



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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Office of the State Comptroller

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Lynn Canton
Deputy Comptroller

The Honorable H. Carl McCall
Comptroller
N.Y.S. Department of Audit and Control
110 State Street
Albany, NY 12236

Dear Comptroller McCall:

In accordance with the provisions of Section 170 of the Executive Law, the State Education Department ("the Department") provides the following responses to the recommendations contained in the Office of the State Comptroller's Final Audit Report (2001-S-22) on the policies and practices of the Department and State University of New York for reviewing applications and monitoring operations for charter schools ("the final audit report").

Recommendation #1. *For the Act's requirement for evidence of adequate community support and an assessment of the projected programmatic and fiscal impact of the school on other public and nonpublic schools in the area, establish consistent, formal guidance and criteria for applicants and reviewers to use, respectively, in the charter school application process. Document applicant compliance with this guidance and criteria.*

We agree, in part, with the recommendation. The Department has established criteria on the issues of community support and programmatic and fiscal impact and will continue to document compliance therewith. With respect to community support, the Board of Regents Charter School Applications Technical Assistance Advisory provides the following guidance:

"Section 2851(2)(q) of the statute provides that the application must contain evidence of adequate community support for and interest in the charter school sufficient to allow the school to reach its anticipated enrollment. Although it is appropriate to include general letters of support for the charter school from community leaders and members, such letters of support are not sufficient. The statute requires evidence of interest in the charter school sufficient to reach its anticipated enrollment. Strong evidence of such support are the signatures of parents of children who would be eligible to attend the charter school affirming

that such parents have an interest in sending their children to the proposed charter school, and listing the current grade(s) for each of their children.”

The final audit report suggests that rigid criteria be promulgated. For example, the final audit report suggests that the parental signatures provided in support of the charter school should account for an enrollment total at least equal to the planned enrollment stated in the charter application. We believe that promulgating rigid criteria is not advisable. The type of community support necessary to show that a charter school will reach its anticipated enrollment will inevitably be different for different types of charter schools. For example, a proposed conversion charter school is required, pursuant to Education Law §2851(3), to provide evidence that the parents of a majority of the students of the existing public school have voted in favor of converting the school to a charter school. In light of this requirement, and the likelihood that most students who were enrolled in the public school prior to conversion will also enroll in the charter school, it may not be necessary for the school to provide substantial additional evidence of community support. As another example, it may be appropriate to require a greater number of parent signatures for a charter school that proposes to have a special emphasis (e.g., performing arts, sports) that may not be of interest to the general population.

The charter school application review process is still relatively new and the first Board of Regents “direct applicant” charter schools did not open until September of 2001. We anticipate that the Board of Regents analysis of community support will evolve based on our experiences to date and in the future. For example, we will have the opportunity to examine the correlation between charter schools’ difficulty or ease in meeting enrollment figures with the evidence of community support shown in the application. The establishment of more rigid criteria concerning “community support” is inconsistent with the flexibility needed to allow our community support analysis to evolve.

In addition, where an administrative agency prescribes a fixed, general principle to be applied without regard to other facts and circumstances, it must do so through agency rule making. See, Matter of Roman Catholic Diocese v. New York State Dept. of Health, 66 N.Y.2d 948, 951 [1985]. However, Education Law §2856(5) provides that the regulatory power of the Board of Regents and the Commissioner of Education does not extend to charter schools except as specifically provided in Article 56. Therefore, it is appropriate to establish flexible guidelines for various factors to be considered in analyzing community support, rather than a fixed requirement that would result in automatic denial of a charter school application without regard to other facts and circumstances.

With respect to the potential programmatic and fiscal impact of a charter school on a school district, the Board of Regents generally considers the following factors: the likelihood that students of the charter school will come from one school district or a variety of school districts; whether the districts can have economies of scale when students transfer to charter schools; the impact on the school district’s budget; the cumulative effect of multiple charter schools in a district; and any unique circumstances. No specific weight is assigned to any of these factors, and other factors may also be considered. In addition, the Board of Regents engages in heightened scrutiny of the fiscal impact issue when the anticipated impact would exceed five percent of the school district’s budget. As is the case for community support, we do not believe that rigid standards for analyzing the potential programmatic and fiscal impact of a charter school are advisable.

As noted in the final audit report, in its Annual Report to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly on the status of charter schools in New York State, the Board of Regents recommends that the Charter Schools Act be amended to include a definition of fiscal impact that will assist a charter entity in determining when such an impact would be too great to allow. For the reasons discussed above, we believe that such a definition must come in the form of an amendment to the Charter Schools Act and not from regulations or guidance issued by the Department.

Recommendation #2. *Establish formal guidelines to ensure school district and community reaction to a proposed charter school is properly considered during the application review and approval process, including in the final decisions by the Regents and SUNY Trustees.*

We agree, in part, with the recommendation. We have always considered, and will continue to consider, school district and community reaction as part of the review and approval process. The charter application summaries prepared for the Regents contain an entry on community support, which includes summary comments of any input we receive from districts and members of the community. Because we already have procedures in place to fully consider and apprise the Regents of school district and community reaction, we do not believe there is a need to promulgate additional “formal guidelines” concerning these procedures.

Recommendations #3 and #4.

These recommendations are directed to the State University of New York.

Recommendation #5. *Require charter schools to report student enrollment on time as specified by the Regulations of the Commissioner of Education.*

We agree with the recommendation. We have required, and will continue to require, charter schools to report student enrollment on time as specified by the Regulations of the Commissioner of Education. Our procedure for charter schools that do not submit timely bi-monthly reports has been to send letters reminding the charter schools of the requirement. The charter schools appear to have met their obligations to notify districts via the bi-monthly enrollment reports. We have received no notification from districts regarding delinquent enrollment reports.

Recommendation #6. *Review charter school student enrollment data and require that errors be corrected.*

We agree with the recommendation. We have reviewed, and will continue to review, charter school student enrollment data and require that errors be corrected.

Recommendation #7. *Promptly provide charter schools with written notification of deficiencies found during site visits and require and obtain timely written charter school responses about corrective actions taken to address such deficiencies.*

We agree with the recommendation. Some reports were delayed last year because charter schools have been in operation for only a short time and the remedial actions that were developed to

respond to issues found on the visits were precedent setting and needed extensive programmatic and legal review. The Department expects to be more timely in reporting findings from site visits made this school year.

As noted in the final audit report, on the date of the visit, an exit conference is held with the principal of the charter school, at which the preliminary visit findings are shared. The written report simply confirms these findings and identifies specifically the remedial actions required.

In addition, the Department will require charter schools to submit progress reports reflecting the remedial actions they have made. The frequency of these progress reports will depend on the nature of the remedial actions.

Recommendation #8. *Take steps that will require the Charter Schools Unit and the Institute to coordinate their respective site visit schedules.*

We agree with the recommendation. The Charter Schools Unit, the Charter Schools Institute, and the New York City Department of Education's Office of Charter Schools formed a joint task force to address issues surrounding the monitoring of charter schools. Progress in this area has already been made. During the 2001-2002 school year all New York City charter school visits were conducted as collaboration between the State Education Department and the New York City Department of Education's Charter School Unit. In addition, several SED monitoring visits were done in coordination with staff from the SUNY Charter Schools Institute.

Recommendation #9. *Provide written approvals for student enrollment that varies from charter agreement thresholds.*

We agree with the recommendation. We have provided, and will continue to provide, prior written approvals for student enrollment that varies from the charter agreement thresholds.

If you need additional information regarding charter schools outside of New York City, please contact Dr. Darlene Mengel, Supervisor of the Charter Schools Unit, at 518-474-1762.

For charter schools located in New York City, please contact Ira Schwartz, Coordinator, at 718-722-2796.

Sincerely,



Richard H. Cate

cc: Darlene Mengel
Ira Schwartz