

A Guide to New Provisions in State Law Affecting New York City Charter Schools

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This Guide is current as of 7/17/2014. To download it and see any future revisions, visit www.nyccharterschools.org/NewLaw.

This Guide does not constitute legal advice and is offered as an informational resource only. All charter schools should consult legal counsel to understand the law's implications for their own circumstances.

Links to relevant statutes can be found at: <http://www.nyccharterschools.org/resources/charter-schools-act-1998-new-york-state-amended>.

Questions? Contact Susan Briggs: sbriggs@nyccharterschools.org

The package of budget legislation enacted in March 2014 has implications for NYC charter schools in seven key areas.

1. PER PUPIL FUNDING

The law provides for a set of fixed increases in the basic tuition (“Per Pupil Funding”) paid by the New York City Department of Education (“NYC DOE”) based on charter schools’ invoiced attendance, through the 2016-17 school year.

Instead of applying the standard funding formula (which is tied to district spending), NYC charter schools’ Per Pupil Funding will rise according to a schedule of annual, incremental increases:

<i>Year</i>	<i>Increase</i>	<i>Per Pupil Funding</i>	<i>Annual % Change</i>
2013-14 (baseline)		\$13,527	
2014-15	+\$250	\$13,777	+1.8%
2015-16	+\$100	\$13,877	+0.7%
2016-17	+\$150	\$14,027	+1.1%

This schedule only applies as long as the law is left untouched. There is nothing to stop future amendments to this law from being enacted as part of budget negotiations in future years, e.g., allowing the funding formula to “work” rather than going by this schedule.

- ***Q: Do charter schools need to invoice the state for the incremental increases?***

A: No. Charter schools will receive all Per Pupil Funding from NYC DOE through the normal invoicing process. It is interesting to note, however, that for the first time, the state has created a specific budget line item through which it will effectively fund the above increases (by reimbursing NYC DOE).

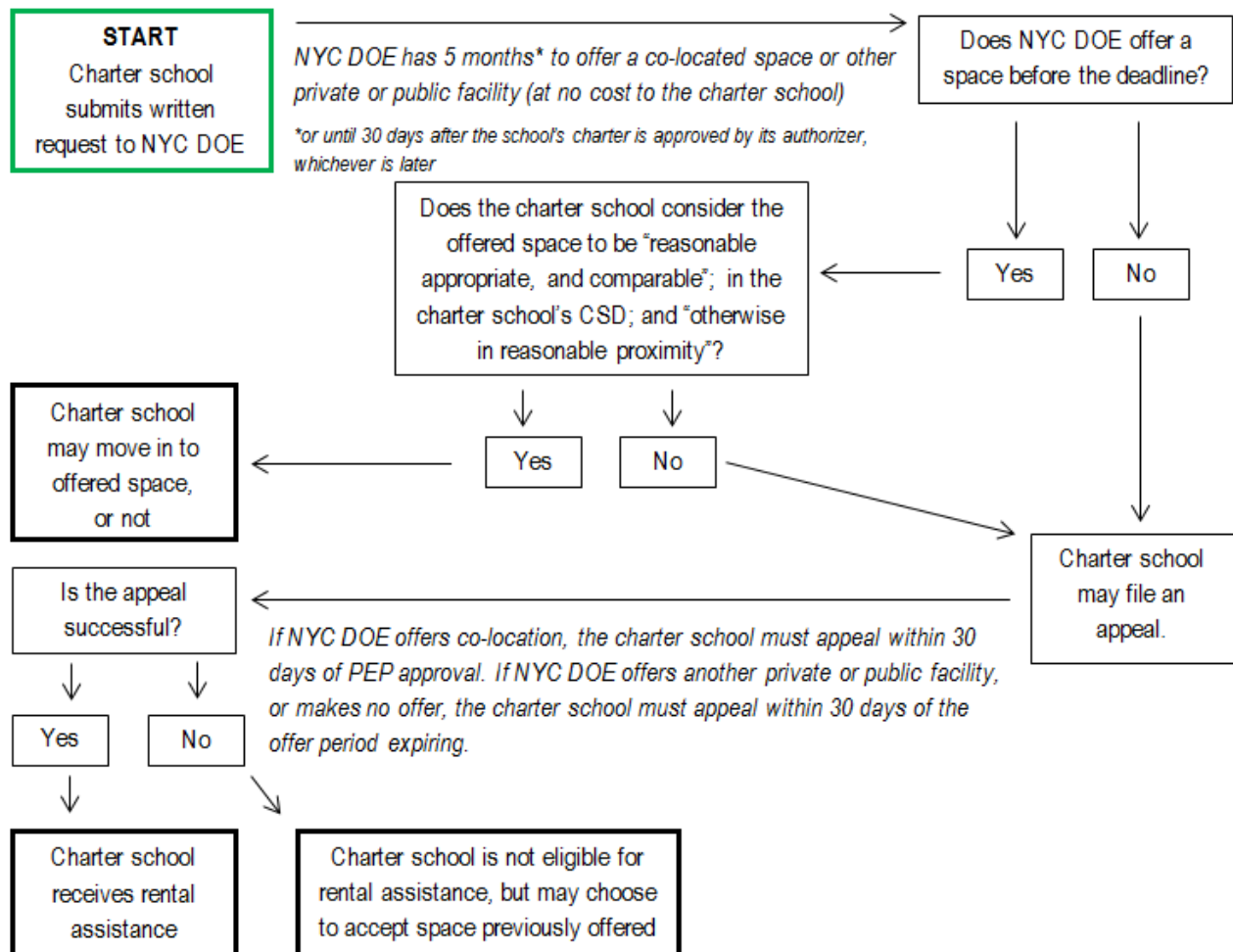
2. FACILITY ACCESS PROCESS: CO-LOCATION, CITY-PROVIDED FACILITY, OR APPEAL FOR RENTAL ASSISTANCE

For the first time, state law now grants a subset of NYC charter schools a statutory right to facilities assistance. For convenience, this Guide refers to this as the “Facility Access Process.” As described below in greater detail:

- Certain eligible new charter schools and schools expanding grade levels now have the right to request co-location from NYC DOE.
- In response, NYC DOE can either:
 - make an offer of co-located space; or
 - make an offer of space in another facility (public or private) at no cost to the charter school; or
 - refuse to make an offer.

- Where NYC DOE makes an offer of co-located space or other space, the charter school can accept that offer if it finds the offer to be “reasonable, appropriate, and comparable.”
- Where the charter school does not find that offer to be “reasonable, appropriate, and comparable,” the charter school can appeal that offer using one of three forums.
- If the charter school wins the appeal, it will be eligible for substantial rental assistance that in 2015-16 will total up to \$2,775.40 per pupil. If it loses the appeal, it must either accept the offer or forego the space and locate in another space at its own expense.
- Where NYC DOE does not make an offer of space, the school can also appeal for rental assistance.

Facility Access Process for Eligible NYC Charter Schools



Which Schools Are Eligible?

NYC charter schools are eligible for the Facility Access Process if they are commencing instruction or expanding to add grade levels in the 2014-15 school year or thereafter, and the new school or those newly provided grades are not fully covered by previously approved co-location plans.¹ As to schools expanding grade levels, the Charter Center takes the position that schools are eligible regardless of when they obtained authority to provide the grade(s) to which they are expanding or whether they had already begun to provide instruction in some of the grades previously authorized, *so long as they have not provided that grade or grades prior to the 2014-15 school year*. Thus a charter school that had previously received authority to provide grades K-5 but was only providing currently grades K-3 would be eligible for the Facility Access Process—though only for grades 4 and 5.²

The Charter Center also takes the position that charter schools that are opening or expanding grade levels in the 2014-15 school year are eligible to participate in the Facility Access Process.

The following chart may be helpful in sorting out whether your school is eligible.

CHARTER SCHOOLS and PROSPECTIVE CHARTER SCHOOLS...	without grade level expansion after 4/1/14	with grade level expansion after 4/1/14
operating in private space before 4/1/14	Not Eligible	Eligible
operating in NYC DOE space before 4/1/14	Not Eligible	<i>Eligible if</i> approved co-location plans do not accommodate planned grade level expansion, e.g., school is K-8 but Educational Impact Statement only covers grades K-5.
authorized but commencing instruction after 4/1/14	N/A	<i>Eligible if</i> any approved co-location plans do not accommodate planned grade level expansion.
not yet authorized	N/A	Eligible

¹ If a charter school's expanding grades are fully covered by previously approved co-location plans, then its co-location is protected as described in Section 3 of this Guide.

² For a discussion of whether UPK constitutes a grade level expansion, see Section 5, below.

Starting the Process: The Duty to Request Co-Location/Timing³

To begin the Facility Access Process, an eligible charter school must submit a written request for co-location to NYC DOE. This is true even if the school, in fact, would prefer to seek private space and receive rental assistance. This request begins the Facility Access Process and starts the clock ticking on the time period NYC DOE has to respond to the request.

In order to ensure that new schools have as much time as possible before they open to determine whether they will be co-located or will be required to find space on their own, the law permits prospective charter schools (charter applicants) to request space prior to charter approval (though as explained below NYC DOE is given additional time to respond to a request when it comes from a charter applicant).

- ***Q: How does a charter school submit a request for co-location?***

A: A charter school should submit a request in writing to the Office of the Chancellor *return receipt requested*. In order for NYC DOE to be able to act on the request, we recommend that a charter school provide the following information in its request:

- a. the name of the school and whether it is currently authorized;
- b. if not authorized, the date on which the application was submitted and to which authorizer;
- c. the date it is intending to open or, if expanding grades, the date on which such expansion will begin;
- d. the number of students in each grade that the school is authorized/projected to serve;
- e. the Community School District (“CSD”) in which the school wishes to operate and any other information pertinent to the school’s request, e.g., “we would like our middle school expansion to be near our elementary school which is located at X address;” and
- f. the contact information for the person at the school that will be handling the Facility Access Process.

We have provided a template for you to use at Appendix A to this Guide.

If, in response to a charter school’s written request, NYC DOE states that it is not yet “accepting” written requests for co-location, please contact the Charter Center for further assistance. Note, however, that regardless of NYC DOE’s response, a written request from an eligible school triggers the period in which NYC DOE has to respond regardless of whether it is “accepting” requests or has yet to put a process in place in order to respond to such requests.

³ As a best practice, the Charter Center recommends that charter schools obtain Board authorization prior to engaging in the Facility Access Process.

- ***Q: When can a charter school submit a written request for co-location?***
- ***A:*** Charter schools may submit a written request for co-location at any time. In general, the Charter Center recommends that such requests be submitted as early as possible in order for schools to find out whether they will be offered a co-located space (or other space paid for by NYC DOE) or rental assistance. For new and expanding charter schools with a strong preference for co-located space, however, applying too far in advance of NYC DOE’s own planning timelines may reduce the chances of receiving an offer of co-location. Such schools should contact NYC DOE to discuss timing *before* submitting a written request.
- ***Q: How does the timing of a charter school’s written request for co-location work with the existing EIS/BUP/PEP⁴ process for co-locations?***
- ***A:*** The Facility Access Process does not replace the EIS/BUP/PEP process but runs parallel to it. This means that in order for NYC DOE to make a valid offer of co-located space in response to a charter school’s written request for co-location, NYC DOE must issue an EIS and BUP, hold a hearing at the school, and seek PEP approval of the EIS/BUP within the time period governing the EIS/BUP/PEP process—but also within the time period governing the Facility Access Process (and meet any other notice requirements that are triggered where a co-location of a charter school is involved).

It is important to emphasize that NYC DOE will not be deemed to have made an offer of co-located space (and cannot co-locate a school) unless and until the proposed co-location goes through the EIS/BUP notice and hearing process for co-locations and is approved by the PEP in accordance with state law. The timing of this is explained in more detail below.⁵

NYC DOE’s Response: Timing/The Choice to Provide an Offer of Space (or Not)

NYC DOE must respond to a request for co-location *within the later of* five months after a charter school’s written request for co-location AND (if applicable to the situation) 30 days after the charter school’s charter is approved by its charter entity.⁶ Thus, for a previously authorized school that makes a request, the response period is a maximum of five months; for a school not yet authorized, the response period is at least five months and may be longer depending upon when the school’s charter is approved by its charter entity. This same rule applies to expanding grades.

For convenience, this Guide refers to the period during which NYC DOE has the right to make an offer as the “Offer Period” and the date on which the Offer Period ends as the “Offer Deadline.”

In response to a written request for co-location, NYC DOE is the master of how it chooses to respond. It has the choice of offering the requesting charter school a co-located space in a public school facility, or space in a privately owned or publicly owned facility at the expense of NYC DOE and at no cost to the charter school.

⁴ Educational Impact Statement/Building Utilization Plan/Panel for Educational Policy

⁵ However, as explained more fully below, a charter school can appeal as soon as NYC DOE issues an EIS.

⁶ The term “charter entity” is defined in the Charter Schools Act as a charter school’s authorizer.

NYC DOE may also choose not to offer any space. Such a failure to respond in any fashion would be construed as a failure to make an offer and would guarantee a school's ability to successfully appeal for rental assistance (see discussion in this Section, below).

- ***Q: My school, which is currently serving grades K-5, has submitted an application to our authorizer to revise our charter by expanding the grades we offer to K-8 starting in the 2015-16 school year. Assuming that we submit a written request to NYC DOE for co-location for grades 6-8 on August 1, 2014 and that our approval will not come through until January 26, 2015, when will the Offer Deadline be?***

A: Because NYC DOE has five months and 30 days after you are approved to provide the expanded grades (grades 6-8 in this example), the Offer Deadline would be February 25, 2015. This is because the Offer Deadline is five months after a written request for co-location has been received AND then an additional 30 days after approval has occurred.

On the other hand, if, in the above example, you received approval to expand to grades 6-8 on November 3, 2014, the Offer Deadline would be January 1, 2015, which is five months after the date of your written request for co-location (August 1st in this example) AND 30 days after the date you received approval from your charter entity.

The Next Step: Evaluating an Offer of Space and Whether to Appeal or Accept the Offer

If NYC DOE makes an offer of co-located or other space, the charter school must decide whether to accept it or file an appeal within the timeline required (see discussion in this Section, below). Any offered space must be in the charter school's CSD and "otherwise in reasonable proximity," and must be "reasonable, appropriate and comparable." While there is no case law at present that would more precisely define these terms, it is likely that a fact-finder would use as a comparison the space requirements that NYC DOE applies and provides to traditional district schools which it operates, e.g., the "footprint" formula and/or actual space that district schools are, in practice, afforded.

Thus, for instance, if there are examples in which a district K-8 school in your CSD is split-sited, then an offer to put your K-3 in one site and your 4-8 in another may well be viewed as comparable and appropriate. However, if no K-8 district schools in your CSD are split-sited by elementary and middle school grades, such an offer might not pass the comparability test. Similarly, if you are offered space that is below footprint but other district schools are similarly situated, it is possible that such an offer would be found to be "reasonable, appropriate and comparable." As stated above, how these words are interpreted will be determined over time through the appeal process.

Accepting the Offer or Appealing the Offer/Lack of an Offer

If NYC DOE makes an offer of co-located or other space and the charter school deems it acceptable, then the charter school can accept the offer (within the timeline set forth below). If, however, the charter school does not view the offer as acceptable, it can appeal the offer of space

(again, within the timeline and process set forth below).⁷ The charter school also can appeal if NYC DOE fails to make an offer. If NYC DOE issues an EIS but the proposed co-location does not make it through the statutory EIS/BUP/PEP process by the Offer Deadline, the charter school can appeal on the ground that NYC DOE has failed to make an offer.

Deadlines for Accepting an Offer or Filing an Appeal

A charter school is subject to strict deadlines for deciding whether to appeal NYC DOE's offer or failure to offer a co-location site. Appealing too soon would result in the appeal being dismissed as premature, though the school likely could bring the appeal later at the appropriate time. However, missing the deadline to appeal carries severe consequences. If NYC DOE has failed to make an offer of space, a charter school that fails to appeal in the time permitted would receive neither space nor rental assistance. If NYC DOE offers a space that is plainly inadequate, a charter school that fails to appeal would have to choose between accepting the space "as is" and finding a private facility with no rental assistance.

The following rules set forth the time periods and deadlines for filing an appeal or accepting an offer:

- The *earliest* a charter school can commence an appeal where NYC DOE issues an EIS (which assumes, of course, that NYC DOE intends to try to co-locate the school) is upon issuance of that EIS. However, a charter school is not required to commence an appeal upon the issuance of the EIS.
- The *earliest* a charter school can appeal either an offer of space that does not involve a co-location or NYC DOE's failure to make any offer at all is the day after the Offer Deadline.
- The *latest* a charter school can appeal an offer of co-location is 30 days after the PEP approves the co-location, assuming the proposed co-location makes it through the statutory EIS/BUP/PEP process prior to the Offer Deadline.
- The *latest* a charter school can appeal either an offer of space that does not involve a co-location or NYC DOE's failure to make any offer at all (including where NYC DOE issues an EIS but the proposed co-location does not make it through the statutory EIS/BUP/PEP process prior to the Offer Deadline) is 30 days after the Offer Deadline.
- If the charter school decides to accept NYC DOE's facility offer, the charter school must accept the offer in writing within 30 days after the PEP approval (for co-located space) or within 30 days after the Offer Deadline (for other space).

⁷ Interestingly, by its literal terms, the new law does not permit a charter school to appeal as inadequate NYC DOE's offer of space in a privately owned or other publicly owned facility (paid for by NYC DOE) *per se*; rather, a school that is dissatisfied with NYC DOE's offer of space in a privately owned or other publicly owned facility must frame its appeal as an appeal of NYC DOE's failure to offer a co-location site. Because a successful appeal would have the same result, i.e., the school would receive rental assistance, the Charter Center does not believe this should be an obstacle.

The Appeal Process and Choice of Forum

A charter school that chooses the option of appealing NYC DOE's offer or failure to offer a co-location site may choose one of three forums for appeal:

- A. binding arbitration; *or*
- B. an expedited appeal to the State Education Commissioner; *or*
- C. a lawsuit in state court – specifically, a special proceeding pursuant to Article 78.

The potentially quickest route of appeal is an expedited appeal to the State Education Commissioner, which is a simplified process that takes a matter of weeks from beginning to end. It is possible, though, that a decision by the Commissioner could then be appealed (either by the school or NYC DOE) to New York State Supreme Court via an Article 78 proceeding.

In contrast, binding arbitration, which takes a minimum of 4 to 5 months, has the advantage of certainty, as there is no question that the decision of the arbitrator is final and cannot be appealed to state court.

Filing an Article 78 lawsuit directly with the New York State Supreme Court may be the most costly, time-consuming and complex of the three routes but provides a petitioner with an avenue to proceed directly to court.

In deciding which route to take, a school will want to consult with its legal counsel and consider the various factors of time, expense and certainty (as well as any other factors) that each forum may require.

Unsuccessful Appeals

If an appeal fails, the charter school must accept the space offered, or pay for private space without rental assistance.⁸ Although the new law does not allow NYC DOE to withdraw its offer, and does not set forth a time frame within which the charter school must make its decision following an unsuccessful appeal, a “reasonableness” standard is assumed. Therefore, a charter school should not delay and, to be safe, should accept the offer within 30 days.

Successful Appeals: Rental Assistance

If the appeal is successful, the charter school becomes eligible for rental assistance that NYC DOE must provide, on top of the charter school's ordinary Per Pupil Funding.

Importantly, rental assistance funds must be applied to lease costs and are not applicable to the cost of new construction. Therefore a school receiving rental assistance should think carefully how to structure their lease arrangements to capture any costs associated with actual occupancy of the

⁸ Again, it is an open question as to what it would mean for an appeal to fail if brought before the State Education Commissioner, in that a charter school potentially has the ability to appeal from a decision of the Commissioner to New York State Supreme Court. If faced with such a situation, the school should consult with legal counsel as to its possible options.

space. The Charter Center anticipates providing detailed technical assistance on this issue in the future.

For a charter school whose charter is originally granted or for an existing charter school whose expansion of grade level is approved by its charter entity before October 1, 2016, rental assistance will be the amount of the actual cost of the charter school's lease or 20% of Per Pupil Funding, whichever is lower. As explained earlier, rental assistance is only provided for new and expanding grades—not for other grades a charter school is currently serving—but this does not stop a school from housing eligible and ineligible grades together in the same facility and under the same lease.

Assuming no changes to the scheduled increases to Per Pupil Funding in NYC, the table below shows the amount of rental assistance prior to October 1, 2016.

Year	Per Pupil Funding	Rental Assistance for Schools Approved Before 10/1/16 (20% of Per Pupil Funding)
2014-15	\$13,777	\$2,755.40
2015-16	\$13,877	\$2,775.40
2016-17	\$14,027	\$2,805.40

For a charter school whose charter is originally granted or for an existing charter school whose expansion of grade level is approved by its charter entity on or after October 1, 2016, rental assistance will be calculated based on the maximum cost allowance for an identical building through the state facility aid program. The New York State Education Department ("NYSED") calculates the maximum cost allowance by formula after reviewing its blueprints and factoring in the school's planned enrollment and local building costs.⁹

- ***Q: Is there a legal loophole that would allow an eligible charter school to request co-location, receive no offer from NYC DOE, and yet lose on appeal?***

A: No. Charter schools must meet all deadlines and procedural requirements, but there is no pathway for NYC DOE to simply deny facilities assistance to an eligible charter school.

- ***Q: Will the type of rental assistance that a particular charter school receives change on October 1, 2016?***

A: No. Any charter school that receives rental assistance of up to 20% of Per Pupil Funding will continue to receive up to 20% of Per Pupil Funding after October 1, 2016 (of course, as Per Pupil Funding increases, so will rental assistance). However, there may be instances of schools that receive authorization for some grades before October 1, 2016 and authorization for other grades on or after October 1, 2016. In those cases, the school will

⁹ NYSED calculates the maximum cost allowance for a particular facility based on the number of Building Aid Units in the facility (according to the type of construction and the types of spaces in the facility, subject to minimum class size rules); a construction project cost index; and a Regional Cost Factor for NYC. The result will then be translated into regular payment amounts based on assumed amortization.

receive funding of two different types for applicable grades. The Charter Center does not anticipate at this time that this will be an impediment to the school's operation or its ability to enter into leases or other real estate transactions.

- ***Q: Does the change in the type of rental assistance alter any other aspect of the Facility Access Process?***

A: No. The procedures for requesting space, receiving an offer (or not), evaluating it, and determining whether to appeal remain in place and unchanged.

- ***Q: School districts only receive facility aid for a portion of the maximum cost allowance, and are expected to pay the difference as a local contribution to the project. Will this be true of charter schools that receive rental assistance based on the maximum cost allowance?***

A: No. Unlike school districts (which levy local taxes for facility projects), charter schools are not required to pay for a portion of the maximum cost allowance.

- ***Q: How will the two types of rental assistance compare?***

A: The maximum cost allowance varies based on a range of facility-specific and economic factors, but the Charter Center tentatively expects that rental assistance based on maximum cost allowance will provide somewhat less funding per pupil than rental assistance based on 20% of Per Pupil Funding.

3. CO-LOCATION PROTECTIONS

The new law protects all co-locations that were approved before January 1, 2014 and that were not altered, revised, amended, revoked, overturned, or withdrawn on or before April 1, 2014, and mandates the implementation of all such co-locations unless the charter school consents to a different arrangement or loses its charter. This provision applies to charter schools that received co-located space pursuant to the formal EIS/BUP/PEP process as well as to charter schools that received co-located space before the statutory process was put into place in 2009.

4. USE OF CO-LOCATED SPACE WITHOUT COST

NYC DOE is required to allow any charter school that is co-located, or will be co-located, to use its co-located space without cost. Most importantly, this means that co-located charter schools cannot be charged rent or usage fees (for such things as utilities, etc.), whether on a sliding scale or otherwise.

- ***Q: Can NYC DOE charge co-located charter schools for after-hours use of a school facility?***

A: The law allows a co-located charter school use of its facility without cost, and there are no day or time restrictions specified. The Charter Center takes the position that co-located charter schools may now provide extended-time instruction or activities without paying any fees to NYC DOE. Please notify the Charter Center if NYC DOE invoices your school.

Co-located charter schools are still required to work out, through the Shared Space Committee, an arrangement that allows charter and non-charter students to share facilities

equitably, in a similar manner, and at reasonable times including during and after school hours.

In the same vein, coordination with NYC DOE will still be important for the sake of arranging necessary building services; but charter schools should expect to be treated like district schools, not like Community Based Organizations that use district school buildings.

- ***Q: Can charter schools charge NYC DOE for the cost of renovation to a NYC DOE building?***
A: The new cost provision only entitles charter schools to *use* school district services and facilities without cost; the Charter Center does not believe that this provision requires NYC DOE to fund facility improvements that charter schools wish to undertake. However, if NYC DOE undertakes building renovations of a school's co-located space on its own, it should not charge the charter school for such upgrades.

Charter school co-locations are still subject to the Charter Schools Act's requirements relating to capital improvements or facility upgrades that exceed \$5,000, including prior permission from the Chancellor and equivalent improvements to non-charter schools in the same building. The Charter Center takes the position that because charter schools must be permitted to use the building without cost, they cannot be required to fund the matching payments that must be made to the other district schools in the building.

5. UNIVERSAL PRE-KINDERGARTEN (UPK)

Authorization to Provide UPK

The new legislation, which is not part of the Charter Schools Act, authorizes NYC charter schools to provide UPK programs. Charter schools must apply to NYC DOE for inclusion in its citywide consolidated UPK application to the State Education Commissioner. If NYC DOE denies the charter school's application for inclusion in its consolidated application, charter schools may apply directly to the Commissioner to provide UPK.

Charter Revision

Adding pre-K will change the number and ages of students to be served by a charter school. The Charter Schools Act requires these metrics to be in a school's charter and any changes normally must be approved by the school's authorizer. NYSED has taken the position in its UPK Request for Proposal that a charter school does not need to obtain a charter revision in order to operate a pre-K program because it does not consider UPK to be an expansion of grade level. The Charter Center recommends that any charter school that wants to offer pre-K consult directly with its authorizer to determine the proper course of action. All schools should keep in mind that for existing charter schools, a charter revision to offer UPK is an eligibility requirement for requesting an offer of co-located space for UPK under the new law (assuming pre-K is treated as a grade level for purposes of the Facility Access Process).

Facilities or Rental Assistance

Even though NYSED has taken the position that pre-K is not a grade level expansion, New York State Education Law – including the UPK legislation and the Charter Schools Act– does not rule out UPK as a grade level expansion. Accordingly, the Charter Center takes the position that charter school UPK providers who obtain a charter revision to offer UPK should be eligible for the Facility Access Process.

There may be no clarification on this point until a charter school seeking to offer UPK makes a written request for a co-location site from NYC DOE. For the 2014-15 school year, NYC DOE has advised all potential UPK applicants that they must be able to accommodate their UPK programs within their existing space.

Funding

Charter schools, along with all other UPK providers, will be required to report their expenses to the State Education Commissioner. Charter school UPK providers will receive funding for total approved expenditures of up to \$10,000 per pupil.

Oversight

Responsibility for the monitoring, programmatic review and operational requirements of charter school UPK programs, consistent with the requirements of the Charter Schools Act, is assigned to charter entities. The new legislation permits NYSED and NYC DOE to inspect charter school UPK programs, and gives the Office of Children and Family Services as well as the NYC Department of Health and Mental Hygiene the authority to suspend and/or terminate charter school participation in the UPK program.

- ***Q: Will NYC DOE have programmatic oversight authority over charter school UPK programs?***

A: No. The new legislation states that *all* programmatic review shall be the responsibility of the charter entity and shall be consistent with the requirements of the Charter Schools Act.

Student Enrollment

In accordance with the new legislation, the admission provisions of the Charter Schools Act apply to the admission of pre-K students, with one exception – namely, that for the 2014-15 school year, each charter school may determine the date by which applications must be submitted.

- ***Q: Under the new UPK legislation, will charter school pre-K students be considered returning students for purposes of Section 2854(2)(b) of the Charter Schools Act?***

A: The admission provisions of the Charter Schools Act set forth the procedures for the admission of a child to a charter school – *not* to a grade, grade level, or program. Thus, just like kindergarten program applicants, successful UPK applicants will gain admission to a charter school, not to the UPK program. Because they are admitted to the charter school itself, charter school UPK students who want to return to the same charter school to attend kindergarten should be treated as returning students under the admissions provisions of the Charter Schools Act.

Teacher Certification

Charter schools are not exempt from UPK regulations concerning teacher certification but such teachers may be exempted under the existing aggregate exemptions applicable to charter schools as to certification (30% or five teachers, whichever is less, may be uncertified though otherwise Highly Qualified). The teacher of record must hold a teaching certificate issued by the State Education Commissioner in order for the school to receive full funding.

6. CITY COMPTROLLER AUDITS

The new law authorizes the NYC Comptroller to conduct audits into the “financial operations” of NYC charter schools. The existing requirement that charter schools conduct annual, independent audits remains unchanged. Charter school authorizers and the Board of Regents/NYSED can also conduct financial audits.

Previously, the New York State legislature attempted to subject charter schools to the audits of the New York State Comptroller. The Courts rejected both of these attempts because the New York State Constitution strictly limits the kinds of entities that the State Comptroller can audit, including charter schools. There are no similar limits on the powers of the NYC Comptroller; thus, this new provision in the Charter Schools Act may well be beyond serious legal challenge.¹⁰

Such audits can be done at the NYC Comptroller’s discretion; that is, all charter schools do not have to be audited within a specified timeframe. The Charter Center intends to address the question as to the proper scope of such audits with the office of the NYC Comptroller in the near future. If your charter school is contacted by the NYC Comptroller indicating that the office intends to begin an audit, please contact the Charter Center for further information.

7. PROVISIONS FOR DISSOLUTION

Upon the dissolution of a charter school, and after payment of all debts and obligations, any remaining funds that can be attributed to public funding must now be paid over to the school district in an amount that is proportional to the number of students enrolled in the charter school from each such district in which such students reside. (In the past all assets could be distributed to another charter school at the election of the school that was being dissolved.) Private assets can still be turned over to another charter school in the school district, as per previously existing law.

Charter schools should review their dissolution provisions to ensure compliance with this provision. Where a charter school’s dissolution provisions are at odds with state law, state law will control.

¹⁰ The new law also defines a charter school as a “political subdivision” with the same boundaries as the community school district in which it is located, for audit purposes only. If the power of the NYC Comptroller to audit NYC charter schools depends to any extent upon the new definition of charter schools as political subdivisions, such power may be open to legal challenge as New York State’s highest Court has previously ruled that charter schools are not political subdivisions.

APPENDIX A: CO-LOCATION REQUEST TEMPLATE

[DATE]

RETURN RECEIPT REQUESTED

Office of the Chancellor
 Tweed Courthouse
 52 Chambers Street
 New York, NY 10007

**RE: Written Request for Co-Location in a Public School Building
 Pursuant to Section 2853(3)(e) of the Education Law**

Dear Sir/Madam:

_____ Charter School hereby submits its written request for co-location in a public school building pursuant to Section 2853(3)(e) of the Education Law, as of the date set forth above.

[_____ Charter School is currently authorized by [name of authorizer] for the 20__-20__ school years to provide Grades __-__. _____ Charter School is located at [address] in Community School District __, and is currently providing Grades __-__. _____ Charter School intends to expand to Grades __-__ starting in the 20__-__ school year, and will serve [#] students in Grade __, [#] students in Grade __, and [#] students in Grade __, for a total of [#] students. _____ Charter School specifically requests that its co-location for newly provided Grades __-__ be located in close proximity to our current school.]

OR

[_____ Charter School submitted its application to [name of authorizer] on _____, 2014 to provide Grades __-__. _____ Charter School will be located in Community School District __ and intends to begin serving students starting in the 20__-__ school year, and will serve [#] students in Grade __, [#] students in Grade __, and [#] students in Grade __, for a total of [#] students.]

Please contact the following individual for further information or assistance:

Name
 Address
 Email
 Telephone

Thank you.

_____ Charter School
 By: _____
 [Name]
 [Title]