

Recommendations

Pursuant to §2857(4) of the Education Law, the Board of Regents shall include in this report “recommendations to modify, expand, or terminate [the charter school] approach.” Those recommendations are described below.

Recommendations to Expand

With respect to expansion, by the submission date (December 31, 2003) for the five-year report, it is virtually certain that the number of charter schools approved will not have exceeded 60. Since 7 of those 60 have been conversion charter schools, the total number of new charter schools created under the 1998 statute is 53. Indeed, even if all the charter schools that have been approved and are scheduled to open by Fall 2004 actually open, there would still be only 51 operational, new charter schools. These numbers and projections, considered along with the pattern of application submissions, do not support a recommendation to expand the charter schools approach to allow for raising the ceiling on the number of allowable new charter schools. The only proposed modification (see below) would be to allow district boards of education, acting in their capacity as charter entities, unlimited creation of new charter schools.

Recommendations to Terminate

There is no basis for recommending the termination of the charter schools approach. Cause for termination would have had to reside either in evidence of widespread fiscal irregularity, widespread academic failure, or substantial impact on the educational viability of school districts. While a few charter schools have struggled financially and some have not excelled academically, there is no evidence of widespread fiscal irregularity or academic failure. Regarding the effect of charter schools on school districts, there is no case to be made that the educational viability of any school district has been compromised solely because of the financial burden of a charter school.

Some charter schools have been less successful with their students than other charter schools. However, in general the charter schools have not been educational failures. The appropriate context for dealing with academically unsuccessful charter schools is the renewal process. The statute provides a remedy for educationally unsound charter schools: non-renewal or revocation of their charters. If some charter schools have fared poorly on the educational front, this should surface during the charter renewal process. No charter school that has failed educationally over the course of four to five years should be given an opportunity to experiment with children’s learning for five more years. The challenge for the renewal process will be the borderline charter schools, those that have shown modest improvement but have not inspired great confidence educationally. None of this addresses the case for recommending the termination of the charter schools approach.

Recommendations to Modify

It is recommended that the charter school approach be modified. The analysis of charter school fiscal data, charter school student academic performance data, and operational experience provide the bases for the recommendations below. Department staff are available to further discuss these recommendations and provide more detail on how they might be operationalized.

Application Process

1. §2852(1) of the Education Law should be amended to require the submission of applications by July 1 of a year for action by the charter entity on or before January 1 of the succeeding calendar year. This will allow the charter entities more time to interact meaningfully with the applicants to reach a decision regarding approval, and will also provide earlier notification to districts regarding the possible establishment of a charter school within their boundaries.
2. §2852(2)(c) of the Education Law should be clarified to describe under what circumstances preferences might be given to students who are at-risk of academic failure. This would help to better describe the characteristics of an “at-risk” student rather than relying solely or primarily upon poverty measures.
3. §2852(3) of the Education Law should be amended to allow for the administrative disapproval of unacceptable applications without formal action of the charter entity. This would allow for a more timely review and decision-making process, and would alleviate the need to take up meeting time with routine matters. The charter entity would be informed monthly of all such actions being taken.
4. §2852(5-a) of the Education Law should be amended to allow the Board of Regents 120 days to review and approve proposed charters submitted by other charter entities. This would allow for a more meaningful interaction between the charter entities as well as provide sufficient time for the review process itself.
5. §2852(7) of the Education Law should be amended to provide the Commissioner of Education with the discretionary authority to approve non-material changes to existing charters as recommended by any charter entity. This will allow for emergency action to be taken and will also alleviate the need to take up meeting time with non-material matters.
6. §2854(2)(b) of the Education Law should be amended to provide that, in New York City, the student’s district of residence would be the Community School District in which s/he resides.

Conversion Process

1. §2851(3)(c) of the Education Law should be amended to require that a Board of Education, when acting in its capacity of a charter entity, enter into a memorandum of agreement with the school before its conversion, to define the support and the services that will be provided by the Board to the charter school. It should also specify any agreements that have been reached regarding facilities, disposition of supplies and equipment, and personnel issues such as pension benefits. This will help to alleviate confusion after the fact and will more clearly describe ahead of time the roles and responsibilities of all parties.
2. §2851(3)(c) of the Education Law should be further amended to allow the Commissioner of Education to promulgate regulations describing the process by which the parents or guardians of a majority of the students then enrolled in the existing public school shall vote on the issue of conversion. This will help ensure that consistent processes are enacted to provide for a fair and meaningful vote.
3. §2856 of the Education Law should be amended to clarify the extent to which the district of location, in the case of a conversion charter school, can provide services to charter school students and claim State aid for those services, as if the students were enrolled in a district-operated program. This will help to clarify requirements and assist districts and charter schools to operate in a fiscally sound manner.

Renewal Process

1. §2851(4) of the Education Law sets forth the current process for the renewal of charters. Charters may be renewed for a term of up to five years. It is recommended that this portion of the law be amended to allow for charters to be renewed for up to ten (10) years. The discretion for the actual length of the renewed charter should remain with the charter entity. This will allow successful charter schools to more successfully negotiate leases, loans, and lines of credit when seeking to expand their facilities. The charter entities would maintain their right and responsibility to oversee and monitor the continued educational and fiscal soundness of the schools, and to require corrective action as necessary. The Department would also maintain its role as the ultimate overseer of all public schools.

Financing of Charter Schools

1. §2853(1)(d) and §2853(3)(b) should be amended to allow charter schools access to financing of the construction or renovation of facilities through the Dormitory Authority of the State of New York, including the ability to pledge or assign monies provided under §2856.
2. §2857(2)(c) and various other provisions of the Education Law should be amended to make charter schools eligible for certain State categorical aids, such as limited

English proficiency aid and transportation aid, as they relate to services provided to students by the charter school, directly or by contract.

3. §2856(1) of the Education Law and Commissioner's Regulation 119.1 set forth the current process for the financing of charter schools. This has been perhaps the most contentious area surrounding charter schools. While the Legislature correctly determined that public school districts were not entitled to keep certain State aid funds for students whom they were no longer educating, it appears that other measures should be taken to help initially offset the financial impact of charter schools on a district. It is recommended that the Legislature annually fully fund a Charter Schools Impact Fund to be administered by the Commissioner of Education. Regulations would be promulgated for this program. Criteria to determine the initial and on-going eligibility of each district would be set.

One method would be to use the percent of district students attending charter schools as a threshold measure to determine eligibility for financial assistance. Each affected district would then be eligible to receive financial assistance on a sliding scale (relative to the projected impact; not a dollar-for-dollar reimbursement) for a maximum of three years, and on a decreasing basis for each of those three years. No funds would be provided to an affected district after the third year. Each district would thus have three years to plan for and adjust to the financial impact of having resident students attend charter schools. This would not be retroactive but would be intended for districts with charter schools commencing operation or significantly expanding in the 2004-05 school year. Any district that has had resident students attending an existing charter school for the 2001-02, 2002-03, and 2003-04 school years would not be able to claim those students under this program, since they have already had three years to adjust their operations.

The first per-pupil payment to a charter school on July 1st would trigger the first such impact payment to an eligible district, to lessen the need for borrowing.

4. §2856(2) of the Education Law should be amended to allow the Commissioner of Education to impose a financial penalty or other sanction upon a school district for its persistent failure to pay monies owed to charter schools. Commissioner's Regulation 119.1 would also be amended to reflect this proposed change in the law. This will help to ensure timely payments to the charter schools. If the districts dispute the enrollment figures, they must use the complaint procedure described in §2855(4) of the Education Law.
5. The current method for determining the level of per pupil payments to charter schools should be reviewed by the Legislature to determine if differential funding by grade level would be more appropriate, and if so, the formula by which such determinations would be made.

Facilities

1. §2853(3) of the Education Law should be amended to require charter schools to adhere to the Department's health, sanitary, and fire safety requirements. This would not be retroactive but would pertain to all charter school applications approved after February 1, 2004 for charter schools that seek to commence instruction in September 2005.

Charter School Operation

1. §2856 and §1950 of the Education Law should be amended to provide Boards of Cooperative Educational Services (BOCES) with the authority to provide the same services to charter schools, at cost, as they do for public school districts. This will allow charter schools to operate in a more efficient manner, and will also provide BOCES with the ability to provide services to new customers.
2. §2857(2)(c) should be amended to provide that the date for the receipt of financial statements and audits is October 1, in order to coincide with the due date for other public schools. This will help to streamline the audit review process.
3. The current special education IEP service delivery and funding requirements should be reviewed to determine a more cost efficient and programmatically effective system that allows students with disabilities full participation in charter school programs.