



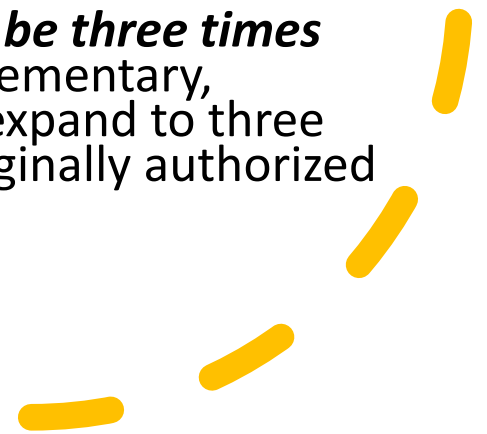
Why the cap on charter schools should NOT be raised & how we need more charter accountability instead

Class Size Matters briefing  
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[Info@classsizematters.org](mailto:Info@classsizematters.org)

# What did Gov. Hochul propose & how would this affect NYC public schools?

- Gov. Hochul proposed to [allow about 100 additional more charter schools](#) in NYC, by eliminating the regional limits and by adding 15 more “zombie charters” which were originally authorized but have been closed or had their charters revoked.
- NYC already has [275 charter schools](#) – the vast majority of those authorized in the state.
- [\\$2.69 billion](#) per year is already being diverted to charters from DOE budget, not counting the space and services that co-located NYC charter schools receive for free.
- [OMB estimates](#) the cost of allowing another 100 charter schools in NYC to be about \$1.3 billion – coincidentally, the same as their estimate of the cost of to new class size law passed by the state legislature last June.
- Yet the potential cost of raising the cap could **be three times as large**, since every charter school, whether elementary, middle, or high school, is currently allowed to expand to three schools, no matter which grade levels it was originally authorized to serve.



# Timeline of charter cap: Part I

- NY Charter school law first passed in 1998, in a deal with the Legislature in which Gov. Pataki agreed to raise legislator salaries.
- The 1998 law established a cap of 100 charter schools statewide, plus an unlimited number of existing public schools that could convert to charter schools.
- In 2002, Mayor Bloomberg was elected; and he and Chancellor Klein pushed for further charter school expansion, along with Democrats for Education Reform, Wall St. hedge funders & Robin Hood Foundation.
- In 2007, Legislature raised charter cap to 200, with 50 more reserved for New York City.

# Timeline of charter cap Part II

- In 2010, statewide charter cap raised once again to 460, with a maximum of 114 additional slots for NYC.
- In 2015, the charter school sub-cap for New York City was increased, adding another 50.
- In 2017, Legislature added 22 “zombie” charters that could be authorized in NYC, the number of charters which had been previously revoked, terminated or not renewed.
- In 2021, NYC hit its current cap of 290, though some charter schools already authorized under this cap have not yet opened
- There are now **140,677 charter school students in NYC, about 15% of total enrollment**, compared to 2,400 students in 2002.

Bloomberg/Klein  
pushed hard to  
help charter  
schools expand  
through  
colocations

- In 2003, Chancellor Klein met with top charter management officials (KIPP, Uncommon Schools, Achievement First, Harlem Children's Zone, Success) and convinced them to expand their charter schools.
- Klein promised to give them space in existing school buildings for \$1 per year; and in July 2003, Bloomberg and Klein held a press conference, celebrating first charter to be co-located in a public school, a KIPP charter in a Harlem.
- Currently **128** charter schools are in buildings owned or leased by the NYC DOE; and **147** charter schools are in private (non-DOE) space.

## 2011 charter co-location lawsuit

In the original charter school law, Section 2853(4)(c) of the NY State Education Law said that districts could lease public school “buildings and grounds” to charter schools, but that *“any such contract shall provide such services or facilities at cost.”*

In 2011, IBO estimated that the space & services provided by DOE to co-located charter schools in 2008-9 totaled \$2,712 per student.

In July 2011, CSM along with other advocacy groups & about 25 NYC parents sued the DOE because the cost to DOE for this space and services totaled about \$100M a year – far more than the \$1 a year outlined in the law.

# What happened to the lawsuit?

- Progress of our lawsuit slowed when assigned judge, Paul Feinman, who appeared sympathetic to our arguments, was promoted to the Appellate Court by Gov. Cuomo in 2012.
- Next judge, Barbara Jaffe, ruled in 2013 that plaintiffs needed to submit a complaint to the NY Education Commissioner first before bringing lawsuit to court.
- She added: *“There is no dispute that charter schools, through public funding and private donations, have access to more financial resources than those available to traditional public schools....Parents of public-school students thus understandably bristle not only at the disparate treatment of the students, but at how open and notorious it is.”*
- Before the case could be decided, Cuomo and Legislature amended the law in 2014 to require NYC provide free space to all new and expanding charter schools or help pay for their rent in private space.

# NYC has unfair financial burdens regarding charters under state law

- NYC is the only school district in the state and nation obligated to provide space for charters or help pay for their rent – where we have the highest rental costs in the state and some of the highest in the nation
- DOE is required to pay either the complete lease amount or a formula based on per-student figures, whichever is lowest, after an appeal process.
- The cost to DOE of charter rental subsidies this year is more than \$187 million, with 60% of that reimbursable by the state
- DOE is also spending another \$9.5 million to rent buildings for six Success Academy charter schools without any state reimbursement.
- NYC is ALSO the only school district in the state exempted from state charter school transitional aid, meant to reduce the financial burden on districts of charter school expansion
- Between 2011 and 2022, NYC has been denied over \$2.62 billion in state charter school transitional aid.

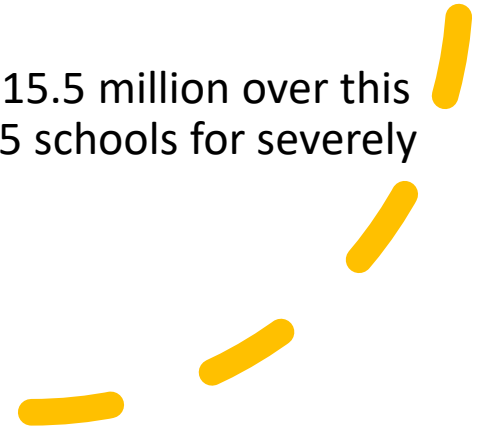


Co-located  
charter schools  
take up space  
necessary to  
lower class size &  
provide students  
with mandated  
services

- Given the new state law which mandates a phase-in of smaller classes starting next fall, further charter expansion and co-locations could deprive many public schools of the necessary space to lower class size.
- On March 28, several parents and teachers along with the UFT filed a lawsuit to block two charter school co-locations in Brooklyn and Queens because the DOE did not reserve any space for smaller classes and instead assumed current class sizes in the existing public schools would continue forever.
- Other problems with these co-locations: neither one reserves space for students with disabilities to receive their mandated services in dedicated, private spaces.
- The Queens middle school would lose its science lab to the charter school, though hands-on science experience is required to pass the 8<sup>th</sup> grade science exam.
- None of these issues were mentioned in the legally-required Educational Impact Statement issued by the DOE, which is supposed to describe in detail the impact of these co-locations

DOE fails to provide matching funds to co-located public schools for facility upgrades

- Many co-located charter schools also upgrade and renovate their spaces to have better bathrooms, more air conditioners, computers and other equipment, and are repainted and recarpeted year after year, in contrast to the dilapidated conditions of their co-located public schools.
- In recognition of this “separate but unequal” phenomenon, in 2014 the Legislature amended the law to require that public schools that share buildings with charters receive matching funds for facility enhancements.
- Yet Class Size Matters reports in [2019](#) and [2021](#) showed that from FY 2014 to FY 2019, only 4 public schools out of 812 cases received matching funds equal to the amount spent by their co-located charter schools for upgrades in the same year, as law requires.
- 127 co-located public schools were owed a total of \$15.5 million over this six-year period, and schools owed the most were D75 schools for severely disabled students.



# What did our reports find about charter rent?

- In FY 2019, DOE overspent on charter lease subsidies by over \$21 million, compared to their legal obligation.
- In FY 2020, DOE spent over \$11.6 million on rent for charters whose buildings were owned by their Charter Management Organizations or other affiliated organizations; in several of these cases, the charter rents appeared to be inflated.
- For example, the Success Academy CMO that owns space in Hudson Yards raised the rent for 2 of their own charter schools from \$793,000 to over \$3.4 million in one year, leading these schools to charge the DOE \$3M for rent in FY 2020.
- This school year, 81 charter schools are housed in 103 buildings owned or subleased by their CMO or other affiliated organization, charging DOE about \$125 million annually.
- In 34 of these schools in 39 buildings, DOE is paying entire cost of the lease rather than per pupil amount, totaling nearly \$43 million— and in these cases, unclear if rent is inflated or assessed at fair market value.
- A year ago, Senators John Liu & Robert Jackson and CM Rita Joseph, [sent a letter to NYC Comptroller Brad Lander](#) asking him to audit the missing matching funds and charter rent. Yet to our knowledge, no such audit has yet occurred.

# Other problematic issues with charter schools

- Many charter schools exhibit high rates of student attrition, including at Success, where [75% of students leave](#) from Kindergarten on & [about 50%](#) of students who make it to high school leave before graduation.
- Most NYC charter schools have lower enrollment rates of high-needs students, including English Language Learners and students with disabilities.
- Many charter schools are known for their excessive disciplinary policies and pushing out students who do not comply with their strict disciplinary codes.
- Success Academy was ordered to pay over \$2.4 million to settle a federal lawsuit brought by families of five young Black students with disabilities who were pushed out of their school.
- Success has also been found to violate student privacy rights under FERPA by releasing their disciplinary records in retaliation against parents who complained about how their children were treated.
- Also, many NYC charter schools, including those affiliated with [Uncommon](#), [KIPP](#), and [Success](#), have been criticized for racist practices by their own teachers and parents.
- The [Civil Rights Project at UCLA](#) found that NYC charter schools are even more intensely segregated than district public schools.

# Charters claim they have long wait lists; but is this true?

- The charter lobby's claims made of high demand and long waiting lists are unconfirmed by any independent audits and likely inaccurate, as they include many duplicates and families who do not really intend to enroll.
- A research study revealed that [only about half of students who win the lottery to attend Success charters](#) end up enrolling.
- Chalkbeat found that [58% of the city's charter schools have lost enrollment](#) over the past three years, not including charter schools that opened or closed during that time.
- [45% of charters saw enrollment drop this year](#), including Success Academy (down 7.7%)
- Success Academy spends [more than \\$13 million](#) per year on marketing and recruitment, and yet was asking parents to enroll their kids [through October](#) of the current school year, suggesting a shortage of students in many of their schools.
- Since Feb. 2022, 34 NYC charters have requested to be reauthorized to enroll about 7,500 fewer students --about 25% of their originally authorized amounts.

142 NYC  
charter schools  
currently enroll  
559 students  
who live  
outside NYC

- Many NYC charters also enroll students from outside the city and state.
- This includes 134 schools that enroll students from outside the state, which is legally prohibited according to NYSED, except in very limited circumstances when the student is a foster child or homeless and has recently moved out of the city.
- It is unclear to NYSED if the city or state is being reimbursed for these students' expenses by their home districts or states as required, and they provide no oversight to ensure this is happening.
- This year, DOE is paying rental subsidies for 65 of these charter schools that enroll 265 non-NYC students.
- The cost of these subsidies to DOE is \$97 million this year.

Instead of raising the NYC charter cap, the law should be strengthened to require more accountability & transparency

- All charter schools should be obligated to adhere to the same disciplinary and suspension rules that public schools must follow under state law; and not be allowed to push out students unfairly;
- Charter Management Organization boards should be subject to Open Meetings law;
- The State and City Comptroller should be allowed to perform performance audits as well as financial audits on the charter sector, including investigating their waiting lists and their practice of pushing out students;
- NYC should be freed of the obligation to provide space to charters or pay for their rent – the only district in the US so required, and the city should receive transition aid for charter expansion, as all other districts in the state receive.
- The loophole allowing charter schools to triplicate to all grade levels should be closed.
- Some bills introduced in the Legislature that would strengthen the accountability and transparency of charter schools:
  - [S4200](#) (Hoylman); increasing with transparency and limiting charter co-locations to three years; [S1395](#) (Liu); providing the Board of Regents with final say over charter approvals and re-authorizations; [S2171](#) (Liu); requiring the appointment of an independent fiduciary upon the dissolution of a charter school; [S355](#) (Jackson); requiring more accountability for charter schools in multiple ways; [S2137](#) (Liu); repealing the requirement that NYC must help pay for private space rented by charter schools; [S2173](#) (Salazar); allowing the state Comptroller to audit NYC charter schools; and [S2292](#) (Mayer); including school districts and in NYC community school districts in the approval process for issuing any new charter schools, where charter enrollment is already above 5% of the total public school enrollment.

Any  
questions?

- *For more information, or to ask for a briefing for your organization or group, contact Class Size Matters at [info@classsizematters.org](mailto:info@classsizematters.org)*

