C / A. 4307-C)¹ allows the creation of 100 additional charter schools including 50 to be awarded by the State University Trustees. Of the 100 new schools, up to 50 must be located in New York City. Notably, while the legislation allows new universal pre-kindergarten programs, charter schools continue to be unable to offer such programs.

The new legislation contains significant new restrictions and requirements related to the issuance, revision and renewal of charters that become **effective July 1, 2007**, as well as other provisions of law that will affect charter schools immediately. We have developed the following summary of legislative changes organized in three parts: 1) Changes to the Charter Schools Act Affecting Existing Schools; 2) Changes Affecting Existing Charter Schools that Do Not Amend the Charter Schools Act; and 3) Changes Affecting Applications for New Charter Schools. We have included a question and answer regarding the application of the amended law to ongoing charter schools operations after the summary for categories 1 and 2.

Changes to the Charter Schools Act Affecting Existing Schools

- **Required Hearings by School Districts or the Board of Regents Prior to the Issuance, Revision or Renewal of a Charter**

¹ Available on the New York State Assembly's website, <http://assembly.state.ny.us/leg/?bn=S02107&sh=tols>. This is a massive document, but the changes to the New York Charter Schools Act of 1998 are on pages 119-124 (in the original bill (internal) pagination). The enactment is Chapter 57 of the New York Laws of 2007.

The amended law mandates that the school district of location or proposed location hold a public hearing *prior to* the issuance, *revision or renewal* of a charter “to solicit comments from the community.” The hearing for a “proposed charter school” must be held in the “community potentially impacted by” such proposed school, which is not defined. However, if the school districts do not hold the hearings, another provision in the new law mandates that the Board of Regents conduct such hearings. No consequences or penalties are specified in the law if the school districts or Board of Regents do not conduct such hearings. In addition, the new law does not establish a specific timeframe within which the hearings must take place other than “[p]rior to issuance.”

How will this hearing provision affect my charter school?

The Institute does not see a broad impact on existing charter schools. Charter schools do not have to hold or attend these hearings. Our view is that a charter revision or renewal may not be prevented by these hearings not being held as they are an independent responsibility placed on school districts and the Board of Regents. If the Board of Regents does not approve a renewal or revision of a charter because a hearing has not been held, then there may be a delay until the State University Trustees can resubmit the renewal or revision to the Regents and it becomes effective by operation of law. However, this delay is no different than that included in the original language of the Charter Schools Act. The hearings may generate comments, and the Charter Schools Institute may ask you to respond to some (or all) prior to presenting the comments to the State University Trustees for consideration. This has been a standard practice of the Institute and State University Trustees, so the amended law brings no change to this part of the charter revision, renewal or approval process.

- **Two Required Hearings by School Districts or the Board of Regents Prior to a Charter School Changing Its School District of Location and New Notice and Information Requirements**

When a charter school wants to relocate from one school district to another, the amended law mandates that the proposed new school district hold a hearing *as well as* the district where the charter school is currently located. New York City is considered one district for this purpose so movement within New York City will not be subject to this provision.

In addition, the proposed new school district will now have to be given at least 45 days notice of the proposed relocation. (The statute does not specify what entity must make the notice, so either the charter school or the Board of Trustees could provide it.) The charter school must also provide an “analysis of the community support for such relocation and of the projected programmatic and fiscal impact of the charter school on the proposed new school district of location and other public and nonpublic schools in the area” presumably to the charter entity.

How will these hearing and notice provisions affect my charter school?

The Institute does not foresee any significant impact from the new hearing provision. However, the notice provision may delay a school’s ability to move. Additionally, the required information regarding programmatic and fiscal impact will have to be included in the schools application for a change in program, which will be a formal revision to the

school's charter. The new statutory requirements are in addition to the requirements for change in location that are in your school's charter agreement.

- **New Requirements Including a State University Trustees' Hearing for Charter Schools Wanting to Occupy District School Facilities**

Under the amended legislation, before a charter school can be located in "part of an existing public school building" (not defined), the State University Trustees shall 1) provide notice to the parents or guardians of students enrolled in the existing school building, and 2) must hold a public hearing for purposes of discussing the location of the charter school. The statute does not say that the hearing must be held in the public school space, and does not provide notice requirements, which means that the State University Trustees will likely use applicable Open Meetings Law notice requirements. Presumably, if a charter school is to occupy all of a public school building, this provision will not be applicable.

How will this hearing requirement affect my charter school?

This hearing requirement should not affect charter schools currently in district school space as it does not take effect until July 1, 2007. However, it may delay a charter school's ability to occupy district school space in the future. Once an agreement with a district is signed, the school will not be able to operate in the space until the Institute notifies parents of children enrolled in the district school building and holds a hearing to allow them to discuss the location of the charter school. The Institute may ask a charter school it authorizes to assist in this process. As a result of this provision, charter school boards of trustees must consider location changes involving district school space well in advance of the proposed move and must notify the Institute as soon as possible of such decision.

- **Mandatory Consideration of District Comments for New Charters, Renewals and Revisions**

In addition to the community comment process described above, and on a different statutory timetable, school districts must be given an opportunity to comment to the State University Trustees on proposed new charters, renewals and revisions. The State University Trustees, must now "consider any comments raised" by such districts and include them with the application for a new charter, charter renewal or charter revision that is sent to the Board of Regents. The existing and new notification procedures (described below) should help facilitate implementation of this provision.

How will this comment provision affect my charter school?

The Institute believes this comment provision will have little, if any, impact on charter renewals and revisions because it has been standard Institute practice. In addition, the school districts are not *required* to comment; therefore, it will not necessarily occur in every case. Again, your school may be asked to provide information in response to school district comments prior to the Institute's presentation of the district comments to the State University Trustees.

- **Extension of Board of Regents Review Period from 60 to 90 days for Initial Applications, Renewals and Revisions**

After the State University Trustees sends an approved charter or renewal application, or revision, to the Board of Regents, the law provides for a review period during which the Regents can approve, return for reconsideration, or take no action on the item. If the Board of Regents takes no action on such application or revision, it is deemed approved and issued at the end of the review period. The amended law extends this review period from 60 to 90 days. Thus, all charter renewals and revisions are likely to take longer to ultimately be approved. In cases where the Board of Regents votes to not approve a renewal or revision near the end of its 90 day review period, the delay will be longer because the State University Trustees will have to vote to resubmit the item at their next meeting and then the renewal or revision will not be effective by operation of law until 30 after resubmission to the Board of Regents.

How will this time extension affect my charter school?

The Institute will likely adjust certain timetables related to renewal in response to this part of the amended law. With respect to charter revisions, it will take longer to approve them so charter school boards of trustees must consider changes to educational programs (such as grades served and enrollment) earlier, especially those that the school wants to be effective for the following school year. For example, a proposed grade change for the 2008-09 school year would have to be submitted to the Institute in February 2008 so that the State University Trustees could act on it at their March meeting (assuming the meeting is early enough in the month and assuming they continue meeting on a bi-monthly basis). The Board of Regents would then have 90 days to act on it, which would allow it to vote as late as its May meeting. If the Board of Regents did not approve the revision, the State University Trustees could vote to resubmit the revision at its June meeting (the last one before September) and it would be effective 30 days later, sometime in July. If the revision was submitted later, the revision might not take effect until October of 2008. The Institute will likely provide further guidance on this subject in the near future.

- **Significant Changes in the Scope and Timing of Notification to School Districts and Public and Private Schools in the Same Geographic Area**

Formerly, “at each significant stage of the chartering process” (undefined), the State University Trustees had to provide “appropriate notification” (undefined) to the school district in which a charter school would be located and to “public and non-public schools in the same geographic area” (undefined) as a proposed charter school. The amended law mandates that the State University Trustees provide the required notification (1) within 30 days of the receipt of an application for a new charter or for a *renewal*, and (2) at least 45 days prior to the initial approval of a new charter application.

How will this notice provision affect my charter school?

The Institute does not foresee any significant impact on existing charter schools from the additional notice requirements. The original Charter Schools Act included a provision that required the State University Trustees to provide “appropriate” notification. As part of its standard practices, the Institute has typically provided such notice within 30 days of receipt of new applications. The amended law therefore codifies prior Institute practice. The amended law will require the Institute, however, to supplement the initial notice with a second notice at least 45 days prior to initial approval of a new charter application and the

State University Trustees will be unable to approve charter applications or renewals without such notice having been given.

- **Good Faith Efforts to Attract and Retain Comparable Numbers of Students with Disabilities and Students with Limited English Proficiency**

As of July 1, 2007, a charter school must “demonstrate good faith efforts to attract and retain a comparable or greater enrollment” (not defined) of students with disabilities and students with limited proficiency in English when compared to the enrollment figures for such students in the school district in which the charter school is located. In the case of New York City, the comparison must be made to the Community School District of location.

How will this provision affect my charter school?

The details of the application of this provision have not yet been determined. Some examples of “good faith efforts” for recruitment could include the availability of your school’s application for enrollment in different languages, advertising in local areas where the dominant language is not English, and references to availability of services for special education in the application. Revised/updated recruitment efforts must be in place for recruitment for the 2008-09 school year, but retention efforts will be required as of July 1, 2007. The Institute hopes to provide further information on this provision in the near future.

- **New York City Enrollment Preference for Students in the Community School District of Location**

One of the admission preferences in the Charter Schools Act is for “pupils residing in the school district in which the charter school is located.” Formerly, all boroughs of New York City have been treated as one school district for purposes of this preference. The language of the amended law substitutes “community district” for school district for schools within New York City. The amendment will require charter schools to be able to determine from an applicant’s address his or her Community School District (CSD) in order to properly apply the preference. Also, you should be aware that children residing outside of a charter school’s community school district but inside New York City will not receive an admissions preference (i.e., they will be on par with children residing outside of New York City).

How will this provision affect my charter school?

Charter schools within New York City will have to change their admission materials, i.e. application forms, other materials, calendars and processes to ensure that residents of the CSD in which the charter school is located receive the statutory admissions preference in the next admissions cycle. Returning students can still receive a higher preference so no child who is a current student not residing in the CSD need be removed as a result of the preference change. Also, those few students residing outside New York City who wish to attend charter schools inside NYC must be treated the same as NYC residents living outside of the CSD.

The Institute will provide more information to SUNY authorized charter schools located in New York City when a source or method for determining CSDs based on address becomes available. The need to determine an applicant’s CSD may cause a school to increase the time

between the end of acceptance of applications (which can be not earlier than April 1 (below)) and the date of its lottery by which time it must know who has a CSD preference.

- **Mandatory April 1st School Application Deadline**

The Charter Schools Act always provided that any child who was qualified under State law to attend a district school could attend a charter school, and that a charter school had to “enroll each eligible student who submits a timely application” unless the capacity of the building or grade level was exceeded, in which case the school had to use a “random selection process,” i.e., conduct a lottery, to determine student enrollment. The amended legislation mandates an April 1st deadline, meaning that any student who submits an application by April 1 must be either admitted or put into the school’s lottery.

How will the enrollment application date change affect my charter school?

Formerly, a charter school could pick its application deadline and conduct a lottery any time after the deadline. Now the deadline is April 1st each year and lotteries for enrollment cannot be conducted and wait lists cannot be determined until after April 1. A charter school may still, however, admit a child at any time during the school year, and does not have to admit students after April 1 unless the school has a charter provision that requires it.

- **Charter School Report Card Measures to Be Presented in a Format that Is Easily Comparable to Similar Public Schools**

The Charter Schools Act requires that each charter school submit an annual report to its authorizer and the Board of Regents by August 1. The format and measures of the annual report have always been determined by the Commissioner of Education. One component of the annual report has been, and will continue to be, a charter school report card. The amended law specifies that the various measures of progress on the report card “shall be presented in a format that is easily comparable to similar public schools,” and requires that the charter school “ensure that such information is easily accessible in the community,” which is not defined.

How will this provision affect my charter school?

The State Education Department produces the school report cards, and will incorporate whatever changes the Commissioner of Education deems necessary and appropriate with regard to the similar schools data, and likely amend its regulations. A charter school will also have to make sure such information is easily accessible in its community, likely by providing it in the school office upon demand, placing it on the school’s website (if it has one), etc. The Institute will notify schools as it learns of any more specific information or regulations on this requirement.

- **Leave of Absence for a District School Teacher to Teach in a Charter School Extended from Two to Three Years**

This provision of the Charter Schools Act has been amended to increase the time of a leave of absence for a district school teacher to teach at a charter school by one year. A teacher can return to the school district within the now three year period without loss of any right of

certification, retirement, seniority, salary status or any other benefit provided by the law or by collective bargaining agreement.

How will this provision affect my charter school?

Charter schools that hire teachers on leaves of absence from a school district may be able to contract with them for a longer period of time.

- **Changes to the Board of Regents’ Annual Report to the Governor on Charter Schools**

The statute continues to require that the Board of Regents’ annual report to the Governor on charter schools contain the current and projected programmatic and fiscal impact of charter schools on the delivery of services by school districts, but now specifies that the break-out must be by district (as opposed to the “public school system”) and the analysis will be that of the State Education Department. Also, just as the measures on the charter school report cards must now be presented in a manner that allows for the comparison of performance of similar populations of charter and traditional public school students, the same must be included in the Board of Regents’ annual report to the Governor, wherever practicable.

In addition, the Board of Regents’ annual report must now include a list of all actions taken by a charter entity on charter applications and the rationale for the renewal or revocation of any charters. Lastly, the format for the Board of Regents’ annual report is to be developed in consultation with representatives of school districts in addition to “charter school officials” (undefined).

How will this provision affect my charter school?

This provision only affects the State Education Department and the Board of Regents; it has no direct impact on charter schools.

Changes Affecting Existing Charter Schools that Do Not Amend the Charter Schools Act

- **Schools Under Registration Review (SURR) and/or Not Making NCLB Adequate Yearly Progress**

As part of an effort to improve school accountability for academic performance, the budget bill adds provisions to improve the effectiveness of the Schools Under Registration Review (SURR) and schools not making Adequate Yearly Progress (AYP) for more than one year under the federal No Child Left Behind Act of 2001 (NCLB), both of which apply to charter schools. For schools in the early stages of poor performance, the Commissioner of Education may appoint a School Quality Review Team to assist in developing a school improvement plan and other corrective measures. While the recommendation of such a team is advisory, *the expenses incurred by such a team will have to be paid by the charter school if a team is assigned to it.* For schools, including charter schools consistently not achieving AYP and those in SURR status, the Commissioner of Education may appoint a similar Joint School Intervention Team, *the costs of which must also be borne by the charter school.*

How will this provision affect my charter school?

Historically, the State University Trustees have not renewed (closed) schools before they enter this level of chronic poor performance, so the impact of the Joint School Intervention Team provision may be negligible. Details regarding the School Quality Review Team are not available at this time.

- **Plan for SURR Schools and NCLB Restructuring Schools Not Making Academic Progress**

For schools, including charter schools, that are either in NCLB restructuring status or SURR status that fail to make academic progress, the Commissioner of Education will develop a plan for intervention that may include the input of persons identified in the new statute as “Distinguished Educators.” *All district superintendents and charter school principals must cooperate with such Distinguished Educators.*

How will this provision affect my charter school?

Again, historically, the State University Trustees have not renewed (closed) schools before they enter this level of chronic poor performance, so the impact of this provision should be negligible.

- **Mandatory Provision to Be Added to All Charter School Principal Contracts or Deemed Applicable**

The new statute mandates that all charter school contracts for employment of charter school principals or heads of school that are entered into, amended or extended contain “a provision requiring that [the principal] shall be required to cooperate fully with any distinguished educator appointed by the commissioner pursuant to [the new legislation (§ 211-C of Part A of S. 2107-C)],” (described above). The statute states that “such contract provisions shall be deemed to apply *immediately* to any such person not appointed for a fixed term,” (emphasis added), which affects many current charter school principals or heads of school who do not have a written contract. This part of the amended law **takes effect immediately**.

How will this provision affect my charter school?

If your charter school’s principal or head of school has a written contract, he or she should be informed in writing that when the contract is amended, renewed or extended, this new provision of law will add the above language to the contract, and the language should be cited. Any new contracts that are (or were) entered into after May 31, 2007 must also include the new statutory language. In addition, the terms of employment of all principals or heads of school who either have a contract without a fixed term or no contract are also deemed to be subject to this provision, and should be so informed.

- **Facilitating the Efforts of Distinguished Educators Employed by Charter Schools**

If a charter school employs a person who is designated as a Distinguished Educator, it will be the duty of the board of trustees of the charter school to “facilitate the efforts” of that person by granting reasonable leave requests and otherwise accommodating his or her efforts.

How will this provision affect my charter school?

There is no penalty listed in this fairly self-explanatory section of the new law. At this time it is unclear what impact and fiscal implications Distinguished Educators and other new school

remediation programs directed by the Commissioner of Education will have on charter schools.

- **Charter School Financing Changes**

The amended law retains the current funding methodology for per pupil payments to charter schools. The law does contain changes related to special education funding that ultimately will impact charter schools. The new special education funding is not expected to be materially different from the current funding and therefore is unlikely to negatively impact charter schools. The particulars for claiming such funding must be established by the State Education Department before June 1, 2007. The Institute will notify schools as it learns of more specific information regarding this issue.

Changes Affecting Applications for New Charter Schools

- **Cap Lift – 100 Additional Charters**

The total number of charters allowed to be issued by all authorizers was raised from 100 to 200. Of the 100 new charters, the State University Trustees may approve 50 and the Board of Regents and school districts may approve 50. Of the 100 new charters up to 50 must be “reserved” for, or located in, the New York City School District.

- **Change in Application Date For New Charter Schools**

While a “charter entity” such as the State University Trustees may still accept and act on applications to establish new charter schools at any time, the statutory date prior to which applications must be received has been moved from October 1 to July 1. This means that a new charter school application must be submitted prior to July 1 (in the past we have required submission no later than the close of business on the day preceding the legally mandated due date) in order for the State University Trustees to have to act on the application on or before January 1 of the succeeding calendar year. For example, applications received before July 1, 2008 must be acted upon by January 1, 2009. The Institute is currently discussing how best to revise its application schedule to comply with this change in law.

- **March 14th Deadline for Issuance of a Charter in Order for a School to Open in the Next School Year**

The new legislation states that, for authorizers other than school districts, if a charter is not issued (by the Board of Regents or by operation of law) on or before March 14th, the charter school may not commence instruction until July 1 of the “second school year next following.” As a “school year” commences on July 1 each year, the delay results in a delay of more than one year. For example, a charter issued in April of 2008 could not commence instruction until July or September of 2009. This provision, however, mirrors the Institute’s practice of encouraging applicants to take a planning year.

- **Additional Finding or District Consent Required for Applications in Certain School Districts**

Applications to establish charter schools in school districts where the total enrollment of resident students attending charter schools in a “base year” is greater than 5% of the total public school enrollment of the school district will now require a finding by the State University Trustees that “granting the application would have a significant educational benefit to the students expected to attend the proposed charter school,” unless the school district of proposed location consents to the application. (The legislation does not provide a definition of “significant educational benefit,” or “base year,” although a “base year” is typically the prior fiscal year.) The new finding would be added to the other three required findings of the Charter Schools Act for authorizers. As more information regarding “base year” becomes available, the Institute will notify applicants.

- **Mandatory Membership in Employee Organizations of All Charter School Employees If Enrollment Exceeds 250 Students in the First Two Years of Operation**

Formerly, the Charter Schools Act provided that the employees of a charter school (that was not a conversion school) would not automatically be members of an existing collective bargaining unit representing employees of the school district in which the charter school is located, unless the school’s enrollment on the first day of instruction exceeded 250 students or if the average daily enrollment at any time during the first year of operation exceeded 250. If either of the two criteria was met, then only the *instructional* employees were deemed to be represented in a separate negotiating unit by the same employee organization that represented like employees in the school district. The amended legislation extends the timeframe of this provision to include the first two years of operation for new charter schools (existing charters are “grandfathered”), and expands the automatic employee organization membership to *all* employees who are eligible for representation under Article 14 of the Civil Service Law. Thus, custodians and clerical staff, for example, would be deemed to be represented by the same employee organizations that represent like employees in the district of location. The waivers to this provision reserved for the State University Trustees are still intact after the passage of the legislation, and five of the original 10 remain. Such waivers must be specifically requested by charter applicants.

c: School Partnership and Management Organizations