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ECC RESOLUTION TO OPPOSE
AN INCREASE IN THE STATE CHARTER SCHOOL CAP
AND CITY CHARTER SCHOOL SUBCAP

Approved at ECC meeting of February 9th, 2019 by a unanimous vote

The Education Council Consortium (ECC) is a group of parents and community members who have been elected or appointed to serve on District and Citywide Community Education Councils, representing 1.1 million public school students, including children who are receiving special education services and who are Multilingual Learners. The ECC was formed to address issues that affect schools and communities throughout all the boroughs and meets regularly with the Chancellor to help shape, advise, provide feedback and comment on educational policies, visions and goals.

WHEREAS, for the reasons set forth below, the ECC hereby resolves to oppose any amendment to the New York State Charter Schools Act of 1998, the “Law,” that would increase the “Cap” on the total number of Charter schools authorized in New York State or the existing “Subcap” limiting the number of Charters granted in New York City;

WHEREAS, New York State embarked on an experiment to allow 100 publicly funded Charter schools pursuant to the [New York State Charter Schools Act of 1998](#)¹;

WHEREAS, amendments to §2852(9) of the Law in 2010 expanded the statewide Charter Cap to 460 Charters;

¹ https://www.nyccharterschools.org/sites/default/files/resources/NYSCharterSchoolsActof1998_with2014amendments_0.pdf

WHEREAS, amendments to §2852(9) of the Law in 2010 also limited additional Charters in New York City to 114; 57 to be issued by the NYSED Board of Regents (BOR) and 57 to be issued by SUNY;

WHEREAS, further amendments to §2852(9) of the Law in 2015 recognized that New York City was becoming oversubscribed by Charter schools and created a Subcap which limited the number of Charters granted in New York City after July 1, 2015, to an additional 50 Charters and *no more*. Also in 2015, 22 previously surrendered Charters were made available for reissue by SUNY or BOR;

WHEREAS, according to the [NYSED Charter School Directory](#)², 365 Charter schools have been approved to operate in New York State. As of January 4, 2019, 99 Charters remain available for issue in New York State outside of New York City;

WHEREAS, according to the [NYSED Charter School Office](#)³, no Charters remain under the Charter Subcap and only seven Charters remain available of the 22 Charters revived in 2015;

WHEREAS, New York City, with only 39% of the state's students but 71% of the state's Charter schools, houses more than its fair share of Charter schools and faces an outsized impact from the Charter experiment;

WHEREAS, §2852 (9-a)(b) of the Law clearly states the intent of the Charter experiment is to permit Charter schools *in a region or regions where there may be a lack of alternatives, and access to charter schools would provide new alternatives within the local public education system that would offer the greatest educational benefit to students*;

WHEREAS, the NYSED Charter School Directory lists 260 Charter schools in New York City. This constitutes at least 71% of Charter schools statewide and does not include at least 22 new Charter schools approved since October 4, 2018, of which 20 will reside in New York City (as compiled from SUNY press releases and BOR minutes);

WHEREAS, New York City is oversaturated with Charter schools. The [NYSED](#)⁴ currently lists 97 Charter schools in Brooklyn, 77 Charter schools in the Bronx, 53 Charter schools in Manhattan, 27 Charter schools in Queens, 6 Charter schools in Staten Island, and more to open in all boroughs;

² <http://www.p12.nysed.gov/psc/csdirectory/CSLaunchPage.html>

³ <http://www.p12.nysed.gov/psc/facts/nyscsfactsheet1042019.pdf>

⁴ <http://www.p12.nysed.gov/psc/csdirectory/county/map.html>

WHEREAS, New York City, with at least 71% of the state's Charter schools on top of a bounty of public and private options, is demonstrably not a region with a lack of alternatives as originally contemplated by §2852 (9-a)(b);

WHEREAS, for perspective, nearby Suffolk County has only 1 Charter school and rural counties, such as Schoharie County, Tioga County, Yates County, Herkimer County, and Orleans County have no Charter schools;

WHEREAS, there is no need to increase the statewide Cap to serve these counties because there is ample room under the current Cap to provide Charter school options to rural and suburban communities;

WHEREAS, Charter schools are an unproven experiment that continues to grow, predominantly in New York City, while other parts of the state with far fewer local alternatives go ignored;

WHEREAS, Charters schools siphon substantial public funds and resources away from public schools through co-locations offered to Charter schools rent-free or rental assistance on costly private facilities;

WHEREAS, pursuant to amendments to §2853 of the Law in 2014, the city school district *must offer at at no cost to the Charter school a co-location site in a public school building or offer the Charter school space in a privately owned or other publicly owned facility at the expense of the city school district and at no cost to the Charter school*;

WHEREAS, New York City spent approximately [\\$44 million](#)⁵ in fiscal year 2018 to cover the quickly growing cost of Charter schools operating in private facilities;

WHEREAS, a Cap or Subcap increase under amendments to §2853 of the Law in 2014, would divert even more public funds and space resources away from public schools;

WHEREAS, Charter schools lack sufficient oversight and accountability by design;

WHEREAS, Charter schools in New York City are classified as District 84, which is not governed by a superintendent;

WHEREAS, Charter Management Organizations (CMOs) operate free from public oversight and FOIL;

⁵ <https://www.chalkbeat.org/posts/ny/2018/03/02/new-york-city-charter-school-rent-costs-to-jump-63-percent-this-year/>

WHEREAS, a Cap or Subcap increase would further weaken public accountability by placing even more public funds and space resources under private CMO management;

WHEREAS, Charter Management Organizations (CMOs) run multiple Charter schools and effectively act as parallel independent school districts that operate free from public oversight;

WHEREAS, Charter school advocates, such as the [New York City Charter School Center](#), encourage this structure through controversial interpretations of the Law (as amended in 2010). The organization advised Charters to form Charter school districts in 2010,

The legal details are unclear, but by the Charter Center's reading of the law, two or more charter schools can now choose to merge into a single school, managed by a single board - but operating multiple campuses with multiple charters. In other words: a charter district⁶;

WHEREAS, a Cap or Subcap increase would encourage CMOs to prioritize their own growth disconnected from actual district need, through this Charter district structure;

WHEREAS, the substantial use of public resources by Charter schools combined with a lack of oversight merits regular financial audits of all Charter schools and their CMOs through the state or city comptroller with enforced recommendations;

WHEREAS, according to §2854(1)(c) Charter schools shall be subject to audit either by the state or the city comptroller;

WHEREAS, to date we are only aware of four audits of Charter schools performed by the NYC Comptroller, ever. Moreover, it is unclear whether Charter schools have complied with the recommendations of those audits;

WHEREAS, this is clearly inadequate with 260 Charter schools in operation in New York City;

WHEREAS, when the NYC Comptroller conducted an audit of Success Academy in 2016, the Charter school objected to the conduct of the audit, disagreed with most of the findings, and did not respond to any of the [audit recommendations](#)⁷;

WHEREAS, the lack of transparency inherent in CMOs can make it difficult to know if funds intended for special education services are actually being allocated to IEP students. It can also be

⁶ http://www.nyccharterschools.org/sites/default/files/resources/guide_to_new_charter_law_updated_092910_0.pdf

⁷ <https://comptroller.nyc.gov/reports/audit-report-of-success-academy-charter-schools-nycs-oversight-of-financial-operations/>

impossible for a Charter school's own board to know how much per-pupil funding goes to the student or to the CMO;

WHEREAS, any further Cap or Subcap increase under these circumstances would represent a betrayal of the public trust and privatization of public resources by CMOs;

WHEREAS, there has been no independent system-wide evaluation of Charter schools and their impact. Such an evaluation should not be limited to the issues raised herein and should occur before considering any further Cap or Subcap increases;

WHEREAS, an independent evaluation should assess the actual programmatic and fiscal impact of Charter schools on other local public and nonpublic schools before considering any further Cap or Subcap increase. According to §2851(2)(q) of the Law, Charter applicants shall provide *an assessment of the projected programmatic and fiscal impact of the school on other public and nonpublic schools in the area*. This projection should be compared to the actual impact;

WHEREAS, an independent evaluation should assess the actual fiscal impact of co-locations and rental assistance to Charter schools on other local public and nonpublic schools pursuant to §2853, as amended in 2014. New amendments to §2853 regarding facilities should be considered before any further Cap or Subcap increase;

WHEREAS, an independent evaluation should analyze the actual academic impact of Charter schools over entire regions (districts, counties, and cities) before considering any further Cap or Subcap increase;

WHEREAS, an independent evaluation should analyze the actual social impact of Charter schools over entire regions (districts, counties, and cities) particular to issues of school segregation and diversity before considering any further Cap or Subcap increase;

WHEREAS, an independent evaluation should analyze the extent to which a Charter school's performance arises from the school's unique curriculum or management versus performance increases that arise from educating self-selecting populations, rather than the entire student population;

WHEREAS, an independent evaluation should also analyze the academic and social impact of Charter schools on their students;

WHEREAS, an independent evaluation should examine and develop a system to monitor Charter school enrollment and retention practices;

WHEREAS, an independent evaluation should audit and examine the practice of waitlists, which are neither an accurate assessment of district need nor an adequate reflection of available local alternatives;

WHEREAS, an independent evaluation should identify and analyze any educational innovation(s) employed by high performing Charter schools;

WHEREAS, any educational innovation(s) deemed successful and appropriate should be integrated into public schools system-wide; and

WHEREAS, after such an independent evaluation, poorly-assessed Charter schools should be flagged. Any Charters relinquished due to closure should be revived for new Charter applicants before requesting any further Cap or Subcap increase;

The Education Council Consortium, therefore,

RESOLVES, to propose a five-year moratorium on issuing new Charters in New York City and complete a system-wide impact evaluation by an outside evaluator.

We respectfully ask the Governor, Mayor, Members of the New York State Senate and Assembly, the Schools Chancellor, the New York State Board of Regents, the New York City Board of Education, the Board of Trustees of the State University of New York, and our local City Council Members to support a Five-Year New York City Charter Moratorium and join us in opposing any proposed amendment to the New York State Charter Schools Act that would increase the Charter School Cap or the New York City Charter School Subcap.

New York City has 39% of the state's students and houses 71% of the state's Charter schools. Given this fact, the prospect of a Charter School Subcap increase, requires us to ask—What is the vision for New York City public schools? Any amendment to the Law that enables further Charter growth without an evaluation of impact, is an unmistakable signal that Charter schools are not merely a vehicle for educational alternatives and threaten to put New York City public schools out of business. We ask Albany to impose a **Five-Year New York City Charter Moratorium and perform an evaluation of our existing dual education system** because education policy should create systems that work together to make progress for all New York children—not systems designed to undermine each other.

RESOLUTION PASSED UNANIMOUSLY

CC:

The Honorable Governor Andrew M. Cuomo

The Honorable Mayor Bill de Blasio

New York City Comptroller Scott M. Stringer

New York State Senate Majority Leader Andrea Stewart-Cousins

New York State Assembly Speaker Carl E. Heastie

Education Committee Chair, New York State State Senator Shelley Mayer

Education Committee Chair, New York State Assembly Member Michael Benedetto

New York State Commissioner of Education MaryEllen Elia

New York State Board of Regents Chancellor Dr. Betty A. Rosa, Ph.D.

New York City Schools Chancellor Richard A. Carranza

New York City Council Member and Education Committee Chair Mark Treyger

Deputy Chancellor of Community Empowerment, Partnerships, and Communications

Hydra Mendoza

Department of Education, Charter School Office

SUNY Board of Trustees Chairman H. Carl McCall

SUNY Charter Schools Institute Executive Director Susie Miller Carello

UFT President Michael Mulgrew

CSA President Mark Cannizzaro

NAACP President and CEO Derrick Johnson

AQENY Legislative Director & Statewide Education Advocate Jasmine Gripper