

**TESTIMONY BY
NEW YORK STATE UNITED TEACHERS
EXECUTIVE VICE PRESIDENT
ANDREW PALLOTTA**

**SENATE CORPORATIONS COMMITTEE
CHARTER SCHOOL HEARING
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Good morning, Senator Perkins and distinguished members of the Senate Committee on Corporations.

I am Andrew Pallotta, executive vice president of the 600,000-member New York State United Teachers. I thank you for the opportunity to present NYSUT's perspective as New York's charter school experiment begins its second decade.

On a personal note, I am especially pleased to be back in New York City. I am a product of New York City schools and, until just a few months ago, was an elementary school teacher in P.S. 32 in the Bronx. I know first-hand the dedication and commitment of educators in both charter schools and district schools. And, I have seen, up close, how that dedication and commitment can translate into success in the classroom and a brighter future for New York's students.

Chairman Perkins, while I respect and understand that this hearing is focused on the finances and the "business" of charter schools, I would like to take a moment to frame my testimony from a NYSUT perspective. That is, that our interest in charters -- first and foremost -- is what's best for the students we serve every day.

NYSUT supports a charter law that encourages a system that serves all students fairly; a law that provides a mechanism to assure that teachers in both charter and regular public schools have access to good information; and a law that encourages the very best educational practices to help children -- no matter what type of school they attend.

Let me be clear from the outset: Despite the rhetoric coming from some quarters, despite the criticism, attacks and finger-pointing, NYSUT is not opposed to charter schools. We are not on a mission to put them out of business. Charter schools -- and there are many, many good ones -- have an important place in our system of public education. NYSUT is very proud to represent faculty in more than 20 charters, and we look forward to organizing more teachers who want a meaningful voice in the operations of their charter schools very soon.

As a labor union, we also have a duty to question management practices when it appears that those practices do not advance our mission of serving students. As a union that is also deeply concerned about the fiscal crisis our state faces and the deep cuts proposed for education, we also

want to ensure that all schools – charter and district schools – are funded fairly, and that all schools are accountable and transparent in how they spend public tax dollars.

We see the questions we will raise today as part of a healthy system of checks and balances aimed at improving accountability and transparency.

Reason for Concern

My testimony today is based on an extensive, months-long staff review of public records -- research conducted to inform our legislative proposal, Chartering Fairness. It responds to concerns voiced by teachers, in some cases with their jobs on the line, who have raised important questions about charter management practices and spending. Teachers who work in charter schools – like their counterparts in regular public schools – are deeply committed to their students and their schools. When we raise concerns, it is not to sink charter schools, but to improve them.

Because current state law does not ensure charter operators are fairly enrolling or serving all students, it undercuts the efforts of educators in both types of schools who are dedicated to ending the achievement gap for children at risk.

Because the law fails to provide comprehensive accountability for taxpayer dollars, the promise of charter schools is undermined by instances of financial mismanagement and ethical lapses that place profits ahead of students.

Quality charter schools have much to gain from reforming the current law to ensure all charter operators are fair in admitting and serving students, and accurate and transparent in reporting practices, results and finances.

As New York’s charter law reached the significant 10-year benchmark, and as the agreed-upon cap of 200 charters got closer, NYSUT embarked on research to assess how the law was working. We also wanted to look into some of the anecdotal concerns raised by our charter school members – and others – and to pull out from that research what could be done to strengthen the charter school law and to achieve the original promise of charter schools.

Failure of the Current Charter Law

The result was a review of hundreds of public records, including a number obtained through the Freedom of Information Law. Local school districts, the State University of New York’s Charter Schools Institute and New York State Education Department also provided information and records, including never-before collected statewide data on special education enrollment at charter schools and data on “churn” or turnover rates — reflecting the number of students who are discharged from or leave charters and return to schools in their districts.

And, what we found was that, current charter law fails to reliably protect against financial abuses; it fails to ensure that charters fairly serve children most at risk of failure; and it fails to ensure that teachers in all schools can rely on results to identify best practices that advance student learning.

The state’s charter school law gives charter operators great autonomy for how they spend and account for the public tax dollars they receive.

Charter operators are exempt from having to issue property tax report cards; do not hold public votes on their school budgets; or elect independent school board members in a public vote. Charter operators receive more than 95 percent of their revenue from public funds yet are currently exempt from audits by the Office of the State Comptroller, which recently completed audits of all other regular public schools. This financial autonomy sets them apart from other public schools in the state. Similarly, student enrollment is by lottery and operators can discharge students, two factors which also differentiate charters from neighborhood public schools.

Our interest was heightened and our resolve strengthened when charter management began lobbying vigorously for the 200-cap to be lifted without any changes in the law governing their operations.

NYSUT remains steadfast in saying that any lifting of the cap must be accompanied by needed reforms to the law — reforms that would more fairly fund both charters and regular public schools; require charter management to more fully disclose finances and eliminate conflicts of interest; and require charter management to be fair and transparent about student enrollment and testing.

Key Findings from Analysis

As I have stated, NYSUT believes that charter schools can have an important place in public education — including the vital, but as-yet-unrealized mission of partnering with regular public schools in identifying what works and what can be replicated to advance learning for students at risk. Far too many operators have eroded the promise of charter schools by under-serving students most in need. In some cases, charter operators have put profits, their personal financial interests or their business interests ahead of student learning and public transparency.

More than 10 years into New York’s charter experiment, there are more questions than answers about this seismic shift in public education.

Here are our three key findings:

- Reform is needed to ensure greater financial accountability. The lack of strong, systematic financial oversight in New York’s charter law has resulted in instances of misallocation of funds; ethical lapses; no-bid contracts; conflicts of interest; and profiteering at student and public expense. According to our analysis of hundreds of documents, some charter founders sit on multiple charter boards; refer business to companies they control; and resist the accountability and disclosure expected of regular public schools.

- Reform is needed to ensure students are fairly served and test comparisons are valid. New data on student enrollment reveals the vast majority of charters are failing in one of the movement’s primary missions: to serve all students fairly, with a “special emphasis on expanded learning for students who are at-risk of academic failure.” Charter operators, both upstate and here in New York City, significantly under-enroll students with disabilities and students who are English language learners. Data from the State Education Department shows that just 7.2 percent of students in charter schools receive special education services, compared to, for example, nearly 15 percent in Albany; 17 percent in Buffalo and 20 percent in Syracuse. The special education population of the four Harlem Success Academy charter schools is 1.3 percent. In Harlem’s District 5, it is 15 percent. Just 3.8 percent of New York City’s charter population are English Language Learners, compared to 14 percent in New York City district schools. Our review of School Report Card data shows 38 charter schools with zero English Language Learners. This shortfall calls into question the reliability of comparing school test scores. In addition, new data indicates that charter operators routinely discharge students back to district schools, including many who are expelled for behavior or academic reasons, with an estimated “churn,” or turnover, rate of 8 percent to 10 percent. Mid-year migration, of course, also occurs in reverse, with students leaving district schools to enroll in charter schools. This revolving-door student enrollment, along with the under-enrollment of special education and ELL students, undermines the reliability of test score data. The record raises questions about the statistical validity of head-to-head comparisons of student performance between charter schools and regular public schools.
- Our review of available data and the problems they identify suggests that charter authorizers currently lack the capacity to provide comprehensive financial and operational oversight for an expanded number of charter schools. This is a particular concern because, by law, charter operators are exempt from checks and balances that exist in regular public schools, such as elected school boards; city and state comptroller audits; and school budget votes by the public. All three charter authorization entities are hampered by budget and staffing restraints and have responsibility for a larger educational agenda. An important question that must be answered is this: How would authorizers provide rigorous oversight for an additional charter schools if the cap were to be lifted?

Quality charter schools benefit everyone. Students win when they attend charter schools which are accountable and transparent in their operations, and which devote resources to programs meant to advance their learning. Charter operators that are sources of accurate financial and performance-based information are more likely to win community support and to identify best practices that can be replicated. But without greater charter transparency and accountability, how do parents, taxpayers and school authorizers know which charters adhere to the highest ethical, operational and financial standards, and which do not?

Charter Reform Needed Now

NYSUT has proposed a series of reforms to the New York State Charter School Act that we are confident would address these troubling issues. They are part of the legislation – called “Chartering Fairness” – that was derived from this research and now before the state Legislature.

We are calling for:

Transparency and Accountability: The charter statute should be amended to conform with the Court of Appeals decision in New York State Charter Schools Association versus DiNapoli and allow both financial and operational audits for charter schools by city and state comptrollers, and that such data should be made public and readily available under the state’s Freedom of Information Law. Transparency of charter methods, results, resources and practices is essential to inform policy and strengthen public education.

Ethics Reform: Charter school board members and employees should be subject to the exact same financial disclosure requirements and conflict-of-interest prohibitions as other public officials and employees – nothing more, nothing less! For-profit operators should be banned from owning or operating charter schools, and management fees and charter operator salaries should be publicly disclosed. Charter school employees should be protected from anti-union animus.

Equity: Charter operators must commit to serve at least the district-wide average of neediest students, including – but not limited to – English Language Learners and special education pupils. The lottery process for charter attendance should be centralized and overseen by a neutral third party. In order to ascertain charter effectiveness, records must document student migration, reasons why students are “discharged,” student populations and how this affects test results.

End to Over-saturation: The debilitating effect of charter proliferation on New York City, Albany, Buffalo, and other local school districts is clear. Charter school reform must include a remedy to address co-location and over-saturation of new charters, which would undercut existing quality charter schools and regular public schools, and undermine a shared mission to provide quality public education for all.

Fair funding: The charter law must be modified to ensure fairness in funding, so that both charter schools and regular schools can provide a quality education for all students.

Senators, we are simply asking for fairness and equity – not just for our members – but for students, their families and New York state taxpayers.

Yet, the New York State Charter School Association, the lobby group for charter schools, has opposed these and other common-sense reforms, even as charter advocates on the national

level have, ironically, embraced greater monitoring of their schools for admissions procedures, academic standards and financial stewardship.

If you'd allow me to quote Greg Richmond, president of the National Association of Charter School Authorizers. Testifying before the House Committee on Education and Labor, Mr. Richmond said: "Without strong practices in place, a (charter) school drifting off course quickly becomes a disaster for its students, parents and the public."

In his testimony, Mr. Richmond noted that, since the mid-1990s, the federal government had spent \$2 billion to finance new charter schools, but less than \$2 million – one-tenth of 1 percent – to ensure they were held to high financial and educational standards.

Again, quoting Mr. Richmond: "It's as if the federal government had spent billions for new highway construction but nothing to put up guardrails alongside those highways. New highways will allow drivers to get where they are going faster, but the lack of guardrails will sometimes lead to horrible accidents."

Have there been some already? Are we on that road in New York? The record shows there have been, and there is much we don't know because charter operators don't have to tell us; there is little transparency in how they operate; how they spend taxpayers' money; and how they approach educational equity. And, oversight has been lax.

But our research – again, all through public, easy-to-find documentation – raises some questions and, quite frankly, raises some eyebrows. To cite just a few:

A Brooklyn charter school has acquired an unusual subsidiary — a bridal boutique operated by the charter school's founder and board president. For the last year for which full records are available – 2007-08 -- the Bridal Garden paid its executive director more than \$144,000; paid nearly \$60,000 in other salaries; incurred about \$600,000 in write-offs and other expenses, and donated just \$35,000 to the charter school.

Why has a charter school assumed a bridal shop's financial operations as a subsidiary? Is it a problem? Authorizers haven't moved to question it.

At the other end of our state, the founder and board president of a charter school in Buffalo, with three business partners, holds the mortgage on the charter school building. In a complicated real estate transaction, the \$875,000 building is being financed by the partnership — which includes the board president — at interest rates ranging from 7 to 20 percent. Records show the charter school will pay – through a building corporation – well over \$4 million to the board president's partnership as well as additional developer fees.

Again, is it appropriate for the charter school founder to hold the mortgage and profit from the school he operates? Is the mortgage a good deal for the school and for taxpayers?

Without a comptroller's audit – without public oversight through a citizen-elected school board – we really don't know.

There is also a lot we don't know about for-profit charters. At the Buffalo United Charter School, which is managed by National Heritage Academies, the contract requires that 100 percent of the school's revenue goes to headquarters in Grand Rapids, Michigan. N-H-A runs the school, and keeps what's left over as profit. I'm told the PTA at this school is reluctant to hold bake sales, because 100 percent of the proceeds must be sent to Grand Rapids. The school's audit filed in November gave us a glimpse of what's happening. Of the \$7.2 million collected by NHA from Buffalo United, it billed this school – one with 49 teachers:

- \$1.34 million for the school to operate in the building NHA owns,
- \$976,000 for executive administration,
- \$361,000 in “professional fees”,
- \$175,000 for board oversight,
- \$188,000 in accounting fees,
- \$272,000 for technology,
- \$86,000 in miscellaneous fees,
- \$67,000 for travel,
- \$33,000 for marketing and business development.

In 2008-09, NHA collected nearly \$3.6 million in charges and management fees. The school spent \$2.7 million on salaries, benefits, food service and instruction. Now, certainly NHA provided management services to this school. But, how much is profit? How much is a fair profit? Are students receiving all the services they need, or is charter corporate cutting corners to increase their profits? With a self-selected board, no independent audits, no public input on the budget, there is truly too much we don't know and can't know about the financial operations of this private management company and its charter school.

We know charter schools are required to have conflict of interest policies, but who watches to ensure they are followed? For at least three years, the founder and board president and another trustee of a Long Island charter school were paid as consultants to the school. Records show that in one year, the two collected more than \$141,000 from the school. When the unionized teachers at this school raised questions, the Charter School Institute stepped in and is seeking to stop the insider payments.

Before the Charter School Association went to court to block the state comptroller from conducting audits, the Comptroller's Office completed a handful of charter audits. Among its findings were misappropriated funds at Buffalo's Western Maritime Charter School, including the purchase of big-screen televisions, computer equipment and security devices that were delivered to the homes of school employees. The Comptroller's Office found the charter operator's failure to carefully monitor school activities resulted in the employment of an individual with a criminal record; the misappropriation of school funds; and the awarding of

contracts where it was unclear the school received value for the money spent. In addition, the comptroller's audit found that school officials and employees paid for \$95,000 in goods or services that were either not delivered to the school or were misappropriated after they were delivered.

Senators, in researching the impact of state charter law and current charter financial and educational operations, our staff amassed tax records, contracts, audits, e-mails and educational data that document these and many other specific concerns. Augmented by information developed from this hearing, that data will be submitted in a report to your committee next week. To re-state, our goal is not to sink charters, but to strengthen the accountability and transparency provisions of the law to ensure that public dollars are spent wisely and to ensure that charters serve all students fairly. Senators, fixing New York's flawed charter school law by increasing accountability and transparency would protect taxpayers and ensure fairness to students and teachers in existing charters as well as regular public schools.

We Need to Know Why a Charter School Succeeds

I will state again, what's most important is what helps students succeed. And, to know that, we need reliable data on what works. When a charter school succeeds brilliantly, is it because of a particular curriculum? Longer school day and school year? Is it because students wear uniforms or because their teachers receive intensive professional development?

Or, is the charter school succeeding in comparison to district schools because it is educating far fewer students who have learning disabilities? Who are just now learning English? Or because the charter school has expelled students with behavioral problems and counseled out those who they expect to score poorly on state tests?

Answers to these questions are needed because they will help all of us — in charter schools and regular public schools — do our very best for all of our students.

Thank you.