



A Policy Framework for Charter School Replication

Background, Considerations, Legal Context, Research, Implications and Policies of the Board of Trustees of the State University of New York for the Replication of Charter Schools

I. Background: Meeting a Demonstrated Need

The State University of New York (SUNY) is the largest charter school authorizer in New York and the largest university-based authorizer in the country. SUNY authorized charter schools lead the state's charter sector in student achievement on state assessments in mathematics and English language arts. Despite steady growth in the number of authorized schools, demand from New York State families for more seats in SUNY authorized charter schools has far outpaced the rate at which new schools are opening. In fact, the number of students on waiting lists for admissions to SUNY authorized charter schools has increased six fold in the last five years.

SUNY sought a way to be responsive to this demand without sacrificing the rigor and quality of its existing new school application review process. SUNY focused on the replication of existing successful schools as a possible area where efficiencies in its review process could be identified. While SUNY has already approved nearly 40 replications of existing, successful schools, it has largely done so one at a time and generally using the same application, contract, monitoring and renewal policies and practices as it uses for new schools.

There were also other factors that supported SUNY's focus on replication. The 2010 amendments to the New York Charter Schools Act of 1998 (Act) provided new pathways to charter replication. Charter networks and single successful independent schools across the state seek to replicate on a larger scale and at a faster pace than envisioned by SUNY's existing authorizing practices.

In order to continue SUNY's record of granting charters to only the most worthy applicants, SUNY needed to differentiate its authorizing practices to allow for authorizing replicating organizations while maintaining the rigor and accountability for which SUNY is nationally-known.

In 2011 SUNY applied for and won a competitive grant from the National Association of Charter School Authorizers (NACSA) and its Fund for Excellence in Charter School Authorizing to support its work in the area of charter school replication. Specifically, the planning grant supported a gathering of national public education leaders, *Policy Matters: A SUNY Conference on Charter School Replication*, which was held at SUNY Global in New York City in July 2011. New York based and national public education leaders; including fellow authorizers, national policy experts, philanthropists, civic leaders, SUNY Trustees and SUNY Charter Schools Institute (Institute) staff, and representatives from schools and charter management organizations interested in replication – engaged in a focused dialogue about the key design elements of authorizing policy specific to the replication of high quality charter schools. This national conversation was essential in shaping SUNY’s thinking about replication, and in informing the considerations and policies included in the SUNY Trustees’ policies.

II. Authorizer Considerations Specific to Replication

Among the issues specific to charter school replication, four in particular guide SUNY’s policy-driven approach:

- **Creating more high-quality charter school seats.** Nationwide, a subset of charter schools has achieved extraordinary results, particularly with disadvantaged students. These include stand-alone schools, networks of schools and schools that partner with a charter management organization (CMO) or educational management organization (EMO). These high-performing charter schools have shown that it is possible for disadvantaged children to achieve at high levels, and for families to have choices better than their neighborhood schools. Through charter school replication, authorizers have a tremendous opportunity to build portfolios of high performing schools, by enabling highly-successful schools to serve more students. Indeed, that should be the goal of all replications – to increase the number of high-quality seats for students – rather than increasing quantity alone. At the same time, SUNY will continue its policy of closing low performing schools in accordance with its *Practices, Policies and Procedures for the Renewal of Charter Schools Authorized by the Board of Trustees of the State University of New York*¹ (SUNY Renewal Practices) to assure the ongoing quality of the charter schools it authorizes.

¹ Last revised September 15, 2009 and available at <http://www.newyorkcharters.org/schoolsRenewOverview.htm>.

- **Manage risk.** As authorizers take on growing portfolios of charter schools, and approve network expansion to larger numbers of schools, they will unavoidably take on more risk – risks that a successful school cannot duplicate its success in another location; that the success of a dozen schools hinges on one charismatic leader; or that a successful network will exceed its capacity by opening more schools and perhaps even decreasing the performance of the original school(s), among others. Just as successful charter networks balance the need for growth against resource, human capacity, facilities and other challenges, authorizers must pursue strategies that enable them to meet the needs of growing numbers of students while maintaining a healthy level of risk in their portfolio. SUNY’s replication policies are designed to mitigate the risk inherent in replications while maintaining the highest quality standards for which SUNY has been nationally recognized.² Risk assessment of replicating schools seeks to focus more heavily on capacity areas that are high risk to the network or education corporation operating multiple schools.
- **Increase efficiency with scale.** Given current trends, SUNY will increasingly face constraints to the existing investments of time, resources and personnel it can devote to individual schools. Overseeing in excess of 100 SUNY authorized schools open or approved to open by 2012 and the recent history of declining funds at the authorizer level, make a key consideration related to replication the design of streamlined processes and capitalizing on efficiencies made available in the 2010 changes to the Act, while maintaining the SUNY’s rigorous authorizing standards. Resource gains made through replication can then be applied to the traditional one-school-at-a-time application process to promote innovative and strategic schools as well as support other volume-sensitive authorizing functions.
- **Maintain school-level accountability.** For accountability purposes, replicated schools are held accountable in the same manner as SUNY authorized schools that are not replications. While some monitoring and special network-wide accountability will occur at the network level, academic, operational and financial performance should continue to be reported at the school level, with a primary focus on the academic success of each school’s students. In addition, certain new network or education corporation level fiscal and capacity monitoring will be required to help ensure those entities can support their schools.

² U.S. Department of Education, Office of Innovation and Improvement (June 2007), *Supporting Charter School Excellence Through Quality Authorizing* at 10-12.

III. Legal Context

Prior to the 2010 amendments to the Act, a charter in New York permitted only one education corporation to operate one school. SUNY replicated successful schools within this framework; largely one at a time and largely by the same process as approval of the initial school. The May 2010 amendments to the Act permit a charter school education corporation to operate the same grade at more than one site or to operate more than one school. Adding a new school to an existing education corporation or operating the same grade at more than one site costs a charter off the ‘cap’ of total number of charters allowed in the state.

The Act amendments will allow SUNY to provide more high quality charter school seats and will provide new pathways to do so as well as be effective and efficient at the authorizer level. The challenge of multi-school authorizing is to do it in a way that ensures quality while not granting more charters to networks and existing schools than their human and fiscal resources can handle, and to keep the collective and individual risk of school failure low.

The language of the operative Act amendment (to Education Law § 2853(1)(b-1)) reads as follows:

(b-1) An education corporation operating a charter school shall [not] be authorized to operate more than one school or house any grade at more than one site, provided that a charter must be issued for each such additional school or site in accordance with the requirements for the issuance of a charter pursuant to this article and that each such additional school or site shall count as a charter issued pursuant to subdivision nine of section twenty eight hundred fifty-two of this article; and provided further that

(A) a charter school may operate in more than one building at a single site; and

(B) a charter school which provides instruction to its students at different locations for a portion of their school day shall be deemed to be operating at a single site.³

By allowing a charter school education corporation to operate more than one school, the Act amendments allow SUNY at least four new replication/multi-school/multisite pathways:

³ [] = deleted text; underscore = added text.

- **Add a new school to an existing charter.** SUNY can allow the addition of a new school or schools to an existing education corporation whether or not that additional school is an exact replication of the existing school. The Act therefore permits a key legal structure of common governance of multiple schools that heretofore was impermissible, and which SUNY's authorizing practices mimicked by allowing the same individuals to act as school trustees for multiple education corporations. (SUNY will continue the authorizing practice of allowing individuals to serve on multiple boards and for networks and schools to replicate through multiple education corporations.)
- **Merge or consolidate existing charter schools.** As the Act permits an existing charter to operate another charter school, it follows that the additional charter school could be an existing charter school. Whether the resultant education corporation is one of the two existing corporations (merger) or a new education corporation (consolidation) the combination will have all of the same legal structures as adding a new school to an existing charter. SUNY, additionally, must make certain that corporate requirements and logistics are handled appropriately and within applicable statutes, and that schools are not permitted to merge solely to evade the consequences of student performance accountability (which provides further support for a policy of handling student performance accountability at the school level as opposed to the corporate level).
- **Initially charter multi-school networks.** Combining by design the ability to add a new school to a charter, in this case a newly issued charter, and merger (with another newly issued charter), SUNY will be able to replicate high performing networks that do not currently operate in New York, or create sub-networks of schools intended to be replications that are legally separate from the schools upon which they are modeled. Significantly, this may be accomplished at the application stage.
- **Permit multiple sites for existing or new schools.** Under the amended Act, an individual school can have the same grade or all of its grades (essentially another school) at another site so long as SUNY is willing to reduce the number of charters available to accommodate such a request. While clearly a way to increase the number of high performing seats, SUNY would have to weigh the costs and benefits of facility arrangements that would allow similar structures without the use of a charter. A school engaging in such an arrangement would also have one aggregated accountability plan. When seeking input from the charter sector, SUNY has not seen interest in multi-site arrangement as compared to the above multi-school options under the amended Act.

- **Separation of corporate renewal from school renewal.** One education corporation operating multiple schools that began operation at different times and therefore are at different stages of their accountability plans necessarily presents challenges to SUNY's renewal process. The current renewal process was designed for one school with one accountability plan even if it operated with multiple campuses (of different grades) in multiple locations. The high stakes closure decision at the center of renewal turns on whether the school has met the student performance goals in its accountability plan. Under SUNY's existing policies, the corporate renewal of the education corporation's certificate of incorporation and the school's high stakes closure/renewal decision are always intertwined. Replication presents a challenge because schools within the same education corporation could need to be reviewed pursuant to their individual accountability plans every year or more than once in a year; *and* the corporate existence of the school would not need to be reviewed except once every three or five years. The amendments to the Act and conservation of authorizer resources necessitate a system where every school receives its high stakes closure decision at an appropriate time and the corporate renewal (so long as it is justified) takes place before the end of the charter term. It is likely that the SUNY Renewal Practices will have to be amended and systems put in place to fulfill the minimum legal requirements of corporate charter renewal (which were not modified by the amendments to the Act) and maintain the individual school accountability policies of the SUNY Trustees.

IV. Research Findings

SUNY commissioned an external environmental scan of research and best practices from the education, non-profit and corporate sectors on successful growth and replication (full report available at: www.newyorkcharters.org/conference/documents/PublicImpactEnvironmentalScanforSUNYPolicyMatters.doc). The scan included a document review of any existing replication-specific policies and practices currently in place at SUNY and other authorizers across the country. Armed with this research, representatives from the New York State Education Department; the New York City Department of Education; the Office of New Schools, Chicago Public Schools; Volunteers of America-Minnesota; The Center for Charter Schools, Central Michigan University; the DC Public Charter Schools Board and the National Association of Charter School Authorizers joined SUNY Trustees and staff and a number of other distinguished guests to discuss the implications for constructing strong policies to guide authorizing work that directly addresses replicating

schools. A complete list of conference attendees is available at:

www.newyorkcharters.org/conference/documents/AttendeeList.xlsx.

Key research findings relevant to SUNY's replication policies include:

- The replication of proven successful charter schools is a critical tool for increasing the number and accelerating the growth of high-quality public schools.⁴
- Experts suggest that authorizers should permit replication only of those schools with proven track records of success and the capacity to replicate successfully while sustaining excellence at existing schools.⁵ Experts have noted the importance of authorizers articulating clear definitions of school quality and systems to measure it in order to make decisions about renewal and replication.⁶
- Scaling up successful ventures presents some specific challenges, for schools and for organizations outside of education.⁷
- Experts note the importance of strong statewide authorizers to facilitate growth of high-quality charter schools.⁸
- Researchers have documented the importance of frequent, hands-on monitoring to school oversight, particularly in the context of rapid growth. Particularly with

⁴ O'Neill, P., & Ford, J. (2010), "NACSA Charter School Replication Guide: The Spectrum of Replication Options," *Authorizing Matters Replication Brief*, Chicago, IL, National Association of Charter School Authorizers (available: http://www.qualitycharters.org/images/stories/publications/Issue_Briefs/Replication_BriefNo1_Replication_Options_Aug10.pdf).

⁵ National Association of Charter School Authorizers (2010), *Principles & Standards for Quality Charter School Authorizing*, Chicago, IL (available: <http://www.qualitycharters.org/policy/principles-and-standards>); "NACSA Charter School Replication Guide: The Spectrum of Replication Options," *Authorizing Matters Replication Brief* (*supra*); National Resource Center on Charter School Finance & Governance (2010), Smith, J., Farrell, C., Wohlstetter, P. & Nayfack, M., *Mapping the Landscape of Charter Management Organizations: Issues to Consider in Supporting Replication*, Washington, DC (available: <http://www.charterresource.org/files/MappingTheLandscape-SupportingReplication.pdf>); Rhim, L. M. (2009). "Charter School Replication," NACSA Policy Guide, Chicago, IL, National Association of Charter School Authorizers (available: http://www.qualitycharters.org/images/stories/Charter_School_Replication.pdf).

⁶ See Bloomberg, L., Nathan, J. & Berman, I., National Governors Association Center for Best Practices (April 2009), *Achieving Excellence at Scale: State Support for High-Performing Charter School Expansion*, Washington, DC (available: <http://www.nga.org/files/live/sites/NGA/files/pdf/0904CHARTERSCHOOLEXPANSION.PDF>).

⁷ Hassel, E. A., Hassel, B. C., & Ableidinger, J. (February 2011), *Going Exponential: Growing the Charter School Sector's Best*, Washington, DC, Progressive Policy Institute, and Chapel Hill, NC, Public Impact (available http://www.progressivefix.com/wp-content/uploads/2011/02/2.2011_Hassel_Going-Exponential_WEB.pdf).

⁸ National Governors Association Center for Best Practices, *Achieving excellence at scale: State support for high-performing charter school expansion* (*supra*).

replications, strong school-level relationships and accountability are crucial to detect and capitalize on successes, and to detect and intervene when an effort is off track.⁹

- According to NACSA, “A quality authorizer executes contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms.”¹⁰
- Some multi-school efforts struggle to balance the need for faithful replication of their original model with the conflicting need to vary their successful designs to address local needs.¹¹ Network central offices also confront tension between supporting new schools with key challenges, as district offices do, and structuring relationships with individual schools to encourage decentralized control and school-level autonomy.¹² Those that opt to decentralize may do so at the cost of creating a common network-wide culture or ensuring fidelity to their models. Scaling up also brings new challenges to successful schools, such as how quickly to grow, where to site new schools, and what kinds of alliances to form with other networks, schools, districts, and community-based organizations.¹³
- National best practice focuses on performance at the school level and will help prevent problems at one school from jeopardizing programs at other schools in a network or other multi-school effort. This is in addition to monitoring network and board activities to ascertain legal, fiscal, or other issues that may impact performance across schools.

⁹ Kowal, J., & Ableidinger, J., (Public Impact), (2011), *Leading Indicators of School Turnarounds: How to Know When Dramatic Change Is on Track*, Charlottesville, VA, University of Virginia’s Darden/Curry Partnership for Leaders in Education (available: http://www.darden.virginia.edu/web/uploadedFiles/Darden/Darden_Curry_PLE/UVA_School_Turnaround/Leading_Indicators_of_School_Turnarounds.pdf).

¹⁰ National Association of Charter School Authorizers, *Principles & Standards for Quality Charter School Authorizing* (*supra*).

¹¹ Education Sector Reports, *Growing Pains: Scaling Up the Nation’s Best Charter Schools* (November 2009), (available: http://www.educationsector.org/sites/default/files/publications/Growing_Pains.pdf); Lake, R., Dusseault, B., Bowen, M., Demeritt, A. & Hill, P. (June 2010), *The National Study of Charter Management Organization (CMO) Effectiveness: Report on Interim Findings* (by Mathematica Policy Research, Inc. and Center on Reinventing Public Education) (available: http://www.crpe.org/cs/crpe/view/csr_pubs/344); *see also* other sources at National Charter School Research Project, Charter Management Organizations (CMOs), Effectiveness & Scale-Up, (available: <http://www.crpe.org/cs/crpe/view/projects/1?page=initiatives&initiative=1>).

¹² National Charter School Research Project (August 2007), *Quantity Counts: The Growth of Charter School Management Organizations*, Seattle, WA, National Charter School Research Project, Center on Reinventing Public Education (CRPE), Daniel J. Evans School of Public Affairs, University of Washington (available: http://www.crpe.org/cs/crpe/download/csr_files/pub_ncsrp_quancount_aug07.pdf).

¹³ Lake, R., Dusseault, B., Bowen, M., Demeritt, A. & Hill, P., *The National Study of Charter Management Organization (CMO) Effectiveness: Report on Interim Findings* (*supra*); Sullins, C. & Miron, G., (March 2005), *Challenges of Starting and Operating Charter Schools: A Multicase Study*, The Evaluation Center, Western Michigan University (available: http://www.wmich.edu/evalctr/charter/cs_challenges_exec_summary.pdf).

V. Implications

- The SUNY Trustees created the Institute in 1999 to assist it in carrying out its responsibilities as a state-wide charter school authorizer. The work of the Institute is guided by SUNY Trustees' policies and priorities. Any new charter-related policies will necessitate modifications of or additions to Institute practices and the supporting tools and documents. For example, the Institute may need to develop new replication-specific application(s), a modified charter contract and new school evaluation protocols.
- The intent of SUNY's replication policies is to continue SUNY's record of chartering strong schools as successful programs to serve more students, but in a way that deliberately ensures quality. SUNY anticipates a measured, but marked increase in new school seats both in the short- and long-term as more existing charter schools demonstrate their interest in and qualification for replication.
- SUNY will evaluate the effectiveness of the policies and is committed to continuous quality improvement. It is also expected that lessons learned as part of its replication work will inform not only refinements to the replication policies and practices, but also improvements to SUNY's already award-winning one-at-a-time authorizing practices which will remain a key component of SUNY's now differentiated approach to charter school authorizing.
- SUNY is the largest comprehensive system of public higher education in the United States. SUNY has made an unprecedented commitment to K-12 education as part of its efforts to strengthen the education pipeline from birth to career in New York State. SUNY's replication work, particularly its focus on approving replications of schools that have a demonstrated level of success, will facilitate SUNY's research and dissemination efforts around charter school best practices to the broader public education communities in New York and beyond.

VI. Policies of the Board of Trustees of the State University of New York for the Replication of Charter Schools

The Board of Trustees of the State University of New York (SUNY Trustees) is a “charter entity” or authorizer of charter schools with statewide authority pursuant to the New York Charter Schools Act of 1998¹⁴ (Act) to approve, oversee and renew education corporations that operate charter schools. The SUNY Trustees created the SUNY Charter Schools Institute (Institute) in 1999 to assist them in carrying out their responsibilities under the Act.

A. Policy Scope

The SUNY Trustees have developed the *Policies of the Board of Trustees of the State University of New York for the Replication of Charter Schools* (SUNY Replication Policies) to guide their charge to the Institute regarding replication and their decisions regarding charter school replication, merger and consolidation including the approval of new applications, the ongoing oversight and evaluation of approved schools, and renewal processes and criteria.

B. Purpose and Policy Statement

The SUNY Trustees support the replication of high quality charter schools for the purposes of creating more quality charter school seats in New York and better allocating educational resources to serve New York students. SUNY recognizes that replication of proven successful charter schools is a critical tool for increasing the number and accelerating the growth of high-quality public schools. SUNY will maintain its commitment to student academic achievement and to holding charter schools accountable for high student performance outcomes as it makes decisions regarding charter school replication.

C. Definitions and Policy Application

Charter school replication is defined broadly in this policy and applies to each of the following arrangements. All of the terms below are generally referred to as

¹⁴ Article 56 of the New York Education Law, as amended.

“replication” in this policy even though that term has a more specific meaning in practice and in context herein.

- *Replication.* The practice of: 1) a single charter school education corporation; or, 2) the same individuals acting as the board of trustees for several education corporations, operating several schools that are each based on the same or a similar model. The term “replication” includes each of the following arrangements.
 - *Multi-school.* The practice of one education corporation with an existing school operating additional schools.
 - *Merger.* The legal combination of two existing education corporations each of which operates one or more schools into a single successor corporation that is one of the original corporations, which will operate more than one school.
 - *Consolidation.* The legal combination of two existing education corporations each of which operates one or more schools into a third successor education corporation, which will operate more than one school.
 - *New Networks.* The initial chartering of new charter school networks through a combination of multiple new applications of the same design and merger of the newly -approved education corporations shortly thereafter.
 - *Multisite.* The practice of operating the same grade or grades at multiple sites under one education corporation with common governance and leadership.

SUNY will consider replication or merger of high quality charter schools whether they are independent schools, schools that have not yet replicated, schools that have already replicated, schools that are part of a network, schools affiliated with a particular management organization or schools that have distinct corporate existence.

D. Policy Statements

Application and Application Review Processes

Policy 1: SUNY will consider replication applications as described above but will maintain application quality standards for all replication applications, which shall be at least as rigorous as those for traditional new school applications. Replication applications must have a high likelihood of improving student learning and academic achievement.

Policy 2: SUNY shall offer an “expedited” or streamlined application process specifically for replication applicants who can demonstrate that they have met specific academic performance criteria, but meeting such criteria shall not alone qualify an application for approval.

Policy 3: Applicants may be deemed eligible to enter an expedited application process if they have compiled a *strong and compelling* record of *meeting or nearly meeting* the original school’s accountability plan goals (or similar standards for one or more existing schools not authorized by SUNY) to be determined by the SUNY Charter Schools Institute.

Policy 4: Prior to approval of any replication application a due diligence review of the education corporation, its management partners and partner organizations shall be conducted.

Policy 5: The decision to approve another individual school for an existing education corporation pursuant to a replication application, or the decision to approve the merger or consolidation of existing education corporations may be left to the sound discretion of the SUNY Trustees’ Education, College Readiness and Success Committee (Committee) or a similar committee. The action of the Committee shall be final; applicants may not appeal to the SUNY Trustees.

Policy 6: The SUNY Trustees or their delegates will maintain close oversight of the replication process through specific approval of each new education corporation or school which is part of a replication, i.e., the SUNY Trustees will not delegate such approval to an education corporation, charter management organization or network.

Oversight, Evaluation Revocation and Renewal

Policy 7: The performance of each school within an education corporation will continue to be assessed based on its own student achievement data in accordance with the SUNY Renewal Practices, and not based on an aggregation of data across the corporation or network. Each individual school will continue to face a high stakes closure decision in alignment with the SUNY Renewal Practices.¹⁵

Policy 8: The closure of an individual school or site operated by an education corporation that operates multiple schools or sites (as opposed to closure of an entire education corporation as described in the SUNY Renewal Practices¹⁶), may be handled by the Committee in conformity with the SUNY Renewal Practices. The full SUNY Board would retain authority to not renew an education corporation or to close the last (or only) school in a network or single school education corporation.

Policy 9: Charter school education corporations shall not be permitted to avoid the consequences of school closure by attempting to merge or consolidate with a higher performing education corporation. This prohibition would extend to schools authorized by other charter entities in New York State seeking to merge or consolidate with a SUNY authorized charter school.

¹⁵ *Practices, Policies and Procedures for the Renewal of Charter Schools Authorized by the Board of Trustees of the State University of New York* dated September 15, 2009 (as may be revised from time to time) available at <http://www.newyorkcharters.org/schoolsRenewOverview.htm>.

¹⁶ The Committee will review and revise the SUNY Renewal Practices as needed to accommodate the renewal of education corporations operating more than one school.

E. Supplemental Practices, Policies and Procedures

The SUNY Replication Policies provide an overview of the policies governing approval, monitoring and renewal of replication and describe its central elements; they do not delineate every detail of the process employed by the SUNY Trustees, the Trustees' Education, College Readiness and Success Committee or the Institute. Supplemental, interstitial practices and procedures may be required and employed to ensure the integrity, comprehensiveness and excellence of its charter school program and replications in particular. Such amendments and supplements, if material, may be made either through action of the SUNY Trustees or, where appropriate, the Education, College Readiness and Success Committee or the Institute.

F. Amendment, Effective Date, and Scope

The SUNY Replication Policies may be amended by the Trustees' Education, College Readiness and Success Committee or by the SUNY Trustees, as the case may be. Amendments shall be effective upon passage of a duly approved resolution by either body or upon such date as may be set forth therein.

If one section or clause of the SUNY Replication Policies is found to be unlawful by a court of competent jurisdiction it shall not affect the other parts of the SUNY Replication Policies or references thereto in charter agreements.

The SUNY Replication Policies do not limit the discretion or authority of the SUNY Trustees as a charter entity as set forth in the Act.