

NYC Charter Schools in the 2014 New York State Budget Legislation: A Preliminary Overview

March 29, 2014

Governor Cuomo and leaders in the Senate and Assembly have reached an agreement on a package of budget legislation for enactment on Monday. The new laws, if enacted (as is expected), would provide for the following changes and provisions.

1. Structured Increase in Per-Pupil Funding

Charter school per-pupil funding, which had been held frozen for three years, will increase by \$250 in 2014-15 (to \$13,777 in NYC); by another \$100 in 2015-16 (to \$13,877 in NYC); and by another \$150 in 2016-17 and 2017-18 (to \$14,027 in NYC) – but only if the per-pupil funding in each of these years would be higher than the per-pupil funding for this year (\$13,527 in NYC).

This is a modest increase of about \$70 over what the funding formula would have provided in 2014-15, but possibly less than the formula would have provided in the out years. However, please keep in mind that negotiation over education funding takes place on an annual basis in Albany.

2. Ban on Rent for NYC Charter Schools

New York City is required to allow any charter school that is co-located or will be co-located to use its co-located space without cost or charge of any kind.

3. Protection for Previously Approved Co-Locations

After April 1, 2014, any co-location approval that has not been previously changed cannot be amended or revoked and will be implemented unless the charter school consents or loses its charter. This means that the mayor's previous decisions to not co-locate or amend the co-location of four charter schools will remain undisturbed. However, those charters will be eligible for rent assistance per below though it does not seem, absent mayoral intervention, that the two schools that had been scheduled to open will be able to open in 2014 or receive the rent assistance funding (described below).

4. Co-Location or Rent Assistance Funding for New and Newly Expanding Schools in NYC

New York City charter schools that first commence instruction or require additional space due to grade level expansion pursuant to a charter amendment or a new charter after April 1, 2014, must receive either adequate co-located space in the community school district served by the charter school or, prior to 2016, the lesser of (1) the actual rental cost of a lease or (b) an additional 20% of per-pupil funding to be paid towards rent. After 2016, such schools must receive either adequate co-located space in the community school district or the lesser of (a) the actual rental cost of a lease or (b) the maximum amount the state provides the city when it leases a building pursuant to the building aid program to be used for rent.

This provision does not apply to schools which have already commenced instruction in private space and to any grade that such school already has approval to provide per its charter; it will apply to such private space schools however that seek new authority under their charter to expand, e.g., an existing K-5 school seeks and gets approval to expand to middle school grades. It also applies effectively to schools in co-located space that are expanding pursuant to an existing EIS/BUP.

Under this provision, NYC DOE has the right to first make an offer of space. If the charter school does not accept the offer because it deems the space inadequate, then the charter school may challenge the offer via (a) a lawsuit in state court, (b) an expedited appeal to the state commissioner of education or (c) independent arbitration. If the charter school prevails, it can then elect to receive Rent Assistance Funding, or, if it chooses, ask the district for additional space which the district may or may not provide. If the charter school does not prevail, it must accept the space offered.

Finally, this provision is clearly meant to work in tandem with the current siting process provided for under the mayoral control provisions enacted in 2009 and further refined in 2010, e.g., issuance of an educational impact statement, building utilization plan, hearings and final approval by the Panel for Educational Policy.

5. Eligibility to Provide Universal Pre-Kindergarten (UPK) Through a School District

NYC charter schools are eligible to provide UPK through NYC DOE's existing RFP process. If the charter school is not granted authority it may seek authority directly from the state commissioner of education. A charter school's UPK program will be subject to the oversight of its charter entity but must meet all applicable state requirements. Consistent with the Charter Schools Act, which gives the Board of Regents joint oversight over all charter schools, the State Education Department will also have oversight. Students who complete UPK in a charter school may be treated as returning students for purposes of kindergarten admissions. Charter schools are not exempt from UPK regulations concerning teacher certification but such teachers may be exempted under the existing aggregate exemptions given to charters as to certification (30% or five teachers, whichever is less, may be uncertified though otherwise highly qualified).

6. Auditing Power for City and State Comptroller

The NYC Comptroller is authorized to conduct fiscal audits of NYC charter schools, and the New York State Comptroller is authorized to conduct fiscal audits of charter schools located in the rest of the state. For this purpose only, the legislature has deemed charter schools to be political subdivisions. (The Charter Center is exploring the legality of these provisions.)

7. Reversion of Public Assets to School District upon Dissolution

Upon the dissolution of a charter school, and after payment of all debts and obligations, any remaining funds that can be attributed to public funding will be paid over to the school district in an amount that is proportional to the number of students enrolled in the charter school from the district. Private assets can still be turned over to another charter school in the school district, as per current law. In the past all assets could be distributed to another charter school on the election of the school that was being dissolved.