

school.

Due to the economic crisis within the State, the phase-in of the Foundation Aid formula has been delayed. The Governor is committed to continuing the C4E program in order to ensure that low-performing districts, which received considerable resources in 2007 and 2008, target those additional resources predominately to students in schools with the greatest educational needs.

**(F)(2) Ensuring successful conditions for high-performing charter schools and other innovative schools** *(40 points)*

The extent to which—

- (i) The State has a charter school law that does not prohibit or effectively inhibit increasing the number of high-performing charter schools (as defined in this notice) in the State, measured (as set forth in Appendix B) by the percentage of total schools in the State that are allowed to be charter schools or otherwise restrict student enrollment in charter schools;
- (ii) The State has laws, statutes, regulations, or guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize, and close charter schools; in particular, whether authorizers require that student achievement (as defined in this notice) be one significant factor, among others, in authorization or renewal; encourage charter schools that serve student populations that are similar to local district student populations, especially relative to high-need students (as defined in this notice); and have closed or not renewed ineffective charter schools;
- (iii) The State's charter schools receive (as set forth in Appendix B) equitable funding compared to traditional public schools, and a commensurate share of local, State, and Federal revenues;
- (iv) The State provides charter schools with funding for facilities (for leasing facilities, purchasing facilities, or making tenant improvements), assistance with facilities acquisition, access to public facilities, the ability to share in bonds and mill levies, or other supports; and the extent to which the State does not impose any facility-related requirements on charter schools that are stricter than

those applied to traditional public schools; and

(v) The State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.

*In the text box below, the State shall describe its current status in meeting the criterion. The narrative or attachments shall also include, at a minimum, the evidence listed below, and how each piece of evidence demonstrates the State's success in meeting the criterion. The narrative and attachments may also include any additional information the State believes will be helpful to peer reviewers. For attachments included in the Appendix, note in the narrative the location where the attachments can be found.*

Evidence for (F)(2)(i):

- A description of the State's applicable laws, statutes, regulations, or other relevant legal documents.
- The number of charter schools allowed under State law and the percentage this represents of the total number of schools in the State.
- The number and types of charter schools currently operating in the State.

Evidence for (F)(2)(ii):

- A description of the State's approach to charter school accountability and authorization, and a description of the State's applicable laws, statutes, regulations, or other relevant legal documents.
- For each of the last five years:
  - The number of charter school applications made in the State.
  - The number of charter school applications approved.
  - The number of charter school applications denied and reasons for the denials (academic, financial, low enrollment, other).
  - The number of charter schools closed (including charter schools that were not reauthorized to operate).

Evidence for (F)(2)(iii):

- A description of the State's applicable statutes, regulations, or other relevant legal documents.
- A description of the State's approach to charter school funding, the amount of funding passed through to charter schools per student, and how those amounts compare with traditional public school per-student funding allocations.

Evidence for (F)(2)(iv):

- A description of the State’s applicable statutes, regulations, or other relevant legal documents.
- A description of the statewide facilities supports provided to charter schools, if any.

Evidence for (F)(2)(v):

- A description of how the State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.

*Recommended maximum response length: Six pages*

**F(2)(i) The State has a charter school law that does not prohibit or effectively inhibit increasing the number of high-performing charter schools (as defined in this notice) in the State**

Article 56 of New York’s Education Law does include a cap on the number of charter schools that may be formed, other than charter schools formed by conversion of an existing public school, but such cap does not prohibit or effectively limit the number of high-performing charter schools in the state. Education Law §2852(9) limits the number of charters, other than conversions of public schools, that may be issued by the various charter entities. The current limit is 200, with 100 allocated to SUNY and 100 to the Board of Regents and local boards of education. In addition to the 200 charter schools, any public school in the State, with the approval of the parents of a majority of students then enrolled, may be converted to a charter school pursuant to Education Law §2851(3), and any conversion of an existing charter school is specifically excluded from the cap by Education Law §2852(9).

As of the 2009-10 school year-to-date, New York has 140 charter schools currently operating (with an additional 14 charter schools approved to begin operating in 2010-2011 or later). Of that number, 6 are conversions of existing public schools. In 2009-2010, there are 4,540 public schools other than charter schools. New York law does not differentiate between charter schools by type, except that a charter school that converts from an existing public school, under Education Law § 2854(3)(b), has employees remain in the negotiating unit of the school district upon conversion. Pursuant to Education Law §2852(9), therefore, the total number of

charter schools that currently may form in New York are 4,540 conversion charter schools plus 200 non-conversion charter schools, or 4,740. This represents approximately 104 percent of the total schools in the state that are allowed to be charter schools.

Article 56 of the Education Law does not otherwise restrict student enrollment in charter schools in grades kindergarten through 12. New York's funding mechanism provides for a per-student charter school basic tuition, which does not limit the number of charter schools by limiting the share of State or local funds that can go to charter schools. Under Education Law §2854(2) (b), any student who is qualified by law to attend a public school is qualified to attend a charter school. New York's charter school law does not contain any restrictions on the number, percent or demographics of students who may be enrolled in charter schools. Charter schools are not restricted to operating in specific geographic areas, though Education Law §2852(9) reserved a portion of the increase in the cap made in 2007 to charter schools in New York City.

.See Appendix F\_2\_i\_1 for New York's Charter School Law in relevant part (Education Law Article 56).

**(F)(2)(ii) The State has laws, statutes, regulations, or guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize, and close charter schools**

New York has a rigorous approval, monitoring, and reauthorization process. The strength of New York's process was recognized in the Charter Schools Monitoring Report prepared by WestEd in June 2009 on behalf of US E.D. WestEd found that New York's "consistent focused attention on its grant and charter school objectives guides its program implementation and helps drive the creation of high-quality charter schools in the State." They also reported that "monitoring and performance is another strong point in New York's Charter Schools Program. Oversight of charter schools for both program compliance and performance is exceptionally comprehensive, rigorous, and persistent."

In a January 2010 report, the National Alliance for Public Charter Schools ranked New York second in the nation for its charter quality control policies, including its provisions for performance-based charter contracts; comprehensive charter school monitoring and data collection processes; and clear processes for renewal, non-renewal, and revocation decisions. The report also cited New York as a leader in providing charter autonomy. In 2006, the same organization noted that "SUNY has been a particularly effective authorizer. It has taken its authorizing duties seriously—both in approving and in overseeing charters—and has not been afraid to close charters that haven't lived up to their promises."

Education Law §2851(2) establishes detailed application requirements, including a required description of student achievement goals and the methods of evaluating whether students have achieved such goals. Under Education Law §2852(2), a charter entity may only approve an application upon certain specified findings, which include whether the charter school is in compliance with law, whether the applicant can demonstrate the ability to operate the school in an educationally and fiscally sound manner and whether granting the application is likely to improve student learning and achievement. Appendix F\_2\_ii\_1 shows, for each of the past 5 years, the number of charter school applications made, approved and denied.

Upon approval by a charter entity, a charter agreement is entered into, and for a charter entity other than the Board of Regents, the proposed charter must be submitted to the Board of Regents for review (Education Law §2852(5), (5-a) and (5-b)). If the Board of Regents approves the charter, or the charter is deemed approved by operation of law, the new charter school is formed for a term of up to 5 years (see Education Law 2853(1)(a)). A charter may be renewed for a period of up to 5 years (Education Law §2851(4)), provided the charter entity makes the same findings required for a new charter school. Upon renewal, the applicant is required (Education Law §2851(4)) to submit additional information, including a report of the progress of the charter school in meeting its educational objectives, including its record of student achievement.

There are numerous provisions in Article 56 relating to accountability. The Board of Regents and any other charter entity that approved the charter are required by Education Law §2853(2) to exercise oversight sufficient to ensure the charter school is in compliance with law and its charter, and both the Regents and the other charter entities are given authority to visit, examine and inspect each charter school. Education Law §2853(2-a) affords the school district in which the charter school is located the power to visit, examine and inspect the charter school.

Charter schools are required by Education Law §2857(2) to submit an Annual Report to the charter entity and the Board of Regents. Part of the required Annual Report is a Charter School Report Card, which must include measures of the academic and fiscal performance of the school, including graduation rates, dropout rates, student performance on standardized tests and college entry rates. Finally, charter schools are required by Education Law §2851(2)(f) to have annual programmatic and fiscal audits comparable to those required of other public schools, and the annual fiscal audit must be submitted with the Annual Report.

Education Law §2855(1) authorizes the charter entity or the Board of Regents to revoke or terminate the charter on certain specified grounds including: (i) when the charter school's outcomes on student assessments fall below the level that would allow the Commissioner to revoke the registration of another public school and student achievement has not improved over the preceding 3 years; (ii) serious violations of law, and (iii) material and substantial violation of the charter, including fiscal mismanagement. In addition, Education Law §2855(3) gives the charter entity or the Board of Regents authority to place a charter school in probationary status to allow implementation of a remedial action plan (corrective action), and provides that failure of the charter school to comply with that remedial action plan may result in summary revocation of the charter. Appendix F\_2\_ii\_1 contains a chart showing the NYS charter schools that were closed and the reasons therefore. A number of charter schools have either been placed on corrective action or probation, or have been given renewals shorter than 5 years in response to deficiencies.

Thus, educational soundness and student achievement are required factors to be considered upon formation or renewal of the charter of a charter school, and poor academic performance is one of the grounds upon which a charter may be revoked.

Article 56 includes provisions that encourage the formation of charter schools that serve student populations similar to those of the local school district, including high-need students. Education Law §2854(2)(a) specifically requires charter schools to demonstrate good faith efforts to attract and retain a greater enrollment of SWDs and ELLs than the school district in which it is located. Education Law §2854(2)(a) authorizes the formation of charter schools designed to provide expanded learning opportunities to students at-risk of academic failure, and thus the establishment of admissions criteria encouraging admission of at-risk students. Education Law §2852(2) encourages charter entities to give preferences to applications that demonstrate the capability to provide comprehensive learning experiences to students at-risk of academic failure. As a result, New York charter schools do serve high-need students. In the case of students living in poverty, for example, a total of 23,072 students eligible for a Free or Reduced Lunch were reported, representing 75% of all students attending a State charter school in 2007-08. This compared to 45% of students statewide eligible for Free or Reduced lunch.

The strength of New York's charter school authorizing process is evidenced by our robust charter school outcomes, particularly in New York City. As mentioned previously, a study by Stanford University economist Caroline Hoxby showed that charter school students are more likely to be proficient in math and reading than students in the nearest comparable public school. Overall, charter students have proficiency rates that are 5.2 percent higher than their public school counterparts in reading and 3.2 percent higher in math. Further, Hoxby's study shows that charter school students' gains in academic achievement, relative to their public-school peers, tend to increase as the charter schools mature. Subsequently, a report issued by the Center for Research on Education Outcomes (CREDO), also at Stanford University, found that charter schools in New York City are demonstrating significantly better results for their students in reading and in math than their traditional public school counterparts. These trends were consistent

for students overall, as well as for several key groups, including Blacks and Hispanics in both subjects, for students who had not previously done well in traditional public schools, for students in poverty in reading, for students enrolled for at least two years or more in reading, and for all students in math regardless of how long they were enrolled.<sup>21</sup>

The success of New York State's charter school initiative is also reflected in the State's success in attracting some of the highest performing charter operators in the country, including KIPP (in both New York City and Albany), Achievement First (in New York City), and Uncommon Schools (in New York City, Rochester, and Troy), and some of the most innovative charter models in the country, such as the Harlem Children's Zone schools.

**(F)(2)(iii)-- The State's charter schools receive equitable funding as compared to traditional public schools.**

New York's primary funding mechanism for charter schools is through mandated tuition payments by school districts. Education Law §2856(1) requires that public school districts with resident students attending charter schools pay a per pupil tuition amount (the "charter school basic tuition") to the charter school for each of these students. That per-pupil amount is based on a computation designed to ensure that the district provides charter school pupils with an amount equivalent to the school district's per-pupil operating expenditures on instructionally-related activities (see Appendix F\_2\_iii\_1).

The charter school tuition formula is based upon the school district's operating expenditures rather than the revenue source, and reflects expenditures supported by both State aid and local taxes for public school students. The key definition in computing charter school basic tuition is that of approved operating expense (AOE). AOE includes instructional expenditures, but excludes, among other things, transportation and capital expenses, cafeteria and school lunch expenses and most expenditures supported by Federal funds. AOE includes many types of expenditures that charter schools are not required to make; such as costs of providing special

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<sup>21</sup> PR Newswire, Stanford: NYC Charter Schools Providing Significantly Better Results in Reading, Math

education services, textbooks and other services and materials to students attending nonpublic schools, and costs of school health services. As described in Appendix F\_2\_iii\_1 school districts are required to provide a range of services to charter schools in addition to payment of charter school tuition. Beyond the charter school basic tuition, New York's charter schools are eligible to receive Charter School Stimulus Funds from the State (see (F)(2)(iv) below).

In addition, charter schools are considered local educational agencies (LEAs) as defined in 20 U.S.C. §7801(26), and thus may apply as LEAs for awards under the ESEA or other Federal funding sources that use the ESEA definition and for the school lunch and school breakfast programs. Also, Federal IDEA Part B funding attributable to a student with disability (SWD) must be paid by the school district to a charter school that opts to provide special education to such students. Since 1999, New York has been awarded \$56,161,991 from the Federal Charter Schools Program for grants to charter schools. Thus, New York charter schools are eligible to receive a commensurate share of Federal funds.

By linking charter school basic tuition to operating expenditures and requiring that a variety of services be provided to charter school students at school district expense, New York's funding scheme provides equitable funding as compared to traditional public schools.

**(F)(2)(iv)-- The State provides funding for facilities, assistance with facilities acquisition, access to public facilities and other supports**

New York supports charter schools in obtaining facilities in a variety of ways, though funding dedicated solely to facilities costs is not currently available. The charter school basic tuition may be used to pay lease expenses and other facilities costs. In addition, the New York State Charter Schools Stimulus Fund (described in more detail in Appendix F\_2\_iv\_1) provides grants for the development, implementation and operation of charter schools, including start-up costs and costs associated with the acquisition,

renovation or construction of charter school facilities.

Education Law §2853(3)(a) provides that charter schools 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. Education Law §2853(4)(c) provides that charter schools may contract with a school district or the governing body of a public college or university for the use of a school building and grounds. Any such contract must provide such services or facilities at cost. There are currently 65 charter schools located in space leased from public schools or public universities. The New York City School District, in which approximately 64% of the State's charter schools are located (99 of 154 charter schools), actively assists charter schools with obtaining facilities as described in Appendix F\_2\_iv\_1)

The NYS Office of General Services annually publishes a list of vacant and unused state buildings and portions of state buildings which may be suitable for the operation of a charter school (see Education Law §2853(3)(c)). Upon request, a school district is required to make available a similar list of vacant and unused school buildings within the district, including private school buildings, which may be suitable for a charter school. Charter schools are also eligible to participate in energy improvement programs funded by the NYS Energy Research and Development Authority, such as the Not-For-Profit Energy Incentive Program pursuant to 9 N.Y.C.R.R. §§7920.1-7920.11.

Pursuant to Education Law §2853(1)(d), charter schools have authority to issue corporate bonds, which are tax exempt. As LEAs, they are eligible to apply to participate in Federal school bond programs, including Qualified Zone Academy Bonds and Qualified School Construction Bonds. These programs provide interest free borrowing to LEAs and result in a higher proportion of overall project funding to be devoted to actual brick and mortar construction instead of incidental costs. New York applicants are ranked based on their student eligibility for the federal free and reduced price lunch program. Charter schools often serve low wealth, high

poverty populations and therefore should rank highly among applicants providing a greater opportunity to access interest free bonding programs.

As described more fully in Appendix F\_2\_iv\_1, there also are situations in which a charter school may indirectly benefit from school district bonding for school construction. In addition, the Regents have supported and continue to support legislation to afford charter schools access to financing of school construction through bonds issued by the Dormitory Authority of the State of New York, a state public authority with expertise in financing construction for school districts, BOCES and other educational institutions.

Pursuant to Education Law §2853(3)(a), for purposes of local zoning and building code compliance, a charter school is treated as a nonpublic school. Since they apply to private facilities, the requirements are generally less restrictive than those for traditional public school facilities. Education Law §2854(1)(b) also requires charter schools to comply with the same health and safety requirements as public schools.

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In addition, New York State is committed to exploring public/private partnerships to provide highly leveraged uses of capital to support its aggressive reform agenda. NY endeavors to drive innovation to create high quality and results-oriented education opportunities for all youth.

As noted in Sections A and E, New York has strong network of school reform partners. They have demonstrated results across the state and want to expand. NYSED seeks to provide credit enhancement to support high quality charter schools and innovative school models across NY State, to be matched by other funders. If a match could be successfully negotiated, proportionate reductions in other RTTT investments would be used to fund the State's portion of the match up to \$10 million (Please see appendix F\_2\_iv\_2: Bill and Melinda Gates Foundation Letter Re: Charter Facilities Financing).

Specifically, New York State may leverage opportunities to develop a charter school facilities credit enhancement program, similar to what was established by Texas Governor Perry and Education Commissioner Scott established in May of 2009.

NYSED would identify public sources of funds as potential reserves to support credit enhancement for high quality charter school facilities and innovative school models across the state. In the short term, this credit enhancement program could enable high-

performing charter operators in NY to reduce interest payments on facilities debt, provide students in those schools with adequate facilities, and enable the strongest networks to expand to more sites. In the long term, this program could create a public mechanism for financing other types of next-generation models.

**(F)(2)(v)-- The State enables LEAs to operate innovative, autonomous public schools other than charter schools**

The board of education of each school district has authority to prescribe the course of study, employ teachers and other staff, exercise budgetary control and otherwise exercise the superintendence, management and control of the school district (e.g., Education Law §§1709(3), (16) and (33); 1718(1); 1720(1); 2022(1) and (4)). Some board decisions are non-delegable, but New York law generally leaves it to the discretion of the board of education to determine how much autonomy to grant to a school within the school district in exercising its authority under Education Law §1709(33) to manage and control the school district.

A leading example of an innovative approach to public education is the Tech Valley Regional Technology Institute, a joint program of two BOCES that was authorized by special State legislation (see Appendix F\_2\_v\_1) and provides a grades 9-12 high school course of instruction dedicated to providing expanded learning opportunities in technology and the core academic subjects required for issuance of a high school diploma. The Institute's mission is to engage students in rigorous and enriching educational experiences focused on emerging technologies, project-based learning and collaboration and to provide such experiences through linkages with high-tech businesses that will foster a direct connection between student learning and real world experience in advanced technical facilities. The Institute is established as a corporate entity separate from the two BOCES, though its governing board is appointed by the two BOCES. The Institute's governing board is given authority to employ its own joint officers and employees, determine the curriculum, determine the school calendar and daily schedule and adopt its budget, subject to approval of the BOCES. The Institute is given flexibility to contract with private and for-profit and not-for-profit entities to carry out its supplemental innovative technological activities. Students receive their high school diplomas through their school districts of

residence. The Institute is financed through a combination of State aid and funding from school districts of residence, in the same manner as other BOCES programs.

Another example of a school district allowing the formation of innovative, autonomous open enrollment public schools is the New York City Department of Education's *Children First* initiative (See Appendix F\_2\_v\_1 for a fuller description), which affords school principals flexibility in allocating resources, selecting staff, and implementing instructional strategies. This initiative is supported by Article 52-A of the Education Law (See Appendix F\_2\_v\_1). Additionally, CUNY has the authority to run up to five high schools. Although SUNY does not currently run any schools directly, it has the authority to do so and is a candidate for managing schools identified in Section E.

**(F)(3) Demonstrating other significant reform conditions (5 points)**

The extent to which the State, in addition to information provided under other State Reform Conditions Criteria, has created, through law, regulation, or policy, other conditions favorable to education reform or innovation that have increased student achievement or graduation rates, narrowed achievement gaps, or resulted in other important outcomes.

*In the text box below, the State shall describe its current status in meeting the criterion. The narrative or attachments shall also include, at a minimum, the evidence listed below, and how each piece of evidence demonstrates the State's success in meeting the criterion. The narrative and attachments may also include any additional information the State believes will be helpful to peer reviewers. For attachments included in the Appendix, note in the narrative the location where the attachments can be found.*

Evidence for (F)(3):

- A description of the State's other applicable key education laws, statutes, regulations, or relevant legal documents.

*Recommended maximum response length: Two pages*

New York State's educational system provides the most complete, interconnected network of educational services in the United