



new ideas, better schools

Submitted Testimony from Bill Phillips, President of the New York Charter Schools Association, to the New NY Education Reform Commission

September 10, 2012

Chairman Parsons and Distinguished Commission Members:

Thank you for the opportunity to offer comments regarding the structure of New York's education system. My name is Bill Phillips, President of the New York Charter Schools Association (NYCSA). We are a statewide membership organization whose mission is to support the expansion of *high-quality* public charter schools across the state. Let me emphasize that because it's important – our mission is focused on growth of *high-quality* charters, not just any charters.

This testimony is grounded on two basic assumptions:

- 1) Revenues and expenses in New York' public education system are structurally out of balance. Kudos go to the Board of Regents and the State Education Department for laying out the magnitude of the problem.
- 2) In forming this Commission, the Governor was smart to start the discussion by pointing to the disconnection between our current high spending on schools and their middling performance. The number of legitimate demands on the public dollar is endless but the availability of public dollars is not. It is hard for me to see how taxpayers and governments can be expected to spend more and more of their increasingly scarce dollars on schools unless we show an equal constant commitment to strengthening student performance.

The Commission asked for suggestions regarding the structure of public education in the state. I will try to address this challenge in two ways: First by discussing the ways chartering already is improving public education in New York and presenting ideas on how to make chartering even more effective; and second by suggesting ways school districts and the state could take advantage of chartering's basic principles.

Current Benefits of Chartering

This school year, some 80,000 students enrolled from approximately 150 districts are being educated in 209 public charter schools across our state. Waitlist figures for this year are still being collected, but last year there were approximately 70,000 on waitlists for openings. Charter enrollment has almost doubled in the last three years.

By and large, these schools are working well. In 2012, charters once again exceeded their local district averages on the ELA and mathematics exams. This trend has held constant year after year (please see Chart 1, Charter School Performance Trends). More importantly, charter school averages outperformed the statewide averages—which include students from high-income, high-performing districts—in each key high-need demographic group (please refer to Chart 2, 2012 Demographic Breakdown).

We are proud of this performance, and at the same time recognize that there are both high-achievers and non-performers in the charter sector. To date, 20 charter schools have been closed in New York, representing the ultimate high-stakes accountability that charter operators embrace in order to be granted the freedom and flexibility to operate outside of the many rules, regulations and mandates that are inhibiting other public schools. We respect that there is a difference of opinion about test-based, high-stakes accountability in public education, but it is fundamental to high-quality chartering.

Make Charter Schools a Stronger, More Productive Part of the Education Landscape

The following recommendations would strengthen the state's charter sector, allowing for growth and improvement while also setting the stage for innovation.

Equal Funding: The Commission should recommend equal funding for students, irrespective of the public school they attend.

Public school students deserve equal funding, regardless of what type of public school they choose. The best way to accomplish this would be through the implementation of statewide student based budgeting. This approach would shift funding priorities away from entrenched programs and aid formulas, and would provide funding to districts and schools, including charter schools, according to the number of students they serve. Student based budgeting systems adjust for factors such as regional costs, and various student needs or circumstances.

If student based budgeting proves to be politically impossible, the next most logical fix is to equalize funding between charters and districts by targeting the specific discrepancies. Currently, charters do not receive funding for debt and capital costs. Therefore, the state could

reduce this inequality by providing charter schools with a per-pupil allotment that matches the debt and capital component of the sending district. Unlike the current building aid process which covers a percentage of approved expenses, the per-pupil allotment approach has the potential to incent reduced facilities spending. Specifically, the charter schools should be allowed to apply any money saved by spending decisions below the allotment to their operating budget. They should also be financially responsible for any spending decisions that exceed the allotment.

Choice is greatly hampered by a lack of transportation, and unfortunately the receipt of this service from districts is increasingly problematic. As more districts experience funding shortages, they are enacting policies that have the effect of denying charter school students transportation. The state could reduce this unfairness by granting charters the choice to receive either transportation aid or state-funded transportation, rather than rely on their host districts to adequately provide this service.

Vacant School Space: The Commission should recommend that districts with available public space allow charter schools access.

Districts should be required to offer charter schools the use (through rent, purchase or lease) of unused or underutilized school buildings. Allowing districts to maintain vacant school space, while charter schools struggle to find space, is a huge inefficiency that is unfair both to students and taxpayers. New York City has led by example on this front, by making the local decision to site charter schools in certain buildings for a dollar a year.

Special Education/BOCES Access: The Commission should recommend passage of the Charter School Students with Special Needs Act.

The Commission should recommend passage of S.7122(Flanagan)/A.10659(Camara), the *Charter School Students with Special Needs Act*. Passed by the Senate in 2012, with a strong bipartisan vote, it has stalled in the Assembly's Education Committee. This bill would allow charter schools the ability to contract with BOCES. Incredibly, this is permitted for schools *outside of New York State*—and yet is not available to our very own charter schools. Not only would this open up new ways for charter schools to access professional development, curricular resources, and special education services, but it also opens up a new resource stream for BOCES. The change does not grant charter schools access to BOCES aid; charter schools would use their operating funds.

The bill also amends language in the Charter Schools Act to ensure schools are permitted to create consortia to provide services to special education students and English language learners

in a way that is both efficient and effective, including by sending students to another charter school without requiring a transfer or another lottery.

Automatic Closure: clarify a minimum standard for closing low-performing charter schools.

Despite the many successes and positive trends from chartering, we may shortly need to improve the accountability component of the model. We have witnessed a disturbing trend in chartering recently, namely that it is becoming increasingly difficult for authorizers to close low-performing charter schools. If this continues, the state should consider instituting an automatic closure provision that includes an authorizer override mechanism as a part of the charter renewal process. The problem largely stems from the fact that the majority of charters are located in weak-performing host districts. In other words, the weak performance of the district protects charters from closure due to the fear of sending students back to worse schools. This issue is compounded through the increasing use of lawsuits that focus on process rather than performance. Clearly, schools should have a right of appeal; but schools are starting to ask judges to make decisions for which they have questionable qualification. This understandable, self-interested behavior of “to-be-closed” charters is starting to dilute the accountability promise of chartering.

If instituted for all new charters, and upon renewal for existing charters, automatic closure would flip the role of the authorizer from the current practice of having to actively deny a renewal charter, to one of deciding on appeals for the lowest performing schools. The authorizers would make case-by-case determinations if extenuating circumstances merited an override of the automatic closure. Obviously, where the closure bar is set matters. As a starting point, we suggest that any charter schools on the state’s priority or focus list at the time of renewal should trigger the automatic closure provision.¹

Moving to automatic closure, and thus protecting the accountability promise that is fundamental to chartering, could protect the vast majority of charter schools that have nothing to lose with this minimal bar, and much to gain by avoiding additional input-based laws and regulations. It could actually protect the schools in the closure “grey area” as well. Currently, closures are based on a combination of quantitative and qualitative data. It’s a common complaint in chartering that

¹ ‘Priority schools are among the lowest performing schools in the state based on combined ELA and math performance that are not showing progress or that have had graduation rates below 60% for the last several years. “Focus” schools are located in “Focus Districts,” which are those districts that either have the lowest achieving students or the lowest graduation rates for a particular student group. Districts with one or more “Priority” schools are automatically designated as “Focus” districts. Within these districts, “Focus” Schools are those that are lowest performing or have the lowest graduation rates for the subgroups for which the districts are identified.’
<http://usny.nysed.gov/docs/10-things-to-know-about-the-esea-waiver.pdf>

authorizer qualitative reports are frequently so vague they can be used to defend either positive or negative decisions. An automatic closure standard would add clarity to the exact standards for closure, and push resource-drained authorizers away from any schools that are not near the closure bar. Such an approach could be safer for schools because they would clearly know when their charter was at-risk. Moreover, it would reduce the role and impact of qualitative analysis and would help minimize the procedural minefield.

Regional Charter Schools: The Commission should recommend regional charter schools to allow increased access for rural students and innovative opportunities for urban students.

At a time when the creation of regional high schools has become a popular discussion, it makes sense more than ever to create regional charter schools. Regional schools have the potential to lower costs by providing economies of scale, as well as reduce pressure on small school districts. However, this concept is not limited to rural areas. Schools with a very specific focus could be created and draw students from multiple districts or, in NYC, multiple CSDs, and provide a brand new and innovative option to students. A few changes to the Charter Schools Act would help to strengthen this option. First, clarify that enrollment preferences can be implemented in a way that supports a regional focus. Second, modify the language so that the students' sending district, rather than the charter school's host district, is responsible for aid. Third, clarify that enrollment and retention targets for regional charter schools can be set by the authorizers to reflect the entire enrollment zone.

Pre-Kindergarten: The Commission should recommend extending pre-kindergarten to charter schools.

Access to pre-kindergarten should be universal. Therefore, charter schools should be able to offer these programs. Currently, charter schools are limited to serving only kindergarten through 12th grade. When the Universal Pre-Kindergarten program is expanded to additional districts, the expansion also should include charter schools.

Virtual Charter Schools

While some question the performance of virtual charter schools, there are highly regarded examples, such as Carpe Diem in Arizona. Further, the ability to open a wide-variety of charters helps drive innovation and change, and therefore it is recommended by most advocates that virtual and blended-learning schools remain viable options. In NY, language in the Charter Schools Act requiring a charter for every location where a school serves students has been interpreted as prohibiting virtual schools. The Commission can encourage the creation of virtual

schools in NY, either by supporting an interpretation that an online school does not run contrary to this language, as the internet can be broadly interpreted as one single location, or by suggesting the adoption of language allowing virtual schools in the Charter Schools Act. There are areas of the state where students need additional choices and it is not feasible to create another brick and mortar school.

It is apparent a number of digital ventures will need to operate on a for-profit basis in order to attract sufficient funding to serve children at scale. In general, we believe that performance ought to trump non-profit or for-profit status. Therefore, we also recommend the ban on for-profit management should be lifted.

Structural Changes to Improve Results and Efficiency

Given the goals of the Commission, my comments will go beyond suggestions that solely benefit the charter sector. There are basic concepts in chartering that can be applied to all schools.

Allow Districts to Experiment with Mandate Relief and Flexibility

Typically, when I am asked about how districts can copy successful chartering, the question relates to program or school model. While we obviously think things like longer school days and years, the ability to quickly and effectively recruit and terminate staff based on performance, and the ability to adopt unique school models matter, it overlooks the bigger concepts behind chartering that may be applicable across the state. Below, I will describe how basic chartering principles can be applied either in part or whole.

Most simply, chartering is about choice. The Commission should recommend that New York become an open enrollment state. The basic principle is that if you take state aid, your students and their per-pupil funding are free to leave, and you must accept non-resident students and their funding if you have space.

Next, take the concept of the charter itself. It's essentially an agreement to give the school freedom and flexibility from existing laws, rules and regulations (except for health, safety and civil rights), in return for greater accountability. The basic concept is important for a few reasons. First it creates a format for schools to try new ideas or apply old ideas in a new way. Secondly, it creates an environment where failure is understood to be possible, and more importantly, through nonrenewal or loss of the charter, it offers a process for managing failure. Moreover, at the interim level it offers accountability in the form of student choice -- the student and his or her per pupil allotment can leave the school.²

The Commission should consider proposing changes to state education law to create a separate school category that allows district schools to mimic these basic conditions. Perhaps this new category should be as large as 20 percent of the total number of public schools in the state. In terms of governance, schools boards should be able to apply, and they should be able make proposals at either the school or program level. The accountability bargain is the one item that should be prescribed -- specifically, the trade for this widespread freedom is that if the program or school is deemed to have been unsuccessful, then either the school is closed, or the district provides the impacted students with funded public school choice. If a district could not test these changes using student per-pupil funds alone, perhaps changes could be incented by something

² Charter schools are funded on a bimonthly basis. Once the child leaves, the funding to the charter school stops. For instance if a child leaves during November of the school year, the school would receive 2 month funding increments in the beginning of July, Sept and Nov. The school would not receive proportional payments in January, March and May.

similar to Governor Cuomo’s competitive School District Management Efficiency Award Program.

Most Superintendents and Principals already know what makes sense for their districts. For example, the testimony from the New York State Council of School Superintendents had many excellent ideas that deserve to be tried. Various circumstances—ranging from socio-economics to size—call for different approaches, and new research continually suggests promising approaches to be tested. These leaders should be allowed to try these ideas universally through changes to state law, or through the space for innovation described above, which would again require a change to state law. If these changes prove to be impossible, Boards of Education and Superintendents need to start using the Charter Law to accomplish similar goals.

Money follows the student (move to student based budgeting)

Districts and public school stakeholders must adapt to new financial systems, partly due to fiscal constraints, but also in part because of the introduction of new funding mechanisms such as competitive grant programs. The next logical extension is the adoption of student based budgeting.

Student based budgeting has been used in large districts, and should be considered as a state-level initiative. Such a system would end the current system of aid streams and formulas and adjustments, which together are so complex very few people understand how education funding works. Student based budgeting relies on the idea that it costs a certain amount of money to provide an adequate education, and that with adjustments for high-risk or high-need students, and adjustments for high cost areas, it is possible to fund schools by having this amount of funding follow each child enrolled. The goal is to support continuous improvement by funding students, not programs or existing structures and systems, and allowing schools or districts ample flexibility over how the funds are used.

An excellent discussion of this concept can be found in the report *Facing the Future: Financing Productive Schools* from the Center on Reinventing Public Education, and I urge all members of the Commission to read it and consider the implications for New York.³ The report concludes:

“The main message of this report is that states cannot both continue funding schools and regulating schools in traditional ways *and* know what is the right amount of money to spend or how to spend it. State leaders have a fundamental choice to make: whether to continue tying funds to administrative structures, employee groups, and programs or to give schools money in ways that allow experimentation and continuous learning about

³ *Facing the Future: Financing Productive Schools*. Paul T. Hill, Marguerite Roza, James Harvey. The Center on Reinventing Public Education, December 2008. http://crpe.edgateway.net/cs/crpe/view/csr_pubs/251.

what is possible given many alternative uses of funds and what works in different situations.”

Another use of the “money follows the student” logic that would reduce waste, and has the potential to boost student outcomes, is to implement student savings accounts for high school and college. If a student drops out or takes a break from school, the money is put away in a savings account in their name, to be accessed if they choose to re-enter the education system at an approved remedial or GED program, technical training program, or academic institution. The key is that the student and their parents control their educational spending account as long as the funds are used for qualified educational expenses. It is understandable that schools complain about students who are not ready to learn and underperform as a result. Schools let these students drop out, especially if they disrupt the learning of others. The district should agree to immediately let the funding go with the student (to his or her account). This approach has the added advantage of encouraging students later in life to complete a program and ideally reach a favorable educational outcome.

Conclusion

Again, I’d like to express my appreciation to the Governor and to the members of the Commission. It is wise to address these issues before we reach an absolute crisis point, and we believe there is incredible potential for meaningful reform to our public education system. It is my hope that the charter school sector will be strengthened as a result of the Commission’s recommendations, and that the charter model can offer tools to be applied on a broader scale to benefit the entire public education system in the Empire State. We remain available to discuss any of these ideas or answer questions at any time.

Chart 1
Charter School Performance Trends
Comparison to NYS Total Public and Charter School Host Districts

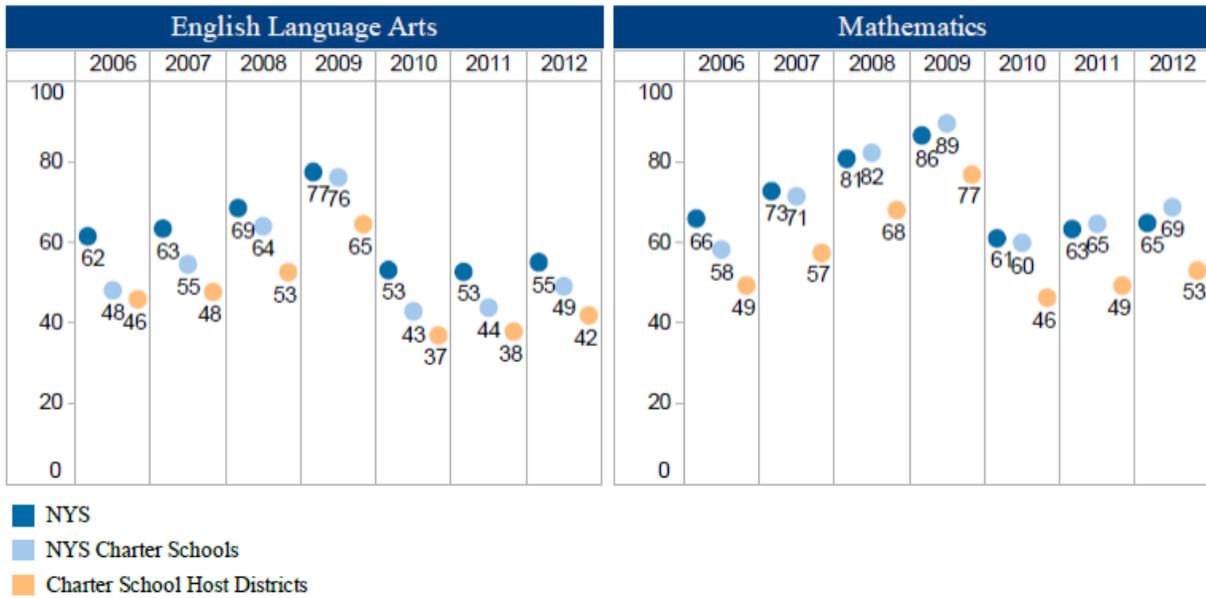
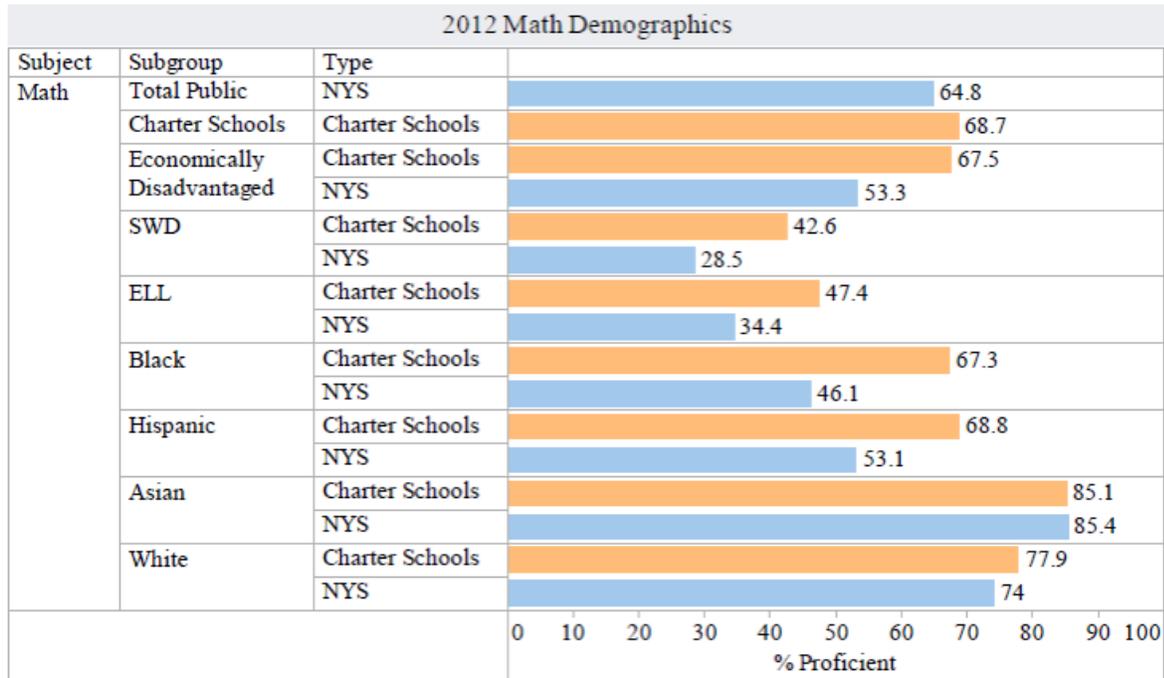


Chart 2
2012 Demographic Breakdown
 Comparison between NYS Total Public and NYS Charter Schools



■ Charter Schools ■ NYS

