



Charter Schools Institute
The State University of New York

Response to Public Comments

SUNY Draft Request for Proposals to Establish New York State Charter Schools

*Collected by the SUNY Charter Schools Institute
on behalf of the
Board of Trustees of the State University of New York*

Date: August 2, 2010

Defined Terms

Act – The Charter Schools Act of 1998, as amended

DOE – The New York City Department of Education

ELL – English Language Learners

FRPL – Free and/or Reduced Price Lunch

IEP – An Individualized Education Program as required by the Individuals with Disabilities Education Act

IDEA – the federal Individuals with Disabilities Education Act

Institute – The Charter Schools Institute of the State University of New York

N-PCL – The New York State Not-for-Profit Corporation Law

RFA – The Requests for Amendment process whereby the Institute works with charter school applicants to correct and/or provide additional detail to an application to resolve Institute concerns and assure compliance with the Act and all applicable laws and regulations before it is recommended to the SUNY Trustees for approval.

RFP – The Request for Proposals to Establish New York State Charter Schools

Proposal – The document submitted in response to a RFP by an applicant seeking to establish a New York State Charter School

Regents – The Board of Regents of the University of the State of New York

SED – The New York State Education Department

SUNY Trustees – The Board of Trustees of the State University of New York

Comments/Discussion/ Changes as Noted

Comment 1: The RFP should limit the number of charters proportional to the number of students in a given city, so that no small city would be overwhelmed by the number of charters.

Discussion: While the amendments to the Act require an RFP that “seeks to locate charter schools in a region or regions where there may be a lack of alternatives and access to charter schools would provide new alternatives within the local public education system that would offer the greatest educational benefit to students,” the Act amendments do not permit the Institute to categorically reject a Proposal based on the number of students in proportion to the number of charter schools in a particular location. The draft RFP awards extra priority points for schools to be located where there are few or no charter schools.

Changes to RFP: None.

Comment 2: The RFP should change the way charter schools in New York are financed to implement a state-wide tax instead of taking money from each school district.

Discussion: The Act does not empower the SUNY Trustees to change the manner in which New York State charter schools are funded via this RFP or otherwise.

Changes to RFP: None.

Comment 3: The RFP should require that charter school parents are provided a “seat” on each individual charter school board with the same voting power as other members of the board.

Discussion: Charter schools are independent, autonomous education corporations, and as such, may organize their boards of trustees as they see fit, except to the extent that they are governed by the relevant portions of the Education Law, N-PCL and SUNY policy. While all applications must state the role of parents in the governance of a charter school, SUNY has declined and still declines to dictate a particular level of parent participation.

Changes to RFP: None.

Comment 4: Charter schools should be under the direct supervision of SED so that public schools are not responsible for supervising the IEPs of charter school students.

Discussion: In New York State, charter schools are not considered “Local Education Agencies” (LEAs) under the IDEA. Therefore, they must rely on the LEA of each student’s residence to adopt and help implement IEPs. SED does oversee all special education in New York State.

Changes to RFP: None.

Comment 5: Charter schools should be responsible for their own “amenities” like transportation, books, school nurse, etc.

Discussion: Various provisions of the Education Law require certain services to be provided to charter schools. Many of these services are provided to all students who reside in the district and charter schools are simply being treated the same as non-public schools. Also, pursuant to Education Law § 2857, charter schools receive less per pupil funding than school districts typically spend to educate a student. Thus, the statutorily mandated services may be seen as partly offsetting that imbalance. The SUNY Trustees, through this RFP process, have not been empowered to change the statutory or regulatory scheme that controls such activity.

Changes to RFP: None.

Comment 6: At the bottom of page 14 in the Draft RFP, the “SUNY Request for Proposals Approximate Timeline” indicates that charters issued pursuant to the August 1,

2010 RFP process will be issued by the Regents “on or before December 31, 2011.”

Discussion: The December 31, 2011 date referenced in the Draft RFP is the result of a scrivener’s error. Reading Chapters 101 and 102 of the 2010 Laws of New York together, the SUNY Trustees must recommend the “qualified application[s]” they have received to the Regents no later than November 1, 2010. Thereafter, “all such recommended applications shall be deemed approved and issued” by December 31, 2010.

Changes to RFP: The scrivener’s error was corrected and the timeline now indicates that charters will be issued by the Regents no later than December 31, 2010.

Comment 7: The draft RFP indicates that there are four minimum general eligibility criteria that a proposal must meet in order to be recommended for approval. The four minimum general eligibility criteria are:

- 1) the proposal is complete, timely and coherent;
- 2) the proposal describes a quality educational program and contains evidence that the school will operate in an educationally and fiscally sound manner;
- 3) the proposal contains a plan to meet the enrollment and retentions targets for student with disabilities, English language learners, and students eligible

for the free and reduced price lunch program;

- 4) the proposal includes information on the public outreach that has been conducted to solicit community input regarding the proposed charter school.

Although there are four minimum general eligibility criteria, only two of these four (#1 and #2) would be scored on a pass/fail basis, and the other two (#3 and #4) would be scored on the same three-point scale for the preference criteria. All four of the minimum general eligibility criteria should be scored on a pass/fail basis.

Discussion: The four minimum general eligibility criteria listed on pages 7 and 8 of the Draft RFP were not accurately quoted by the commenter. Specifically, the third criterion states that Proposals must include “[a] *viable* plan to meet the enrollment and retention targets to be established by the SUNY Trustees for students with disabilities, students who are English language learners, and students who are eligible to participate in the federal free and reduced-price lunch program . . .” (emphasis added). Thus, a Proposal that does not contain a “viable” plan as set forth above at the time the Proposal is initially submitted to the Institute, though otherwise complete, will be rejected.

Similarly, the fourth criterion states that Proposals must include “[a] plan for public outreach that *conforms to the process prescribed by the SUNY Trustees* for the purpose of soliciting community input

regarding the proposed charter school . . .” (emphasis added). As stated above, a Proposal that does not contain a conforming plan for public outreach at the time the Proposal is initially submitted to the Institute will be rejected.

In short, it was the intent of the Institute to grade the third and fourth criteria initially on a pass/fail basis, and then score those sections pursuant to the scoring rubric to determine the priority of the Proposal.

Changes to RFP: Guidance has been updated to clarify that the first, second, third and fourth minimum general eligibility criteria are to be scored initially on a pass/fail basis, while the third and fourth criteria will also be used in calculating the Proposal’s priority score.

Comment 8: The draft RFP indicates that there would be 11 total preference criteria that would be scored on a three-point scale: 0 for necessary evidence; 1 for earning additional credit and 2 for earning the bonus point. The highest score that a proposal could receive would be 22.

Such a narrow scoring rubric for the 11 preference criteria will be insufficient for the SUNY Trustees to prioritize the applications that best demonstrate the objectives that were included in the new law. Furthermore, the proposed use of a zero in the scoring rubric as indicating “necessary evidence” could be problematic. For example, the score for a preference criteria that does *not* provide necessary evidence would

presumably also receive a score of zero. This scoring scale should be expanded to ensure applications can be properly differentiated.

Discussion: Given that most of the preference criteria are also necessary components of the RFP itself, a score of ‘0’ is assigned to any response that does not exceed the basic standard. If the plans described in one of the preference items reflects a full grasp of the issues and demonstrate a comprehensive approach that reviewers deem to have a likelihood of success, the proposal would earn the extra credit for that criterion and would be given a score of ‘1’. If the criterion’s plans show exceptional promise and are well grounded in the rest of the RFP, the proposal would have earned the bonus priority point(s). In the event of a tie for the last allowable charter in the cycle, both proposals will be rejected unless one applicant agrees to withdraw his or her Proposal for consideration in a subsequent RFP.

Note that the scoring rubric has been amended in response to Comment 28, below, to more heavily weight the academic factors.

Changes to RFP: None.

Comment 9: Included in the draft RFP is a passage indicating that the Institute and SED disagree on whether the Act requires the educational program of a charter school to meet the state’s learning standards. It is the position of the Institute that a charter

school’s educational program needs to only provide instruction in content areas that are covered by a state assessment, and does not need to provide instruction in the other learning standards.

According to Education Law § 2854(d), a charter school shall design its educational programs to meet or exceed the student performance standards adopted by the Regents and the student performance standards contained in the charter.

Offering an educational program covering all 28 learning standards is critical to providing a well rounded education to each student. Limiting the educational program to the tested standards implies that certain subjects, such as the Arts, are not a critical part of a child’s education and that is the wrong message to send.

[Another commenter] disagreed with SUNY’s position that its charter schools need not strive to meet the same New York State Learning Standards as public schools. Failing to require rich curriculum in the areas of art, technology, career development and occupational studies, health, physical education and consumer sciences fails to provide students with the complete education they deserve. It also perpetuates the unlevel standards by which the performance of public and charter schools are measured. This allows charter schools to create a perceived level of achievement that in fact limits the academic, social and emotional growth of its students. Charter schools use this perception to their

advantage to build financial and political support for a model that, in the long run, is not in the best interests of all students.

[The commenter pointed to] an Albany charter middle school as an example of a charter school that is hampered by a deficient curriculum. [According to the commenter,] students at the charter school “actually lost ground in overall achievement,” and, “[m]easured in real numbers, fewer students were achieving at grade level in both subject areas after four years at the school. The school’s academic record does not provide evidence of a school having a positive impact on the education of Albany students or advancing academic practice through quality innovation. On the contrary, it is evidence of a school floundering for a foothold in an oversaturated 5-8 environment that will be further destabilized by the addition of the two Brighter Choice middle schools this fall.”

[According to the commenter,] SUNY’s focus on a limited curriculum is serving only a small percentage of the students in the schools they authorize, a “glaring deficiency” in its standards for curriculum which could be rectified by demanding that all charter applicants meet the New York State Learning Standards as a minimum requirement for approval.

Discussion: The 28 New York State Learning Standards curriculum issue reflects a long-standing difference of opinion between the Regents and the SUNY

Trustees regarding interpretation of the Act, which makes reference to charter schools providing instruction that will enable students to meet “student performance standards” and “student assessment requirements.” Based thereon, the SUNY Trustees have, for example, approved a curriculum that included a greater focus on mathematics and English language arts, even at the exception of, for example, Career and Occupational Studies. SUNY charters require not only instruction in all subjects that have associated state assessments, but specific goals and measures. However, SUNY authorized schools are free to design a curriculum that also includes New York State learning standards’ areas for which no state assessments exist, and the majority of them do. SUNY authorized charter schools also often feature dynamic programs in art, dance, theatre, music, athletics, speech, student government, etc.

As changing from rule-based to performance-based accountability is a fundamental purpose of the Act per Education Law § 2850(2)(f), the Institute does not require applicants to include a curriculum that reflects all 28 Learning Standards and has seen no evidence indicating that not doing so has negatively affected student performance.

Changes to RFP: None.

Comment 10: [Several commenters noted that] the RFP should require that schools applying for charters in areas served by

successful public school systems should be required to make a compelling case for why a charter should be granted.

In particular, they should be required to explain how the ostensible advantages to students attending the charter school would outweigh the disadvantages to all of the remaining students in the successful local public schools whose districts would face serious threats to their success due to the extra expense of substantial tuition payments for charter school students along with the risk of having sometimes delicate demographic balances among their student population disrupted. To that end, the SUNY Trustees and the Regents need to be able to assess the ripple effect that a charter school will have on the school district, as well as on the community at large.

Discussion: The Institute and SUNY Trustees have always considered the programmatic and fiscal impact of a proposed charter school on existing public and nonpublic schools in the area where charter schools propose to be located.

For example, Request No. 39(b) asks an applicant to “[p]rovide information regarding why a charter school is needed in th[e] community, including current educational alternatives (or a lack thereof) and why access to the proposed charter school would provide a new alternative within the local public education system that would offer a greater educational benefit to students than the current options.”

The Institute also notes that perception of a “successful school district” in some cases can neglect a group or groups of students that have historically been underserved. For example, a district wherein 75% of students annually score at or above proficiency on state assessments may be perceived as successful, however, the remaining 25% of students could be dramatically failing and are often self identified as economically disadvantaged and/or of a race/ethnicity consistently underserved by the state.

However, the commenters’ suggestion is appropriate in that it seeks to gain more clarity from a Proposal by identifying more specifically the need for the proposed charter school in the community.

The second half of the comment, as it relates specifically to the fiscal impact of a proposed charter school, will be addressed in response to Comment 11, below.

However, SUNY does not view the addition of a charter school to an educational community as a “zero sum” proposition, and continues to study the long and short term effects of the introduction of charter schools.

Changes to RFP: A new Request No. 3 (e) is added and will require an applicant to discuss and expand upon the standards and findings set forth in Education Law § 2852(2), even though such findings are ultimately the responsibility of the SUNY Trustees to make, and only in certain limited circumstances. Further, the Institute not certain that such findings are required under

the amended Act for RFP applications as discussed in response to Comment 38.

Comment 11: The RFP should require that schools seeking approval from the SUNY Trustees should be required to provide some evidence that their school will not simply be used as a free alternative by parents who currently pay to send their children to private and parochial schools. It would be just plain bad public policy for the state to grant a charter when the impact would be that a successful public school district would have to cut programs and services and/or raise property taxes in order to subsidize charter school tuition for some of their potentially most able students or, worse yet, for students who are not currently being served by their school district.

Discussion: As stated in response to Comment 2, the Act does not empower the SUNY Trustees to change the manner in which New York State charter schools are funded.

To the extent the commenter suggests that the current system for funding charter schools is “bad public policy,” the appropriate body to redress that perceived deficiency is the legislature, not the SUNY Trustees or the Institute. The Act is set up to provide exactly what the commenter suggests charter schools should not do – provide a free alternative public school education, especially for those, as stated by the commenter, “students who are not currently being served by their school

district.” Note that when such students (and home schooled students) enroll in a charter school, the school district receives additional state aid and has not “lost” a student from its school system resulting in no changes in current economies of scale at the district level.

Further, the revised Act has put in place a limit on new charter schools that may be located within New York City. Thus, the clear legislative intent is to allow for an increased number of charter schools in suburban, rural and small city school districts, and there were no restrictions in terms of proximity to non-public schools.

Changes to RFP: None.

Comment 12: The RFP should include a process similar to the Federal Environmental Impact Statement (EIS) that is required to assess the impact of a project on the environment in a community. An EIS covers all plausible bases which a “reasonable person” might consider significant enough to warrant further discussion. Furthermore, it must include information on the impact of alternative actions that are outside the jurisdiction of the agency in question. In other words, it has to consider the total impact on the environment or ecosystem. Furthermore, anyone who might be affected is given an opportunity to provide testimony and/or speak before members of the lead agency.

Applying an EIS framework, factors to be considered in a charter school RFP, beyond

what is currently in the draft RFP, should include:

1. Do the conditions warrant re-allocating public dollars in order to provide school choice?
2. Is there sufficient analysis of the projected fiscal impact on the school district budget for all districts within a 15 mile radius using a range of probable enrollment scenarios?
3. What staffing or other cost reductions, if any, would result in the school districts based on those scenarios?
4. What would be the impact on the local taxpayers?
5. How will the charter school enrollment impact the diversity of the school districts?
6. Is there adequate review of what the school districts currently offer and how the proposed curriculum framework compares to what is already offered in the school districts?
7. Is there redundancy to what is offered in the public schools?
8. Is the proposed curriculum framework in essence a boutique school?
9. What is the value-added for students, the school community and the community at large?
10. Is there a compelling need for what the charter school would add to the community?

Discussion: Most of the factors discussed in this comment are considered by the Institute and the SUNY Trustees when determining whether to recommend or approve proposed charters.

Bullets 3, 4 and 5 are essentially unknowable from the perspective of an applicant, except to the extent that they are anticipating per-pupil aid from the surrounding district, which is addressed in the RFP. How those potential “reductions” will be addressed by those districts is entirely discretionary and within the purview of their boards of education and, ultimately, the taxpayers of the district.

The information contained in Bullets 6 and 7 are typically not reviewed at the time a Proposal is evaluated except with regard to the grade alignment of the district school(s). The primary focus of the Institute and SUNY Trustees is to ensure that any approved charter school will be educationally and fiscally sound. The Institute looks at the quality of the program as a standalone school, and not on the potential overlap of offerings in surrounding districts. However, the Institute does evaluate the programmatic impact on surrounding districts as discussed in Request No. 4.

Changes to RFP: None.

Comment 13: [Some commenters noted that] because the requirement to attract and retain ELL, Special Education, and FRPL-eligible students is new to the Act, it would

be prudent for the Institute to take a flexible approach in evaluating Proposals in this regard. Applicants do not necessarily know what measures are going to be most effective in their geographic location, so the SUNY Trustees should not have a hard and fast rule to grade incoming applications. [Another commenter noted that,] due to this uncertainty and the lack of data, less weight should be given to these criteria until the Institute can deliver targets.

Discussion: The Institute has requested the opportunity to meet with SED charter school, data and accountability staff to discuss respective potential approaches to developing appropriate enrollment targets, and a meeting has been scheduled. As the data necessary to develop enrollment and retention targets is maintained and controlled by the SED, the Institute is seeking access to review and analyze that data.

The lack of data is not an adequate reason to not go forward with RFP, especially as the legislature directed that it be issued in final on August 1, 2010 (effectively August 2, 2010 as the 1st is a Sunday). Much like the development of SUNY’s existing academic accountability plans which occurs over the first year of the charter, the enrollment and retention targets can be developed after a full review of the data and will be incorporated into the charters at a later date. The Institute aims to develop a nuanced approach to the enrollment and retention targets that will be data driven. For

example, on the attraction side, the Institute will review what recruitment efforts the proposed school intends to utilize (e.g., community outreach efforts to specific at-risk students, translating the application in languages predominately spoken in the local community, etc.). On the retention side, the Institute will look to the actual structures put in place by the proposed school to serve those at-risk students (e.g., special education offerings, structures meant to increase student achievement for ELLs, staffing, etc.)

Further, given the weight the legislature placed in attracting and retaining at-risk students, the Institute does not intend to devalue that criterion in the scoring rubric.

Changes to RFP: None.

Comment 14: RFP Requests 11 and 12 ask specific questions about high schools and middle schools, respectively. If a proposed school will not have middle or high school grades in the first five-year charter term, but will in its sixth or later year of operation, will the proposed school receive any points for this proposal or does the applicant have to have a middle/high school during the first charter term? Bonus credit should be provided, even if the school will build up to a middle/high school in the second charter term.

Discussion: No. Points will only be awarded based on the proposed school's design during the first charter term. Subsequent charter terms are discretionary, and there have been occasions where

schools, at renewal, have sought to expand and have been denied that opportunity for a variety of reasons including the extent to which a school had met its academic accountability plan goals. Therefore, no extra priority points will be available if a school does not plan to have a middle or high school program in place during the initial charter term (e.g., the first five years of operation).

That being said, extra priority points may be available to proposed schools that intend to start as a middle school and expand into a high school during the first charter term. This will necessitate a full review of the high school curriculum at the time of the application, and not just those high school grades that are to be served during the first five operational years.

Changes to RFP: None.

Comment 15: Because the Governor has vetoed the funding freeze passed by the Legislature (Veto # 16) on charter school aid payments, the formula set forth in Education Law Section 2856 should be controlling moving forward. In terms of budgeting, what per-pupil numbers should a proposed school be using to determine its budget (2010 or 2008)?

Discussion: The Institute will require that budgets reflect the law in place at the time the RFP is issued in final. However, the Institute reserves the right to request additional documentation and budgeting

plans from a proposed charter school during the review of a Proposal.

Changes to RFP: Additional guidance is provided in response to Request No. 34 to indicate that proposed schools should budget for no more than the known per-pupil aid based on the law in effect as of August 2, 2010. Further, the budgets submitted should reflect a conservative or flat estimate of per-pupil funding increases through the first five operational years.

Comment 16: [A commenter noted that] if the SUNY Trustees approve a Proposal and submit it to the Regents, the Regents can either approve it or not, though it must do so by December 31. [The commenter said], in the event that the Regents either do not act, reject or send it back, we read "Chapter 102 of the Laws of 2010 as authorizing SUNY to override the SED action and have the school become operational as a matter of law by reissuing the proposal back to SED."

Discussion: The Institute reads Chapter 102 of the Laws of 2010 such that the resubmission process that was common under the Act prior to the amendments is no longer necessary as the Regents are now compelled to issue the charter no later than December 31.

Changes to RFP: None.

Comment 17: On page 26 of the RFP, it indicates, as does Education Law § 2851(1), that teachers, parents, school administrators

or community residents are eligible to serve on a charter school board. Is there a requirement that at least one board member be a resident of the local school district (or CSD, in New York City)? From the language of this section, it appears this is not a requirement, but there may be a difference of opinion between the SUNY Trustees and SED. In pertinent part, it reads, “An application to establish a charter school may be submitted by teachers, parents, school administrators, community residents or any combination thereof.”

Discussion: Education Law § 2851(1) refers to who may apply to *establish* a charter school, not who is eligible to serve on the board of trustees of a charter school. There is no requirement that at least one applicant or board member for a proposed charter school be a resident of the local school district (or CSD, in New York City) though many boards are comprised of multiple community members. The Institute is unaware of any difference of opinion on this matter between the SUNY Trustees and the Regents with respect to SUNY charters.

Also, the application of the New York General Municipal Law in the amendments to the Act may limit the ability of teachers and school administrators of the charter school to serve on its board.

Changes to RFP: None.

Comment 18: The new RFP process allows a successful school five operational years, allowing it to have a “planning year or two”

without having to lose instructional data and reapply for the new term (see, §§ 4 and 13 of Chapter 101 of the Laws of 2010). However, Chapter 101 requires the RFP to review those schools that will begin “instruction in the next calendar year” pursuant to Education Law § 2852 (9-a)(a)(i)(2). We suggest advising of that requirement in the section on school configuration or providing applicants with the ability to take an extra planning year, if SUNY believes that would be permitted.

Discussion: First, the language quoted by the commenter (“planning year or two”) does not appear in the Draft RFP. The Institute and the SUNY Trustees strongly believe in the efficacy of a planning year. However, the referenced statutory language provides that an applicant have a plan in place to begin instruction in the next calendar year, which the Institute requires. If circumstances materialize and the school is unable to open in the next calendar year, the Institute’s view is that it may seek an extension of time for opening by way of a charter revision, much the same as a planning year has been used in the past.

Changes to RFP: The term “planning year,” as it has been used in the past, may no longer be requested in a Proposal. As a consequence, all references to a “planning year” in the RFP will be changed to the “pre-opening period” and will refer to the date from which the SUNY Trustees initially approve a proposed charter school until the date the applicant is supposed to open the

school for instruction. The “pre-opening period” does not refer to any discretionary time thereafter.

Comment 19: [A commenter asked] when a charter school offers half day kindergarten, are they paid, if the school district of location has full day, the full day rate, pursuant to Education Law § 2856?

Discussion: A charter school offering a half-day kindergarten class in a district that has a full-day kindergarten program will only receive half (50%) of the per-pupil aid for that student.

Changes to RFP: None.

Comment 20: Page 58 of the Draft RFP indicates that a parent employee of the school cannot serve on the board of the school “except on a volunteer basis.” I assume this means only those parents that volunteer in the school (and are not paid) can sit on the board, since board members are volunteers and do not receive compensation for their service.

Discussion: Due to the recent amendments to the Act, a parent volunteer, receiving no compensation for their services at the charter school, may be a member of that school’s board of trustees. If that parent receives any compensation from the school (except as permitted by the General Municipal Law), they may not also be on the board of trustees. The commenter is correct in that

“board members are volunteers and do not receive compensation for their service.”

Changes to RFP: The referenced guidance has been revised to provide more clarity to applicants.

Comment 21: The Draft RFP indicates that charter schools are subject to the same programmatic audits required of other public schools. This has been ruled unconstitutional by the New York State Court of Appeals, in *New York Charter Schools Assoc., et al v. DiNapoli*, Slip Op. 108 (2009). Section 17 of Chapter 101 of the Laws of 2010, however, allows “discretionary” audits of charter schools. How this will be interpreted by the Comptroller’s office is uncertain at this point. We suggest changing this to define this uncertainty.

Discussion: Irrespective of the Court of Appeals’ decision to invalidate audits performed by the New York State Comptroller, charter schools remain subject to programmatic and independent fiscal audits, comparable in scope to those required of other public schools, at least once annually per Education Law § 2851(2)(f). These audits may be performed by auditors chosen by the school’s board of trustees so long as consistent with the requirements of the charter agreement.

Separate from those audits are audits of the State Comptroller. The Institute is aware of the Court of Appeals decision invalidating

certain charter school audits by the New York State Comptroller, and that the current Act requiring “discretionary” audits has not yet been challenged in a court of competent jurisdiction. Unless and until a court of competent jurisdiction declares the audit provision to be unconstitutional or otherwise invalid, the guidance provided in the RFP will remain unchanged.

Changes to RFP: None.

Comment 22: Another area of uncertainty is the requirement of charter schools to pay prevailing wages. Presently, the 3rd Department, in *Foundation for a Greater Opportunity, et al. v. Smith*, has ruled that this is not required, overruling the Albany Supreme Court’s decision siding with the Department of Labor’s pronouncement that charter schools are subject to prevailing wage. The 3rd Department’s decision is presently on appeal, awaiting a decision. We would suggest you note this in the facility sections as this is often a question for charter school boards working with contractors and developers.

Discussion: The current law is such that charter schools are not subject to prevailing wages. The Institute believes that the guidance included in the Draft RFP accurately reflects the current law. As stated in the response to Comment 21 above, unless and until a court of competent jurisdiction or the legislature declares that the prevailing wage provisions are applicable to charter schools, the guidance

provided in the RFP will remain unchanged. Of course, any applicant wishing to budget conservatively may include prevailing wage in its facility costs and note that in its budget assumptions.

Changes to RFP: None.

Comment 23: [A commenter stated that] no new charter schools should be located in the New York City Council District which runs from West 54th Street to West 96th Street on the West Side of Manhattan; that there are 33 public schools and many private and parochial schools in the district and he/she does not want to change the mix.

Discussion: As stated in response to Comment 1, the amendments to the Act provide priority points to an RFP that “seeks to locate charter schools in a region or regions where there maybe a lack of alternatives and access to charter schools would provide new alternatives within the local public education system that would offer the greatest educational benefit to students.” The draft RFP awards extra priority points for schools to be located where there are few or no charter schools, so the schools already in that City Council district would factor into the priority score. However, the Act amendments do not suggest that a Proposal should be categorically rejected solely on that single priority criterion.

Changes to RFP: None.

Comment 24: [A commenter who identified themselves as a parent and employee of a Capital Region school district noted that he/she] “has seen the unfortunate decline of our student population in our schools. [He/she agrees that] “parents...should have a choice about where they children attend school. However, it is unwarranted to have the huge number of charter schools in the Capital Region that we are approaching. In the city alone, our programs, supplies and equipment used to educate our population is slowly being taken away, one by one in order to fund the opening of additional charter schools.” [The commenter asks that this] “stop, that the area is oversaturated already with too many charter schools and is having a devastating effect on our public schools. As a taxpayer...it is unfair to ask us to support two school systems. In the economy of today, it is hardship for all...give the public schools the opportunity to [do] what they have done for years, educate our young in a climate of support with positive outcomes for all. This includes the many wonderful programs that we have enjoyed in the past to help our students become the well rounded people they need to be in today's society... Capping the number of charter schools will enable us to achieve our goal and continue to educate the next generation in a most productive way...Please support the public schools and put the plug on charter charters in Albany.”

Discussion: As stated in response to Comments 1 and 23, the Act amendments do not suggest that an application be

categorically denied based solely on the proposed location of the charter school. Further, as stated in response to Comments 2 and 11, the Act does not permit the SUNY Trustees to alter the manner in which charter schools are funded.

Changes to RFP: None.

Comment 25: [Some commenters] agree with the decision of the SUNY Charter Schools Institute to defer the creation of comparable targets of enrollment and retention of students with disabilities, ELLs, and FRPL-eligible students. While we steadfastly support the legislative intent behind this provision and continue to applaud the legislature for its inclusion in this is an area of great complexity. Accordingly, attached is a report by Professor Robert Bifulco of Syracuse University [available from the Institute upon request]. Professor Bifulco is an acknowledged expert in educational research and we believe his analysis provides a sound analytical basis and methodology for moving forward with this work in the coming months. In the attached memorandum, Professor Bifulco reflects on the proper goals of the target-setting process and offers a series of recommendations, including the use of longitudinal, cohort comparisons, and the use of statistical confidence intervals to set enrollment targets that are appropriately flexible but not arbitrary.

Discussion: The Institute will consider the comments and recommendations of Professor Bifulco as they relate to setting meaningful targets for Special Education, ELL, and FRPL-eligible students. Further, the Institute will continue to analyze additional available research and data to create flexible standards aimed at providing SUNY authorized charter schools with enrollment and retention goals that are closely related to the unique neighborhoods where they are located.

Changes to RFP: None.

Comment 26: [A commenter noted that] while we appreciate the requirement that schools in NYC public school space will require the permission of the Chancellor to undertake capital improvements and facility upgrades in excess of \$5,000, and that matching expenditures must be made on behalf of each district school that is co-located with the charter school, we do not believe it helpful to require, as the draft currently does, that the applicant's budget reflect no more than \$5,000 in renovations unless the DOE has already agreed to such renovations. The proposed budget should predict as accurately as possible the expenditures the school expects to undertake. We think it better practice to require a school to spell out the expenditures it believes it will make and state its assumptions and caveats in notes on the budget rather than setting forth a blanket prohibition.

Discussion: The budget should reflect what the school actually intends to do, even if certain capital improvements require further approval from the New York City Chancellor. However, applicants should also include alternative plans for the allocated money in the event that the Chancellor does not approve the expenditure. Moreover, if the expenditure is necessary to accommodate the program in the space, and if the permission is not provided, then the applicant must provide alternative facility plans.

Changes to RFP: Request 40(a) is amended to require that the proposed budget and facility plans of schools proposed for NYC may include expenditures in excess of \$5,000 for capital improvements even if they have not received express approval from the Chancellor. It will also require the applicant to state how the money will be spent and whether alternate facility plans would be necessitated by a denial from the Chancellor.

Comment 27: [A commenter noted that while they had no specific notes on the requirements set forth in request 28 (partnering with low-performing public schools) as worded] we would ask that as this process is implemented, the Institute be open to plans that include the establishment of larger borough-wide cooperatives and/or more formal structures mediated by the DOE or entities such as the partnership support organizations. For instance, we

believe that an applicant's plans to work through the partnership support organization to find local schools that are willing to engage in a true best practice sharing cooperative should be given high marks.

Discussion: The Institute is open to plans that include the establishment of larger borough-wide cooperatives and or more formal structures mediated by the DOE as discussed in Request No. 28.

The use of entities such as partnership support organizations may be satisfactory to show the necessary evidence of complying with Request No. 28, but will not likely be eligible for additional credit or bonus points as would a Proposal with more well-thought-out plans.

Changes to RFP: Request No. 28 is modified to provide additional guidance with regard to the identification of low performing public schools.

Comment 28: [A commenter noted that] we generally support the RFP proposed by the Institute. The Institute's proposed two-step process in particular makes sense since requiring that all charter school applications must meet certain minimum requirements is consistent with the purpose of the Act.

We believe however that the quality of the application's educational program is given insufficient weight in the Institute's proposed scoring rubric. To be sure, to be scored, an application must first meet the minimum requirement of demonstrating that

the school is "is likely to operate in an educationally and fiscally sound manner, to improve student learning and achievement and...meet any additional requirements established by the SUNY Trustees as part of their commitment to rigorous student achievement." Proposed RFP at 7.

However, among those applications that meet this threshold, the most important criteria in determining which applications get priority should be whether or not the proposed educational program is likely to be successful.

Currently, the strength of the proposed educational program is given little weight. Only 2 out of a possible 22 points can be earned for the "ability to increase student achievement and decrease achievement gaps in ELA and math." Moreover, it appears that the Institute is interpreting this preference criterion as solely focusing on closing the achievement gap. The Act states that this preference criterion is for "increasing student achievement and decreasing student achievement gaps in reading/language arts and mathematics." See *Education Law* § 2852(9-a)(c). Thus, increasing student achievement should also be considered. As important as closing the achievement gap is, we believe that the legislature did not intend to make this the sole criteria for evaluating the proposed educational program.

The recent revisions to the Act give the Institute broad discretion in developing its scoring rubric. The Act does not limit the

factors the Institute may consider nor dictate how much it should weigh each factor. Increasing student achievement should be treated as a separate factor from decreasing the achievement gap. Moreover, both of these factors should be given substantially more weight than any of the other preference factors. While sharing best practices and having a good relationship with the Local School District are commendable, the most important factor in determining which charters to grant is which schools will be good and a good school is, first and foremost, one that educates students well.

Discussion: As the Institute and the SUNY Trustees remain focused on improving student academic achievement, after careful deliberation, the Institute has determined that the scoring rubric should be modified to give greater weight to the priority criteria focusing on academics.

Changes to RFP: The scoring rubric as discussed in the RFP is modified to give greater weight to the academic criteria.

Comment 29: The draft RFP from the Institute claims that there is no need for all New York City charter schools to establish Parent Associations. Here is the relevant passage from the draft RFP:

Applicants seeking to establish charter schools in New York City do not automatically have to establish a parent association or a parent-teacher association pursuant to the 2010 amendments to Section

2590-h of the Education Law. That amendment was not an amendment to the Charter Schools Act and, therefore, is not binding on SUNY authorized charter schools. Like many other laws and regulations applicable to district schools, SUNY authorized charter schools need not follow this law but may choose to establish a parent organization as part of the charter. However, the new law does direct the New York City Schools Chancellor to ensure that such organizations are established. Therefore, it is anticipated that any school in NYCDOE space will be required to establish such an organization as part of its lease or memorandum of understanding related to use of space.

To the contrary, all existing and future charter schools in New York City, whether they are in co-located space or not, should be required to have Parent Associations, according to the new charter law. The language and the legislative intent of the amendments to the Act are clear.

The language clearly is meant to apply to every charter school within the geographical boundaries of the city of New York, and it is disappointing that the Institute should try to find a loophole in order to evade its responsibilities in this way.

The Institute should comply with the law, and require that all charter schools under its jurisdiction, existing and potential applicants alike, located within New York City should be required to implement Parent Associations without delay.

Discussion: The Institute and the SUNY Trustees are in full compliance with the law with regard to the establishment of parent-teacher associations. Chapter 101 of the Laws of 2010 modified the mayoral control legislation (Education Law § 2590-h), not the Act itself, when it added the parent-teacher association requirement.

Significantly, Education Law § 2854(1)(b) states, in pertinent part, that “[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's charter or *in this article*” (emphasis added). As stated in the cited materials, the amendment was not an amendment to the Act and, therefore, is not binding on SUNY authorized charter schools.

As quoted by the commenter, the new law does direct the New York City Schools Chancellor to ensure that such organizations are established. Therefore, it is anticipated that any school in DOE space will be required to establish such an organization as part of its lease or memorandum of understanding related to use of space and that the renewals of charters of existing charter schools authorized by the DOE will contain such a term.

Changes to RFP: None.

Comment 30: [One commenter noted that] the Institute interprets the legislation’s requirement that a charter applicant must demonstrate “*support from the school district in which the school will be located*” as meaning merely a “letter of support from the district superintendent.”

Clearly, a school district is more than one person; especially in the case of New York City, the largest school district in the country. Whether the draft RFP indicates the need for a letter from the community district superintendent or the Chancellor, we believe this is far too restrictive.

Instead, support from the school district should be interpreted to mean a letter of support from the Community Education Council and the President’s Council, the bodies established by state law and Chancellors regulations in the city of New York, to represent the interests of parents in each district. These two bodies, selected by parents who are the primary stakeholders of our schools, deserve a say in where and whether charter schools are sited in their districts.

This need is especially critical, as indicated by the numerous places in the amended charter law that refer to the need for charter applicants to gain input from the community, and to partner effectively with neighboring public schools, as follows:

- The Regents and the SUNY Trustees shall each develop such RFP’s in a manner that . . . considers the demand for charter schools by the community. . .

Also:

- That the applicant has conducted public outreach, in conformity with a thorough and meaningful public review process prescribed by the Regents and the SUNY Trustees, to solicit community input regarding the proposed charter school and to address comments received from the impacted community concerning the educational and programmatic needs of students.

And that also the charter applicant should have a plan to engage in

- partnering with low performing public schools in the area to share best educational practices and innovations...

None of these goals can be achieved without the assent of the relevant Community Education Council and Presidents Councils, the bodies that have intimate knowledge and involvement with their district’s public schools.

Discussion: As clearly defined in the quoted portions of the Act, a prospective applicant must demonstrate “support from the school district in which the school will be located.” If this statute is to be given any meaning, it must refer to the legal representative of the school district. Thus, the Institute will continue to look to correspondence from the chief executive officer or governing board (or their designee) to comply with Request No. 29. The response to Request No. 29 is separate and apart from any requirement to show community support or the need for the

SUNY Trustees to consider the demand for the charter school by the community.

Demand is typically demonstrated through petitions which demonstrate the ability of a particular charter school to enroll the number of students they propose to enroll, waiting lists for other charter schools, letters of support from community related organizations, etc. The new Act amendments do require that an applicant conduct public outreach, meant to engage the public in a discussion about the educational needs of students in that geographic area.

Similarly, the plan to engage in partnering with low performing public schools in the area to share best educational practices and innovations is unrelated to the aforementioned aspects of the RFP. This particular provision is meant to allow successful charter schools to share the reasons for their success with underperforming public schools. It is not related to the need to conduct public outreach, the demand for a proposed charter school, or support from the legal representative of the school district.

Changes to RFP: None.

Comment 31: [One commenter noted that] several current charter applicants to SUNY have proposed board members who are also on the board or employees of their proposed charter management organization (CMO) or for-profit education management organization (EMO).

The following statement is from your proposed RFP:

- *No more than two school trustees may be affiliated with not-for-profit charter management organizations and one such trustee's affiliation is limited to serving as director of such entity.*

We object to any representative of the charter management organization or education management organization being able to serve on the charter's school board of trustees.

As pointed out in the recent article in Education Week by Greg Richmond, head of the National Association of Charter School Authorizers, one of the six most important criteria for ensuring strong governance and oversight, regardless of whether the management organization is a for-profit or a not-for-profit concern, is the following:

- *Members of a charter school governing board should not be employees of the management organization running their school, nor should they be compensated for their service or selected by the management organization.*

Thus, we urge that to maintain separate and clear lines of authority between the governing board and the management organization, and no conflicts of interest, no overlap should be allowed between these two groups at all.

Discussion: The recent amendments to the Act incorporated the conflict of interest

provisions from the General Municipal Law be applied to the boards of trustees of charter schools. Those conflict of interest provisions, applicable to all public school boards of education in the state, specifically exempt those trustees that are affiliated with not-for-profit corporations. SUNY has never permitted school trustees to be affiliated with for-profit management companies.

SUNY policy maintains, as noted by the commenter, that any participation by a not-for-profit management company on the governance of the school be limited to no more than two trustees. As the Education Law requires there to be at least five trustees (though charter schools with not-for-profit management companies must have more as described below), a management company can never have complete control over the affairs of a charter school.

The commenter also suggests that members of the boards of trustees for charter schools are compensated for their service. As discussed in response to Comment 20, charter school board members are volunteers and do not receive compensation for their service except for reimbursement of costs associated with their duties.

Further, SUNY charters of schools associated with a not-for-profit management company typically contain the following conditions on governance meant to limit the influence of educational service providers over the board as a whole:

- (A) termination of the contract with the not-for-profit educational service provider or other entity shall constitute cause for removal of such person(s) from the School Board, and upon such termination such person(s) may be removed from the School Board by vote of the School Board provided there is a quorum of at least a majority of the entire School Board present at the meeting; and
- (B) such person(s) shall not hold the offices of chair or treasurer of the School Board; and
- (C) when the School Board has proper grounds to go into executive session pursuant to the Open Meetings Law, and the School Board is to discuss or vote upon an issue related to the not-for-profit management company or entity, the personnel of such company or entity, or such person(s), the School Board may, after such person(s) has had an opportunity to fully address the School Board, continue such executive session outside of the presence of such person(s); and
- (D) the number of trustees on the School Board shall not be less than seven (7) where two (2) trustees are affiliated with the not-for-profit entity and not less than six (6) where one (1) trustee is affiliated with the not-for-profit entity.

Changes to RFP: None.

Comment 32: [A commenter noted that] it should be absolutely forbidden for any district public school system employee to establish or operate his or her own separate charter school, or even worse, a chain of charter schools, while still employed by the district.

For district public school employees to attempt to recruit from the same population of students, and to provide them with superior programs, would directly weaken and undermine their ability to focus on their primary responsibility, which should be improving the quality of the public schools under their command.

We strongly urge the Institute to include this prohibition in your RFP document.

Discussion: While SUNY carefully reviews all conflict situations, such a blanket prohibition is plainly rejected by the terms of the Act. As discussed in relation to Comment 17, Education Law § 2851(1) states that teachers, parents, school administrators or community residents are eligible submit an application to establish a charter school. As such, the prohibition sought by the commenter can not be implemented by the SUNY Trustees as it is contrary to the plain terms of the Act. *See also* Education Law § 2851(3) (providing for the conversion of an existing public school into a charter school, which SUNY cannot do).

While there is nothing in the Act or the N-PCL that would prevent a district employee from establishing or operating a charter

school, individual school districts may adopt conflict of interest provisions that could prevent such a relationship. Also, SUNY may not permit a person with a conflict to serve on a school board or be a school leader in its own discretion.

Changes to RFP: None.

Comment 33: [A Commenter said that] “the RFP review process [should] be extended to allow more thorough consideration of the criteria and timelines that will be set in place once this critical decision becomes final.” [Also noted was the] “impact of moving forward without sufficient time to address what we believe to be serious flaws in the RFP, particularly the extremely short application and review period for SUNY’s next 32 charters and the lack of meaningful involvement of local public-school districts, will be severe.” [The commenter cited] “insufficient length of the review process...the need for greater district involvement...greater consideration of the long-term impact on districts, including a potential negative impact on those that do not get into the charter school...the duplicative, redundant taxpayer-supported system that has been forced on our community has diverted more than \$126 million from our budget over the past decade...and will divert at least another \$26.5 million in 2010-11 – more than \$31.5 million if the governor’s recent veto of the charter-school tuition freeze is not overturned.” [The commenter believes] “the

RFP, as currently drafted, would risk extending these fiscal and academic hardships to school districts across the state.” [The commenter] “implore[s] SUNY to allow more time to address the inadequacies of the RFP so that the next generation of charter schools in New York State will be born of a rigorous, well-planned process that embraces the needs of all students, whether their schools are charter, public, private or parochial.”

Discussion: Education Law § 2852(9-a) requires the SUNY Trustees to issue an RFP implementing the amendments to the Act on August 1, 2010. In implementing the changes in the Act into the Draft RFP, the Institute has taken a nationally recognized model charter school application review process and transformed it into a stronger RFP document that takes into consideration every change required by the legislature. The Institute has done so under the pressure of time as required by the legislature. Given the extremely short timeline, the legislature must have understood the extraordinary efforts necessary to develop the RFP and submit a draft for public review in a matter of weeks. Simply stated, the Institute had no intent to abrogate its duty to comply with the mandate to issue an RFP by a date certain nor its commitment to approving only those proposals with the highest likelihood of increasing student achievement, particularly for those at-risk of academic failure.

The remaining issues in Comment 33 will be discussed in depth below in response to Comments 34-38.

Changes to RFP: None

Comment 34: [A commenter noted that] SUNY proposes to identify and approve the first 32 charters to be issued under New York State's new charter-school law in just 45 days. This following a mere 12 days for the public to review, digest and provide feedback on the 100-page RFP that will lead SUNY into its next generation of charter-school growth. We find this timeline wholly inadequate...moreover, the state's new charter law provides that any charter not issued in a given period can be rolled over to the next charter-issuance period...we believe there are fundamental weaknesses in the RFP that must be addressed before it can be made public, the months-long application and review process proposed for the 98 charters to be awarded in 2011-13 provides a more reasonable timeframe for thoughtful planning and review of the myriad factors that must be considered in these critical decisions. A faulty decision to approve or deny even a single application could have a significant negative impact on the children of the community the school is intended to serve. No charter should be issued without a full, open and complete review. There is no justification to act in haste when every application should be provided a very thorough review. Deadlines are far less important than the futures of thousands of

children. We ask that you revise the timeline for the September round of charter approvals...to provide a comfortable period of time (at least double what is proposed) for a complete and thoughtful review.

Discussion: There can be no doubt that the Institute would prefer additional time in dealing with the many facets associated with authorizing charter schools throughout the state. However, the commenters suggestion that the proposed timeline be doubled would be in clear violation of the Act. The legislature has directed that the SUNY Trustees proceed with the issuance of an RFP, required that they and the Institute give thoughtful review to the Proposals they receive, and recommend those of sufficient strength to the Regents for the issuance of a charter. The imposition of an extremely short timeline in no way abrogates the Institute's responsibility to conduct a full and fair review of every Proposal it receives in fairness to the applicants. The Institute has no intention of recommending any charter for approval that does not meet SUNY's high standards, and no charter will be recommended without a full, fair review, regardless of the short time the legislature has carved out for the review of Proposals.

That there is the potential to "roll over" charters from this RFP cycle to the next is not a sufficient excuse to fail to carry out the responsibilities imposed by the legislature.

Changes to RFP: None.

Comment 35: [A commenter noted] that public school districts, and particularly public school districts where charter schools are being considered and approved, historically have been shut out of the review process in New York State. The RFP does nothing to address this glaring failure of the SUNY process to adequately and openly consider the impact these decisions have on local school districts.

A completely transparent process should allow at least one representative from the local school district to serve in an official capacity on the external-review team that studies each application. Historically, SUNY has carried out its charter reviews and approvals behind a curtain that shielded local districts from a meaningful opportunity to assess the impact or even the presumed need outlined in an application. Who better than the local district to provide substantive input on questions about specific inadequacies that a charter applicant is proposing to fill?

Local school districts, because they are led by school boards elected by their entire communities, are the logical representatives of the major stakeholders for these significant decisions. We applaud SUNY for the commitment to transparency stated in the RFP. To that end, we request the following be included in the final version of the RFP:

- All public comments on this RFP, and the institute's responses, should be made

publicly available prior to the RFP's release.

- A public opening of all applications received during each application period.
- A complete tabulation made publicly available of all RFP responses, with the name of the district and the number of students to be served.
- As stated above, a seat on the review team for a representative from local districts for which charter schools are proposed.
- A complete list made publicly available of all internal and external reviewers.
- All review comments should be publicly available prior to the award of any charter.
- All scores for each application should be made publicly available no later than the time of a charter award.
- All correspondence between applicants and the Charter Schools Institute should be provided to the local district no later than the time of a charter award.
- All internal audits of existing charters should be made publicly available in a timely manner.

Discussion: The commenter suggests that the SUNY Trustees and the Institute take certain actions as described above. Each will be discussed in turn below.

- *All public comments on this RFP, and the Institute's responses, should be made*

publicly available prior to the RFP's release. As stated in the Draft RFP, comments and the Institute's response will be released on August 2, 2010, or as soon thereafter as practicable given the volume of comments.

- *A public opening of all applications received during each application period.* By "public opening," the Institute assumes that the commenter refers to making charter school Proposals publicly available as soon as they are received by the Institute. As proposals often contain confidential information (e.g., student names or other personally identifiable data protected by FERPA, employment histories, personal contact information, etc.), they cannot be released to the public until such information has been redacted. The Institute has developed protocols to ensure that redacted applications are publicly available upon request in an extremely short timeframe.
- *A complete tabulation made publicly available of all RFP responses, with the name of the district and the number of students to be served.* This is a current practice of the Institute, and the information is typically posted on the Institute's website within 24 hours of the receipt of an application.
- *A seat on the review team for a representative from local districts for which charter schools are proposed.* This would create a clear conflict of

interest. However, districts are welcome to submit comments for consideration on any Proposal received by the Institute and those comments are considered as well as forwarded to, and considered by the SUNY Trustees.

- *A complete list made publicly available of all internal and external reviewers.* A list of reviewers, upon redaction of any personal and/or private information, could be made publicly available.
- *All review comments should be publicly available prior to the award of any charter.* Reviewer comments are privileged opinions that the Institute does not make publicly available. By withholding these opinions from public release, the Institute aims to protect the deliberative process and to encourage open and honest dialogue from the reviewers. As stated in numerous opinions discussing the Freedom of Information Law, statements of opinion reflective of a deliberative process are not subject to disclosure.
- *All scores for each application should be made publicly available no later than the time of a charter award.* Please see the response to the previous bullet.
- *All correspondence between applicants and the Charter Schools Institute should be provided to the local district no later than the time of a charter award.* Correspondence between the Institute and an applicant is subject to the Freedom of Information Law, and can be

made publicly available subject to redaction consistent with the Public Officers Law and other privacy interests protected by State and Federal Law.

- *All internal audits of existing charters should be made publicly available in a timely manner.* Charter school annual fiscal audits are placed on the Institute’s website soon after they are received. They are also incorporated into the Institute’s fiscal dashboard, available on the Institute’s website, for comparison against other charter schools and economic benchmarks.

Changes to RFP: None.

Comment 36: [A commenter noted that] the fiscal impact on local districts is an important aspect that is insufficiently addressed throughout the RFP.

The institute should require that all financial plans be reviewed and approved by an independent certified public accountant or the chief business official of the local district. Failure to do so calls into serious question the integrity of any assessment of potential fiscal impact offered by a charter-school applicant.

We request that charter schools agree to hold themselves to the same standards to which public districts are held in this critical area, an issue addressed in the state’s new charter statute. From Education Law § 2854(1)(c):

- (c) charter school shall be subject to the financial audits, the audit procedures, and the audit requirements set forth in the charter and shall be subject to audits of the comptroller of the state of New York at his or her discretion. Such procedures and standards shall be consistent with generally accepted accounting and audit standards. Independent fiscal audits shall be required at least once annually.

Discussion: As stated above in response to Comment 35, all annual fiscal audits of SUNY authorized charter schools are already made publicly available on the website of the Institute. Further, all Proposals are subject to a thorough fiscal review to ensure that the potential charter school can operate in a fiscally sound manner. With regard to audits to be performed by the New York State Comptroller, as well as the audits required by Education Law § 2851(2)(f), please see the response to Comment 21.

Further, Request No. 36 requires an applicant to demonstrate and discuss the potential fiscal impact on the nearby public and private schools, to include:

- *Enrollment expectations (should tie to Attachment 3 and 5- year budget projection);*
- *Per Pupil Allocation assumptions;*
- *Dollar amount the proposed charter school anticipates receiving from each district in Per Pupil Funding;*

- *Other projected revenue the proposed charter school anticipates receiving from the district (special education, grant, etc.);*
- *Projected Budget for the District; and*
- *Projected impact as a percentage of dollars of each district’s budget (with more than 10 students projected to attend the charter school) for each year.*

Changes to RFP: None.

Comment 37: [A commenter noted] the entire scoring rubric outlined on pages 10-12 of the RFP is wholly inadequate, setting a low bar of rigor that fails to hold charter applicants to the higher standard for which they are supposed to strive – philosophically and legally. In addition, the absence of a detailed scoring rubric for all of the requirements in Education Law § 2851 and compliance with Education Law § 2852(2) is troubling. Specifically, the RFP proposes nothing more than a global “pass/fail” score for the 30 or so factors that are required to be considered in these applications, in addition to the others that are specified in the scoring rubric.

In the scoring rubric, it is further troubling that applicants are awarded “bonus points” for meeting what ought to be minimum standards. For example, in regard to middle-school applications, the RFP indicates that simply enrolling middle-school students is a plan to be credited with one bonus point. Further down the rubric,

providing a “realistic long-term financial plan” qualifies an applicant for the maximum of two bonus points. This second example assumes that a charter application lacking a “realistic long-term financial plan” nevertheless may be granted a charter.

Surely these should be examples of minimum standards that any applicant must meet, not examples of a rigorous proposal designed to raise achievement for all students that would be served. Because we have so many concerns about the inadequacies of the scoring rubric, we request a meeting before the RFP is final and made public to discuss the serious problems with the scoring methodology.

Discussion: Due to the timeframes discussed in response to Comments 33 and 34, it is not likely possible to meet with the commenter before the RFP must be issued in final. However, the Institute is confident that the scoring rubric is sufficiently strong as modified to do what the legislature intended it to do – grant priority to those schools that can demonstrate that they meet a series of preference criteria. The commenter criticizes that portion of the scoring rubric that awards priority points based on the admission of middle school students, but that is one of the exact factors the legislature required the SUNY Trustees to consider in developing the rubric.

It should be clear that the rubric does not supplant the rigorous review process for which the SUNY Trustees and the Institute have been nationally lauded as noted by the

minimum eligibility requirements described in the scoring rubric.

Changes to RFP: None.

Comment 38: [A commenter stated that] it is well known that the City School District of Albany has the largest percentage of students enrolled in charter schools of any district in New York State – approximately 19 percent in the 2009-10 school year. We continue to assert that SUNY consistently has failed to follow the fourth criterion of Education Law § 2852, which specifically provides that an application may not be granted unless the charter entity finds that:

“[I]n a school district where the total enrollment of resident students attending charter schools in the base year is greater than five percent of the total public school enrollment of the school district in the base year (i) granting the application *would have a significant educational benefit* to the students expected to attend the proposed charter school or (ii) the school district in which the charter school will be located consents to such application.” (*emphasis added*).

[The commenter stated that] we are disappointed once again to note that the RFP does not include specific language to address the oversaturation of charter schools in Albany. However, we applaud the inclusion of the language in section 39b of the RFP and submit that, given the excess capacity already existing in charter and

public schools in Albany, it would be impossible for any new charter to meet these requirements.

Improving educational opportunities for all students in New York State is critical for our future. We recognize the great benefit of diverse approaches to education that provide families with options to choose the best environment to fit the needs of their children. We also recognize our own responsibility to do more to enhance the opportunities and achievement for all students in our school district. But we know that these goals cannot be accomplished – in Albany or any community across New York State – by forcing taxpayer-supported schools to operate under separate sets of rules that put traditional public schools at a competitive disadvantage.

Discussion: Since the 2007 amendments to the Act, the SUNY Trustees have consistently made the finding that charter schools proposed to be located in Albany would have a significant educational benefit to students expected to attend the school. By its plain terms, this finding was required only when a school was seeking initial approval – not at renewal.

This finding was not included in the Draft RFP because it is not clear whether the findings must still be made with respect to a charter issued pursuant to Education Law § 2852(9-a). However, SUNY will continue to make the finding as discussed in response to Comment 10 and the new Request No. 3(e) in the final RFP.

Further, the assumption that Request No 39(b) would make it “impossible for any new charter” school in Albany is incorrect. As discussed in response to Comment 1, the amendments to the Act require an RFP that “seeks to locate charter schools in a region or regions where there may be a lack of alternatives and access to charter schools would provide new alternatives within the local public education system that would offer the greatest educational benefit to students.” The Act amendments do not imply that a Proposal be categorically rejected based on the proposed location of the school. The draft RFP awards extra priority points for schools to be located where there are few or no charter schools, making it difficult, but not impossible, for a proposed school in Albany to receive priority points based on this criterion.

Changes to RFP: None.