SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

NEW YORK CITY PARENTS UNION; CLASS SIZE MATTERS; NEW YORK COMMUNITIES FOR CHANGE; and LEONIE HAIMSON, NOAH GOTBAUM, STEPHANIE FIELDS, LASHAWN CHERRY, JACQUELINE PEREZ, CHRIS MOSS, AMANDA JACOBS, REGINA TIMBER, JERMAINE BLIGEN, NATASHA HOOPER, CHERYL AND ANGELO BLUE, SHARLENE HALE HALL, AMANDA COLON, ANGELA BALTIMORE, SANDRA E. HARPER, CYNTHIA GRIFFIN, HELENA CLAY, SONYA HAMPTON, ELLIOT WOFSE, HENRY CLEMENTE, YVONE WALKER, CYNTHIA BONANO, FAYE HODGE, and MUBA YAROFULANI, on Behalf of Their Children and Others Similarly Situated,

Index No. 108538-11

Plaintiffs,

– against –

THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK and DENNIS M. WALCOTT, as Chancellor of the City School District of the City of New York,

Defendants.

----------X

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

ADVOCATES FOR JUSTICE
ATTORNEYS FOR PLAINTIFFS
225 BROADWAY, SUITE 1902
NEW YORK, NEW YORK 10007
212) 228-6320

INTRODUCTION

Defendants and Intervenor Defendants served opposition papers at around midnight on September 12, 2011 for the September 15, 2011 hearing on Plaintiffs' preliminary injunction motion. Plaintiffs attempt here to succinctly reply to this opposition, but reserve the right to request supplemental briefing.

ARGUMENT

POINT I

PLAINTIFFS HAVE STANDING TO PURSUE THIS CAUSE OF ACTION

Without any support from the legislative record, Defendants frame Education Law § 2853(4)(c) as a statute designed solely to protect charter schools, which creates a "zone of interest" extending only to each co-located charter school and its district. According to Defendants, parents of public school children in school buildings with co-located charter schools which pay rent in private buildings, and parents of children in a school system which is being deprived of nearly $100 million per year, do not have standing.

In order to establish standing, a party must satisfy a two-part test. First, a petitioner must show "injury in fact," meaning that a petitioner will "actually be harmed by the challenged administrative action." N.Y. State Ass'n of Nurse Anesthetists v. Novello, 2 N.Y.3d 207, 211 (2004). Second, the injury asserted must fall within the "zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted." Id. Notably, in assessing compliance with those requirements, New York courts have "consistently taken a liberal view of standing to bring an Article 78 proceeding." Brodsky v. Friedlander, 191

Misc.2d 459, 461 (Sup. Ct. Erie County 2002) (citing LaSalle Ambulance, Inc. v. N.Y. State Dep't of Health, 245 A.D.2d 724 (3d Dept. 1997).

In Mulgrew v. Board of Education, 75 A.D.3d 412 (1st Dept. 2010), the Appellate Division dealt with a similar argument when the UFT, individual parents, and membership organizations brought suit to challenge the closure of twenty schools. The court held, in part, that the teachers working at the affected schools had standing to sue, even though the statutory violations — inadequate Educational Impact Statements — had nothing to do with employment issues.

New York courts have recognized that educators such as UFT members are "sufficiently affected" for the purposes of standing when governmental action directly impacts the education areas for which they are responsible. See Brodsky, 191 Misc.2d at 460. A similar rule would apply to parents of children in schools affected by actions or inactions violative of a statute requiring the collection of money for use of space in a school building.

The injury asserted — the loss of $100 million to the school system each year — clearly falls within the "zone of interests" sought to be protected by legislation addressed to the finances of the school system, In an attempt to disclaim such a finding, Defendants rely on a narrow assessment of the zone of interests. They argue that the DOE's decision not to collect rent caused a reduction of only a "small percentage of its teacher force" and that the money could be used for other education system enhancements, and that the injury caused by loss of the money is "speculative." Even if this is so, they cannot argue that the loss of $100 million per year has no impact on the children of the parent plaintiffs.

Even if the statute was designed principally to protect the charter schools, and were the "primarily intended beneficiaries" of the law, Defendants cannot seriously argue that the

payment of rent created "secondary beneficiaries" who were within the zone of interest created by the statute. See, e.g., Mahoney v. Pataki, 98 N.Y.2d 45, 51-52 (2002); In re Dental Soc'y of the State, 61 N.Y.2d 330 (dental organization's members, who were also Medicaid providers, were "clearly within the zone of interests" of the Medicaid legislation's overall purpose to provide a comprehensive program of high quality dental care to needy.) For this court to rule otherwise would be contrary to the Court of Appeals holding in Mahoney and belie the plain meaning of "zone of interest," a phrase necessarily more inclusive than merely the "primary intended beneficiary."

POINT II

PRIVATE LITIGANTS HAVE A RIGHT TO PURSUE THIS LITIGATION

For many years, private litigants — parents, teachers, elected officials, and advocacy membership organizations — have pursued litigation to enforce provisions of the Education Law, most particularly the provisions of § 2853, the provision addressed to co-location. The Court of Appeals has consistently held that "the enforcement of a clear constitutional or statutory mandate is the proper work of the courts." Hurrell-Harring v. State of New York, 15 N.Y.3d 8, 10 (2010); Campaign for Fiscal Equity v. State of New York, 86 N.Y.2d 307 (1995); Jiggetts v. Grinker, 75 N.Y.2d 411 (1990); McCain v. Koch, 70 N.Y.2d 107 (1987); Klosterman v. Cuomo, 61 N.Y.2d 525 (1984).

Defendants, without one word of support in the statute's legislative history, assert that § 2853(4)(c) was enacted in order to benefit charter schools and not the public. They rewrite the statute to read that when charter schools contract with school districts for space, "those contracts will be no more than at cost." (Intervenors' Memorandum at 19.) In fact, as we discuss below,

the statutory proscription is in the positive: "any such contract shall provide such services or facilities at cost." This is a direction to the public facility owner to charge the charter school the cost of both the facilities and services.

The Court can best analyze this by comparing the requirement of § 2853(4)(c) with the provisions of § 2856 of the Education Law. Section 2856 sets out the formula for the funding of a charter school by a school district. One could say, as Defendants do here, that the statute was designed to benefit charter schools. Under Defendants' interpretation of the law, if a school district colluded with a charter school and provided more money than the statute required, parents and teachers whose schools were suffering an allocation loss would be unable to go to court to require adherence to the statute. Such a reading of the Education Law is absurd, particularly addressed to parents concerned about a loss of funds in the public part of the school system. Such a circumstance is analogous to § 2853(4)(c).

The argument that the permissive (now mandatory) right to appeal a co-location to the Commissioner found in § 2853(3)(a-5) shows that the legislature intended to foreclose a private right of action under § 2853(4)(c) is equally unavailing. Section 2853(4)(c) has been part of the Education Law for more than a decade. The right to process an expedited appeal to the Commissioner set forth in § 2853(3)(a-5) was added in 2009. Clearly, the legislature was looking to enhance remedies available to affected parties, not limit them.

POINT III

SECTION 2853(4)(C) REQUIRES THAT SCHOOL DISTRICTS LEASE SPACE TO CHARTER SCHOOLS AT COST

Defendants try to stand § 2853(4)(c) on its head in order to get around its requirement that the provision of space and services be at cost.

First they cite the Court's decision in Mulgrew v. Board of Education, 927 N.Y.2d 855, 866 (N.Y. Sup. Ct. 2011), for the proposition that a school district which has a co-located charter school does not have to enter into a contract with the charter school because the statute says that a "charter school may contract with a school district." They fail to note that this Court's interpretation of "may" was reversed by the Appellate Division in Mulgrew v. Board of Education, ___ A.D.2d ___, 928 N.Y.S.2d 269, 274 (1st Dept. 2011) (the word "may" in Education Law 310(7) triggers mandatory exhaustion of remedies), and adopted by this Court in Steglich v. Board of Education, ___ Misc.2d ___, 2011 WL 3557870 (N.Y. County 2011).

More to the point, § 2853(3), just one paragraph earlier, states:

> "2853(3) Facilities. (a) A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building or in any other suitable location. Provided, however, before a charter school may be located in part of an existing public school building, the charter entity shall provide notice to the parents or guardians of the students then enrolled in the existing school building and shall hold a public hearing for purposes of discussing the location of the charter school. A charter school may own, lease or rent its space. For purposes of local zoning, land use regulation and building code compliance, a charter school shall be deemed a nonpublic school." (Emphasis supplied.)

This provision requires that a charter school own, lease, or rent its space, a clear indication that the legislature was not contemplating the donation of space without a lease or agreement by the school district.

The legislature made other provisions which make it clear that they were not contemplating the donation of free space and services by a school district to a charter school — the provision in Education Law § 2856 for funding of schools. Section 2856[1] provides for a per-

[1] Section 2856 states in full: "The enrollment of students attending charter schools shall be included in the enrollment, attendance and, if applicable, count of students with disabilities of the school district in which the pupil

pupil payment to each charter school. Section 2856(1)(a) states that the school district of resident "shall pay to the charter school for each student enrolled ... the charter school basic tuition." Subsection 1(b) also requires the school district (again, the word "shall" is used) to pay to the charter school any federal or state aid attributable to a student with a disability attending the charter school. Finally, the legislature provided at § 2856 that:

> "Nothing in this article shall be construed to prohibit any person or organization from providing funding or other assistance to the establishment of a charter school. The board of trustees of a charter school is authorized to accept gifts, donations or grants of any kind made to the charter school ... however ... no gift may be accepted if subject to a condition that is contrary to any provision of the law." (Emphasis supplied.)

Had the legislature intended to allow additional "gifts" or "donations" from a school district, it would have included "school district" along with the words "person or organization."

Defendants also argue that the Court must presume that the Legislature knew about the BOE's failure to charge rent and that its failure to act amounted to a tacit approval of the interpretation now being defended. Unlike the circumstances in People v. Sherman, 12 Misc.3d

---

resides. The charter school shall report all such data to the school districts of residence in a timely manner. Each school district shall report such enrollment, attendance and count of students with disabilities to the department. The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the school district an amount equal to one hundred percent of the amount calculated pursuant to paragraph f of subdivision one of section thirty six hundred two of this chapter for the school district for the year prior to the base year increased by the percentage change in the state total approved operating expense calculated pursuant to subdivision eleven of section thirty six hundred two of this chapter from two years prior to the base year to the base year; provided, however, that for the two thousand nine--two thousand ten school year, the charter school basic tuition shall be the amount payable by such district as charter school basic tuition for the two thousand eight--two thousand nine school year. The school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this subdivision may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. Payments made pursuant to this subdivision shall be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. Amounts payable under this subdivision shall be determined by the commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter. Such projections shall be reconciled with the actual enrollment at the end of the school's first year of operation, and any necessary adjustments shall be made to payments during the school's second year of operation."

1185 (N.Y. Sup. Ct. 2006), the Legislature, in making its 2009 amendments to the Charter Law made no reference to § 2853(4)(c) or to the practice of not charging rent.[2] Circumstances, then, in Sherman, were quite different than in this case.

Defendants then try to parse the difference between "at cost" and "at actual cost," a phrase used elsewhere in the statute. In fact, the dictionary definition of "at cost" is "at actual cost," and absolutely nothing can be gleaned from the Legislature's use of both terms. Defendants argue that the use of two different terms implies a difference in meaning, but they do not suggest an alternative meaning.

Finally, as to the cost. Contrary to Defendants' efforts to confuse things, Plaintiffs do not reference the IBO's 2010 report — they reference the 2011 report and its addendum, Exhibits D and E. The IBO's 2010 report was modified by revisions to methodology. See IBO Web Blog "Charter Schools Housed in the City's School Buildings Get More Public Funding Per Student than Traditional Public Schools," by Ray Domanico and Yolanda Smith, dated February 15, 2011, annexed to the moving papers as Exhibit E. The IBO determined that the value of the use of public school space for 2009-2010 was $3,007 per student — the difference in funding for charter schools housed in private space and those housed in co-located pubic school space. The Intervenors suggest that, in fact, there is no "marginal cost" because if the charter schools were shut down, the system would simply absorb them, making the $3,007 contribution an expenditure that Defendants would have to spend anyway.

---

[2] Defendants state that they never have used leases in co-locations. Plaintiffs have supplied the Court with the prototype lease which was on the BOE website until this lawsuit was filed.

The annexed May 2010 posting by IBO analyst George Sweeting (see Appendix A) undercuts that analysis — in fact, it is more expensive for the City to educate a student in a co-located public school. That is one of the key points in the IBO's 2011 report.

But that is not the point. Few of the self-serving affidavits filed by Intervenors say that having to pay rent would result in a shutdown; most predict a loss of staff — a circumstance plaguing the public schools this year with the loss of 2,500 teaching positions due to attrition. These schools are required, when applying for a charter, to "demonstrate the capacity to ensure acquisition and availability of appropriate facilities." See Appendix B, the State Education Department's Frequently Asked Questions section of its 2011 Charter School Application Kit. All that has happened, frankly, is that the BOE's policies have enabled co-located schools to hire extra teachers and provide more equipment for their students. The subsidy we complain about lies at the heart of the inequities in various school buildings that fuel the opposition to co-location. These inequities, and the rent subsidy which the 2011 IBO Report revealed, was never the intention of the Legislature.

POINT IV

THE EQUITIES FAVOR PLAINTIFFS

In Campaign for Fiscal Equity v. State of New York, 100 N.Y.2d 893 (2003), the Court of Appeals found that the State had violated a constitutional mandate to make available a "sound basic education" to all children by establishing an education financing system that fails to afford New York City public school children the opportunity for a meaningful high school education. The Court principally found that New York City schools have excessive class sizes, which negatively affect learning. The Court affirmed the trial court's conclusion that there was a "causal link" between the present funding system and the poor performance of City schools, that

increased funding can provide better teachers, facilities, and instrumentalities of learning, and that such improved inputs yield better student performance.

Charter schools should not be in business if they are as marginal as some of the affidavits imply. They could not assume the availability of free space when they initially applied for their charters, and they should always be ready for the possibility that the co-location process might not result in a co-location in a given year. The New York City public schools sustained an overall budget cut this year, without loss of students, while the budget for the charter schools increased – before taking the unlawful rent subsidy we complain about into account. It is not speculative that $100 million would vastly cut into the reduction in the number of teachers. The Court can take judicial notice that the Mayor, in announcing his budget, sought to make up for the BOE's budget shortfall solely by laying off teaching staff. If $100 million was restored to the BOE budget and it decided to use it to hire a bigger army of bureaucrats at Headquarters, it would have a new lawsuit on its hands.

CONCLUSION

For the reasons stated herein and in Plaintiffs' initial brief, the preliminary injunction should be granted.

Dated: New York, New York
September 14, 2011

ADVOCATES FOR JUSTICE
Attorneys for Plaintiffs

By: _____
Arthur Z. Schwartz
225 Broadway, Suite 1902
New York, New York 10007
(212) 228-6320

APPENDIX A

Skip to content Skip past content

IBO Web Blog

With Rising Enrollment Charter School Spending Increases, Shrinks for Other Public Schools

Posted by George Sweeting, May 26, 2010

Buried amidst the bleak news for city schools in the Mayor's Executive Budget there is one spending category that is growing at a rapid clip: funding for charter schools. And because of the way charter school funding is mandated, it grows proportionately with enrollment even while the budget for traditional public schools, which also have growing enrollment, is shrinking.

The Department of Education (DOE) projects charter school enrollment to grow by 9,400 students next year, up from 30,500 this year—an increase of 30.8 percent. This enrollment growth reflects the planned opening of 29 new charter schools for September 2010, plus the addition of new grades to existing charters as they gradually expand towards their planned grade span. Enrollment in traditional public schools is also forecast to increase next year by 11,600, although in percentage terms the growth is much less (1.2 percent). In the case of charters, enrollment growth results in additional spending by the education department to maintain per capita support. For traditional public schools, other than a broad maintenance of effort requirement for total expenditures and mandates to provide some specific services, there are no explicit requirements to increase spending in line with enrollment and thus per capita spending will fall.

Under the state's charter law, New York City, as the local school district, must provide charter operators with a flat per student amount for each student at a charter school. The budget assumes that amount is unchanged from its 2010 level of $12,443. (See "Comparing the Level of Public Support: Charter Schools versus Traditional Public Schools" for a discussion of additional resources that the city provides to charter schools beyond the mandated per student payment.) Thus, the enrollment growth increases the identified cost of charter schools in the education department budget by $117 million. The cost of providing mandated special education services to charter school students is also expected to increase by about $10 million this year, which brings the required charter school expenditure for the DOE to $545 million, an increase of 30.4 percent over the amount for 2010.

That $127 million in increased charter school expenses has to be absorbed in a proposed overall Department of Education budget that is virtually unchanged from this year. The budget for school year 2010-2011 shows year-over-year reductions in state and federal aid, and an increase in city support for the DOE that is just enough to offset the loss in state and federal funding, despite growing enrollment and mandated costs, including charter payments. As a result, the portion of the DOE budget used for traditional public schools (i.e. subtracting spending for charters and nonpublic schools from the total DOE budget) will fall next year from 90.2 percent to 88.7 percent.

Looking just at the traditional public school part of the DOE budget, spending will decline by $285 million (1.7 percent). The combination of a smaller budget and higher enrollment results in a $475

(2.8 percent) reduction in per student spending for traditional DOE public schools.

So it is clear that charter schools' guaranteed adjustment for enrollment growth means that the cutbacks in the education budget has a smaller effect on charters than on traditional public schools. But does that mean that the budget cuts for traditional public schools are greater because of the shift of more money to charters? That depends on how much it costs to educate each additional student in the regular DOE schools—the marginal cost of a student—which is different from the average or per capita cost.

Suppose the increased charter school enrollment (9,400) for next year were instead educated in DOE traditional schools. More students would add to the cost pressure on the DOE budget for traditional schools, but there would also be potentially up to $127 million in additional resources available.

Assuming the additional money was allocated to the traditional public schools, this would likely have a somewhat smaller effect on classroom instruction spending—even with the higher enrollment—than will result from shifting those students and their funding to the charter schools. This is because the *marginal* cost of adding one student to the system is almost certainly lower than the *average* cost of educating a student or even the per capita charter school payment ($13,654, counting the required special education services), although how much lower is uncertain.

Operating cost adjustments in response to lower enrollment can take time. The loss even of thousands of students in a single year will not immediately lower the cost of running centralized departments such as human resources, information technology, food and supply warehousing, building maintenance, and the chancellor's office. Even at individual schools, shifts of a handful of students may not significantly alter a school's budget until the difference is large enough to trigger the loss or addition of a class section. While these adjustments can be expected to eventually occur, they almost certainly could not occur fast enough to offset the effect of next year's shrinking DOE budget for traditional public schools.

Comments closed | Trackback URI

Trackback/Pingback (1)

1. Remainders: Four ways to do layoffs, and no clear favorites | GothamSchools on Wednesday, May 26, 2010 at 6:09 pm

   [...] school funding is rising while other school budgets are falling; both have growing [...]

APPENDIX B

APPENDIX B1: FREQUENTLY ASKED CHARTER SCHOOL QUESTIONS

DEFINITIONS

What is a charter school?
A charter school is a public school. It is financed through public local, state, and federal funds but is independent of local school boards. The authority of the charter school to provide education is through a "charter," a type of contract, between the charter school board of trustees and its chartering entity. Charter schools typically focus on innovative curricula, a new approach to school organization, or some other features that differentiate them from traditional district schools. Students may choose to attend any charter school and are accepted through an application procedure.

What are the purposes of charter schools?
Charter schools as defined in New York may be created to:

- Improve student learning and achievement;
- Increase learning opportunities for students who are at-risk of academic failure;
- Encourage the use of different and innovative teaching methods;
- Create new professional opportunities for educators;
- Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
- Provide schools with a method to change from rule-based to performance-based accountability systems.

APPLYING FOR A CHARTER

Who can open a charter school in New York?
An application to establish a charter school may be submitted by teachers, parents, school administrators, community residents or any combination thereof. Such application may be filed in conjunction with a college, university, museum, educational institution, or not-for-profit corporation, but may also be filed independently. A charter school may be authorized to operate for a maximum duration of five years, and may be authorized to have a planning year before the charter school opens for instruction. A charter may be renewed for subsequent periods not to exceed five years each.

May an application that has been submitted be withdrawn?
Yes. A decision by an applicant to withdraw an application requires a written request on letterhead signed by the lead applicant and submitted to the Office of Innovative School Models prior to final action by the Board of Regents. If an application is withdrawn at any time subsequent to its submission to the Board of Regents, that application nonetheless remains a public record.

Who will review and evaluate charter school applications and the capacity of founding groups?
NYSED OISM's staff and/or designees of the Commissioner will provide an initial review of the Prospectus and Application based on the guidance provided in this Application Kit. Questions raised as a result of the review process regarding application content and the capacity of the founding group will serve as the basis of the capacity interviews. Any legal issues identified upon review of the charter applications will be referred to legal counsel for NYSED for review.

Will the Board of Regents give preference to certain kinds of applications and applicant groups?
Preference will be given to those applications and applicant groups that demonstrate the greatest probability of creating public charter schools of the highest quality by meeting the comprehensive criteria of the Board of Regents' rigorous application process. In addition, applicants must meet the criteria set out in the Charter Schools Act and the 2010 revisions to the Act.

On what grounds may a charter application be denied?
Applications that do not meet the submission criteria outlined in New York statute will not be recommended for approval. Applications and the capacity of applicant groups to establish a successful charter school are judged on the prospectus and application materials, the capacity interviews, and additional research and due diligence conducted by staff, which may include criminal background checks and employment references of proposed governing board members and school administrators. The Office of Innovative School Models will not recommend that the Board of Regents award charters to applicant groups whose applications do not demonstrate a sound educational program as defined in the application, or that do not demonstrate the capacity to successfully implement the proposed educational program.

If a charter entity rejects a charter application, can the applicant appeal?
No. If a charter entity denies an application for a charter school, the denial is final and not reviewable to any authority, including a court of law. However, the applicant may apply to other charter entities.

OPERATING AS A BOARD OF REGENTS AUTHORIZED CHARTER SCHOOL

Legal Requirements

What happens after a school has received a charter from the Board of Regents?
Upon approval of an application, the **Board of Regents** enters into a contract with the charter school. The charter sets forth the terms and conditions under which the charter school is approved to operate. The approved charter contract is the final document outlining the terms and conditions of the relationship between the Board of Regents and the governing board of the charter school. An approved charter may be delayed in opening for up to one year and may be subject to revocation if specified pre-opening conditions are not met.

What is the allowable extent/duration of a charter?
Charters may be issued for a term of up to five years and may be renewed for additional five-year periods.

Under what conditions may a charter be revoked or terminated?
A charter entity or the Board of Regents may revoke a school's charter for serious violations of law, or for violation of the charter, including academic underperformance and fiscal mismanagement.

Is a charter school subject to the same laws and regulations as other public schools?
No. The charter school is subject to the same health and safety, civil rights, and student assessment requirements as other public schools, but is exempt from all other State and local laws, rules, regulations, or policies governing public or private schools, other than the provisions of Article 56 of the Education Law regarding charter schools.

Will the people who teach at charter schools have to be certified by New York State?
At least 70 percent of teachers must be certified. The number of uncertified teachers employed by a charter school may be no more than 30 percent or 5 teachers, whichever is less. Certified teachers who teach outside of their certification area are not counted in determining the permissible number of uncertified teachers. The permissible exemptions are listed in Article 56 of the Education Law.

Charter School Oversight

Who oversees charter schools?
The charter entity that approved the charter school and the Board of Regents may exercise oversight over the charter school.

Student Enrollment

Who can enroll in a charter school?
Any child who is qualified under the laws of this State for admission to a public school is qualified for admission to a charter school. Immunization requirements for enrollment in the public schools, as health and safety requirements, will apply to charter school students.

On what basis may a charter school select students?
In general, a charter school may establish no admissions requirements except that students meet the age or grade level requirements specified in its charter. However, a charter school may be formed as a single-sex school or as a school designed to serve at-risk students, and in such circumstances may limit admissions to students of a single gender or who are at-risk of failure in school, unless such action would constitute impermissible discrimination under federal law. In addition, a charter school may deny admission to a student who is currently under suspension or expulsion by another public school until the period of suspension or expulsion has expired.

A charter school may provide admissions preference, for example, to students returning to a charter school, siblings of children attending a charter school, students who are at-risk, and children residing in the local school district.

Are charter schools required to enroll children with special needs?
Yes. A charter school shall not discriminate against any student on the basis of ethnicity, national origin, gender, or disability.

What if more students apply than a charter school can enroll?
If the number of applicants exceeds the number of available seats, a random public lottery, must be held.

Funding and Facilities

How much money do charter schools receive?
The amount depends on the number of students the charter school serves and the approved operating expense (based on local, State, and federal funds) of the various districts of residence of those students. If the charter school provides special education programs and services to its students, rather than have such services provided by the school districts of residence, the charter school will also receive any State or local aid in proportion to the level of services provided. Money follows students to the charter school.

Are charter schools entitled to federal funds?
Yes. As public schools, charter schools are eligible for federal funds that go to public schools such as IDEA and Title funds (I, II, etc)

Can charter schools use funds to lease facilities?
Yes. However, the charter school may not use per pupil funding to directly pay for construction costs. Charter schools may use per pupil funding to pay for lease payments, mortgage payments, rents and other operational costs bundled or associated with these facilities payments.

What funds are available to cover the start-up costs of charter schools?
In addition to any private donations a charter school might receive for start-up costs, charter schools may apply to the charter school stimulus fund for funds appropriated to assist charter schools with start-up costs, which may include facilities costs. (Please refer to Appendix B2 for Questions and Answers related to the CSP Planning and Implementation Grant).

By what point in the application process should an applicant secure a facility?
During the application process, applicant groups must demonstrate the capacity to ensure acquisition and availability of appropriate facilities. Ultimately, founding groups must demonstrate to the Board of Regents that they have satisfied pre-opening requirements (including a facility) prior to receiving final authorization to open the school.