

# Preserving Charter School Autonomy

No. 99  
February  
2013

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*A Pioneer Institute White Paper*

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**PIONEER INSTITUTE**  
PUBLIC POLICY RESEARCH


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### Executive Summary

Three years ago, with great incentive from the federal government, the Massachusetts state legislature raised the cap on charter schools in some underperforming districts across the Commonwealth. The move was welcomed by parents, students, and other concerned citizens in those communities—communities where charters have provided a high quality alternative to the traditional public system.

But the charter cap lift was only a first step. Though important in that it symbolized a willingness on the part of state leaders to increase the number of high-quality education options for students and families, it was clear less than a year after the legislature lifted the cap that it would not be enough to accommodate the thousands of students on charter school waitlists across the Commonwealth.

Pressing as it is, the need to serve those students and families who demand more charter schools is not the only issue that the 2010 legislation highlighted. At the same time the legislation raised the cap in some districts, it also created important, but often overlooked, regulations for new and existing charter schools to follow. Some of those regulations, such as those that require charters to maintain their own waitlists and to ‘backfill’ empty seats, have proven to be confusing and time consuming regulatory burdens for these schools.

Additional confusion arises from provisions in the 2010 legislation pertaining to Horace Mann charter schools. Charter advocates were pleased to see that the new law removed the requirement that Horace Mann charter schools receive approval from a local school committee and collective bargaining unit to be established, but they were befuddled

to learn that these same bodies would have the right to approve any reauthorization of a Horace Mann charter established after 2010. With reauthorization impending for many young Horace Mann charter schools, school leaders are left to wonder whether local school committees and teachers’ unions will attempt to strip them of some of the autonomies they have enjoyed since their founding.

Perhaps most troubling, however, are some of the major issues facing charters that the 2010 legislation leaves unanswered. Since charters were established in the Commonwealth of Massachusetts, they have received very little support from the Commonwealth in finding and financing space in which to operate. Moreover, the state has done little to encourage local school districts that own empty school buildings to lease those buildings to new charter schools at fair rates. As the state charter school office has long been underfunded and understaffed, these new charter schools, along with their established counterparts that are seeking to replicate, require guidance and support (though not regulation) in a number of matters, from financing a new building to opening a new school on an incredibly limited timeline. For these reasons and many more, three years after its passage, it is time to give the 2010 charter school legislation another look.

### Introduction

On December 20, 2011, Governor Deval Patrick visited the MATCH Community Day School in Jamaica Plain to “celebrate ‘Smart Cap’ Charters and efforts to close the achievement gap.” A collaboration between two of the Commonwealth’s highly successful charter schools, MATCH Community Day was one of the first new charter schools authorized under the 2010 law *An Act Relative to the Achievement Gap*.<sup>1</sup>

The Act created a ‘smart cap,’ which allowed for the expansion of some high performing charter schools in the Commonwealth. The Governor’s visit to MATCH Community Day marked an important new chapter in charter schooling in Massachusetts, for the 2010 legislation that enabled MATCH Community Day and other schools like it was formal recognition of what many charter advocates have long known: charter schools play a vital role in “clos[ing] the achievement gap in Massachusetts.”<sup>2</sup>

Since the 2010 ‘Smart Cap’ legislation was passed, nearly 20 new charter schools have opened, concentrated in the lowest performing districts in the Commonwealth. The vast majority of those schools are run by ‘proven providers,’ a term introduced in 2010, which refers to “individuals or charter networks that have previously or currently run schools with records of academic success and organizational viability.”<sup>3</sup> The availability of these new schools and the combined seats was welcome news for the tens of thousands of families on waitlists to attend charter schools in Massachusetts.<sup>4</sup> For these families, many of whom have multiple children on waitlists for multiple charter schools, the new legislation meant more opportunity to have their number picked in a charter school lottery.

Unfortunately, the number of seats added under the Patrick administration’s 2010 legislation has not been change enough, and it has come with a price. In exchange for seeing the cap lifted in the Commonwealth’s lowest performing school districts, charter schools and their advocates have had to accept some trade-offs. Those trade-offs include provisions in the law that force charters to ‘backfill’ seats when students leave charters, and even one provision that calls for some Horace Mann charters to have school board

and union approval upon reauthorization. Such provisions hamper the very autonomy that has so greatly contributed to the success of charter schools in the Commonwealth.

Perhaps more problematic, however, are two dire needs the 2010 legislation failed to address: making high quality charter school options available to all students and families that want them and ensuring that all charter schools are able to operate in a safe and affordable space. In that it did nothing to raise the overall cap on charter schools in the Commonwealth, the 2010 legislation made a mere dent in the rapidly growing waitlists that charter schools maintain. Moreover, the legislation failed to provide any incentive to local school districts, many of which have school buildings sitting empty, to lease buildings to charters at fair and affordable prices. Thus *An Act Relative to the Achievement Gap*, while certainly a step in the right direction toward making a high quality, charter school education available to all students who want it, does not do enough. Now two years after the legislation’s passage, charter proponents and opponents alike can assess its implications with an eye to determining the next best steps for public education in the Commonwealth.

### **Massachusetts Charter Schools and the Caps Attached**

Charter schools were established in Massachusetts as part of the Education Reform Act of 1993. As they were a new and relatively untested education reform, the legislation that created charter schools also created caps on the number of charters that could exist in the Commonwealth. The first cap, created in 1993, ensured that only 25 charters could be open at any time in Massachusetts.<sup>5</sup> The second cap, which was put in place in 1997, ensured that no district

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would have to spend more than 9 percent of total school tuition expenditures on students who chose to attend charters instead of their regular district schools.<sup>6</sup>

Since their inception charters have been very popular with poor and minority parents especially, who see them as high quality alternatives to troubled public schools, especially in urban districts.<sup>7</sup> Indeed, demand for charters has grown among these populations so much over time the original state cap has been raised three times in total: once shortly after the 1993 legislation was passed, in 1997, and then again in 2000.<sup>8</sup> At present, the state cap on charter schools is 72.<sup>9</sup>

In most cases, parents have been correct to place their faith in Massachusetts charter public schools, which as a group, outperform a majority of their traditional public school counterparts on state examinations of student achievement.<sup>10</sup> The success of Massachusetts charter schools is due in great part to the thoughtful and conservative authorizing process that was put in place in the first years of the movement. That process, which relies upon rigorous internal and external charter school evaluations, has been cited time and again as one of the most effective in the country.<sup>11</sup>

Some note that the current authorization process was developed at a time when authority for charter schools rested with a body independent of the Department of Elementary and Secondary Education (DESE).<sup>12</sup> An independent charter office does not exist today. In 1996, authority for charter school authorizing was moved out of an independent secretariat, which had been abolished, and moved into the DESE. Under the current arrangement, the DESE, which operates under a reincarnated

Secretariat of Education (established in 2008 under the Patrick administration),<sup>13</sup> makes recommendations to the Board of Elementary and Secondary Education (BESE) as to which charters should be authorized or, in the case of failing schools, closed.

It was under this new structure that the most recent cap lift occurred. With enticement from the federal *Race to the Top* grant program, which rewards applicants for loosening restrictions on the growth of charters schools, Governor Deval Patrick and then Secretary of Education Paul Reville, neither of whom had been ardent public supporters of charter schools in the past,<sup>14</sup> worked with the legislature to craft *An Act Relative to the Achievement Gap*. Chapter 12, or the Act, passed in 2010 and included provisions to lift one of the two then-existing caps on charter schools. The cap lift applied only to the lowest performing 10 percent of school districts in the Commonwealth, and in such districts raised the amount that can be spent on charter schools from a total of 9 percent of total district spending to a total of 18 percent of total district spending.<sup>15</sup>

In many ways, this modest but important cap lift was an effort to please both charter supporters and detractors while ensuring that Massachusetts receive a Race to the Top grant. The lift appeased charter supporters who had been demanding more high-quality charter school options for Massachusetts families since the last cap raise in 2000. But it also avoided rankling charter school detractors in that it allowed only for the minor and relatively slow expansion of charter schools, which some see as unwanted competition for traditional public schools.

Though a compromise of sorts, the 2010 cap increase was an important victory for charter school supporters. Demand for charter school

seats in low-performing districts was so high that as soon as the cap was raised DESE received 42 new charter school applications, up 14 from the previous year.<sup>16</sup> Sixteen of those applications were approved in 2011.<sup>17</sup> All of the charters approved were in low-performing districts and were granted to designated ‘proven providers.’

Given the large number of applications filed and approved, this small victory for charter school supporters seemed short-lived; it has quickly become clear that the cap lift in targeted districts will not be enough to meet the demand from Massachusetts families and students. For, as the new charter school seats have quickly filled, the number of families searching for a charter school seat has also continued to grow, especially in the Commonwealth’s lowest performing districts.

In Boston, for example, where many of the Commonwealth’s charter schools have flourished, 3,600 charter school seats were already taken in 2010, leaving roughly 1,000 seats open for authorization in subsequent years.<sup>18</sup> Indeed, Commissioner Mitchell Chester was so concerned that Boston and cities like it would exceed the cap if too many worthy charter school applications were approved, that in 2011 he called for a moratorium on charter school applications in some cities.

That moratorium had an impact not only on charter schools in the affected cities that were poised to replicate, but also on the growing number of families on charter school waitlists across the Commonwealth. While it is difficult to pinpoint an accurate number of the individual students on charter school waitlists because so many families apply to multiple charter school lotteries, between 2010 and 2012 the number of students on

**Charter schools** are public schools of choice established on the basis of an agreement, or charter, with the state Board of Elementary and Secondary Education. In exchange for certain autonomies, such as the autonomy to extend the length of the school day and year and to hire and fire staff, charter schools are held to strict accountability standards. In addition to meeting all of the accountability requirements imposed on traditional public schools, charter schools are reviewed by the state every five years, and they may be closed if the Commonwealth finds that they are not performing to the terms of their charter.

**Commonwealth Charter Schools** were the first type of charter schools created in Massachusetts in 1993. They function as their own school districts and have the ability to create and manage budgets and hire and fire staff. Teachers in Commonwealth charter schools need not be part of a union.

**Horace Mann Charter Schools**, created in 1997, enjoy many of the same autonomies of Commonwealth charter schools. Teachers in Horace Mann charter schools are members of the union but have the ability to opt out of certain aspects of collective bargaining agreements. Until 2010 and Chapter 12 of An Act Relative to the Achievement Gap, all Horace Mann charter schools needed school committee and union approval to exist. The 2010 legislation revoked the requirement for newly created Horace Mann charter schools, which are not subject to school board and union approval upon authorization. However, school committees and unions must give their consent for Horace Mann charters to be renewed.

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charter school waitlists nearly doubled from just over 24,000 to 47,471.<sup>19</sup> This increase is impressive and reflects great demand for more high quality charter school options.<sup>20</sup>

Of course, it is not just Boston that is affected. Even in cities like Lawrence and New Bedford, where there is still room for expansion, many parents and advocates are calling on the Massachusetts Board of Elementary and Secondary Education (BESE) to approve more charters in the near future. These so-called Gateway communities see charters as important partners in education reform and in ongoing efforts to close the achievement gaps that plague these cities.<sup>21</sup>

In light of this need, charter advocates would now like to see a lift of the overall state cap, which was unaffected by the 2010 legislation. This cap, which has been in place since 2000, limits the number of Commonwealth Charter Schools that can operate in Massachusetts to 72 and the number of Horace Mann Charter Schools to 48.

On this issue, charter advocates have the public in their corner. According to one recent poll conducted for Pioneer Institute by David Paleologos of DAPA research, “Over two-thirds (70 percent) of likely voters support charter schools. . . Broken down by party affiliation, 87 percent of Republicans, 77 percent of independents, and 56 percent of Democrats support charters.” Furthermore, “six-out-of-ten support increasing the number of students enrolled in Massachusetts charter schools. That support jumps to 68 percent among households with children under 18 (55 percent in households without children under 18).”<sup>22</sup>

The public, it would seem, has good reason to support an increase in charter enrollment, especially given the Commonwealth’s

history of strong authorizing processes and high student achievement in charter schools. In 2011 alone “twenty Massachusetts charter public schools ranked Number 1 in the state on various 2011 MCAS measurements, including several urban charters whose students are predominantly minority and low-income.”<sup>23</sup>

### Massachusetts Charter Schools by the Numbers<sup>24</sup>

Operating Commonwealth Charter Schools, 2012-2013	67
Operating Horace Mann Charter Schools, 2012-2013	10
Number of students attending charters schools in 2011-2012	30,595
Number of students on waiting lists for 2012-2013 <sup>25</sup>	47,471
Number of charters schools ranking Number 1 in the state on one or more MCAS measurements	20

### 2012 Top Ranked Districts, 10th Grade MCAS, Mathematics<sup>26</sup>

School	Rank
Berkshire Arts and Technology Charter	1
Boston Collegiate Charter	1
Community Charter School of Cambridge	1
MATCH Charter, Boston	1
Advanced Math and Science Academy Charter, Marlborough	5

Despite all of these strong arguments for raising the cap, it is clear, according to Marc Kenen of the Massachusetts Charter Public School Association, that “a lot of work remains before a cap lift is approved.”<sup>27</sup> In large part this is because charter schools have



always been and remain a political issue in Massachusetts. Without the support of the Commonwealth's teachers unions, many legislators will be hesitant to allow more charter schools to open in Massachusetts.

One mitigating factor may be that the national climate towards charter schools is changing, mainly due to the Obama administration's clear emphasis on using coveted federal grant money to incentivize more charter-friendly environments at the state level. After all, the 'Smart Cap' legislation was a direct result of Massachusetts's desire to win federal Race to the Top funding.<sup>28</sup> Marc Kenen notes,

*"At present, events nationally and locally are changing—it's unclear what the impact of the Chicago teacher strike will be or whether there will be a backlash related to the new Boston Teachers' Union contract. On top of that, there is a new legislature coming in January. As events unfold, we might find that the path will get easier than anticipated."*<sup>29</sup>

### **The 'Smart Cap' Legislation and Charter School Autonomy**

While raising the overall cap on charter schools in the Commonwealth is clearly the next big push for charter supporters, there are other aspects of the 2010 legislation that many advocates would also like to address. Specifically, charter proponents fear that statutory language related to recruitment and retention requirements and backfilling vacant charter school seats place unneeded bureaucratic constraints on charter schools, hampering their autonomy and running the risk of hampering their effectiveness.

In addition to raising the cap on district spending on charter schools, the 2010 legislation also put in place several provisions designed to address two of the biggest

complaints that detractors had lodged against charter schools since their inception: 1) that charter schools serve disproportionately low numbers of special needs students and English language learners, and 2) that charter schools lose too many students and do not have to fill vacant seats when students leave for another school during the school year.

Statutes related to recruitment and retention require that charter schools create and "update annually a recruitment and retention plan." They also make clear that charter schools should focus their recruitment efforts upon students from low-income, minority, English language learner, and special education populations.<sup>30</sup> Of course, for most charter schools the recruitment of low-income students has never been a problem; charter schools disproportionately serve students who are minority (mostly black) and of low socio-economic status.<sup>31</sup> Charters have traditionally struggled, however, to attract English language learners and special needs students.

In at least one sense, the 2010 statutes for recruitment and retention have been a boon to charter schools, for they also required traditional public schools to share their enrollment lists with charters, so that charters might better target underserved populations—sharing these lists was not something that traditional public schools had previously been inclined to do on their own. In this way, according to Paul Hays, Principal of City on a Hill Charter Public High School, the legislation has had a positive effect:

*Reaching out to these students was something we had always attempted to do before but that we can now do more effectively—the biggest difference due to these requirements has been the increase in Boston Public School students, from*

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*all populations, applying to our lottery.*<sup>32</sup>

Thus the problem in the legislation's recruitment provisions is not related to any unwillingness on the part of charters to reach out to these populations of students, instead,

*the issue is that the requirement for charter schools to create and annually update recruitment and retention plans places a disproportionate amount of emphasis on whether or not charters comply with a given bureaucratic regulation; there is no expectation in the law that charters receive a desirable recruitment and retention outcome.*<sup>33</sup>

### **City on a Hill, Charter Public School, Special Populations, 2010-11/2011-12**<sup>34</sup>

<b>Population</b>	<b>2010-11</b>	<b>2011-12</b>
First Language Not English	23.8	27.1
Limited English Proficient	4.8	5.5
Low-Income	72.8	84.2
Special Education	11.9	17.5
Free Lunch	55.4	71.8
Reduced Lunch	17.3	12.4

Regulating charter behavior as it relates to compliance as opposed to outcomes, critics charge, goes against the very grain of what charters were designed to be: institutions free of the bureaucratic constraints that hamper traditional public schools. In this vein, the very successful charter schools in Massachusetts might also be becoming more like their less successful charter counterparts in other states. As a recent report published by the Thomas B. Fordham Institute notes:

*America's charter schools resemble an artist who is expected to paint masterpieces while forced to wear thick mittens. Our policy makers and school authorizers, by and large, have not fulfilled their part of the grand*

*“bargain” that undergirds the charter school concept: that these new and independent schools will deliver solid academic results for needy kids in return for the freedom to do it their own way.*<sup>35</sup>

Two of the other statutes in the 2010 legislation, those relating to the maintenance of waitlists and backfilling vacant seats, are also concerning, not necessarily because they exist, but because of the focus they place on charter school compliance. Since 2010, charters have been required to maintain their own waitlists, many of which have grown substantially since the cap was raised in underperforming districts. In addition to maintaining these waitlists, charters are also expected, until February of each school year, to fill vacant seats (due to students who transfer out of the school) with students on the waitlist.<sup>36</sup> Although some claim, that the requirements to maintain waitlists and backfill seats can be disruptive to the “culture of a school,” as students come and go throughout the year, charter leaders interviewed for this paper by and large expressed a great willingness to serve as many of the students on their waitlists as possible.<sup>37</sup>

The problem then, is not necessarily the requirement itself, but that the state has provided many bureaucratic details for charters to follow, along with a number of dates by which seats must be filled and decisions made, without putting any clear processes in place. Furthermore, as with the requirements for recruitment and retention, the state has yet to outline desired outcomes from the processes charters are currently using.<sup>38</sup> Instead, it seems that these regulations exist simply to make charters behave more like their traditional public school counterparts. The question to ask

with regard to these provisions, according to former charter school office head Mary Street, is “What’s the point? What’s the point and who are we trying to save by making schools do all of this work? [These regulations] aren’t about kids, they are about politics.”<sup>39</sup>

### **Hampering Horace Mann**

Of course, charter schools have been a political issue from the beginning, and there is perhaps no aspect of charter schooling more political than that of unionization. By law, teachers in Commonwealth Charter Schools do not have to belong to the local teachers’ unions, though they are free to form a union if they so choose.<sup>40</sup> In large part because non-union charter schools represent a loss of potential membership, Massachusetts unions have been some of the most vocal critics of charter schools.<sup>41</sup>

In 1997, when Horace Mann charter schools were created, there was a sentiment that unionized charter schools could achieve the same results as their non-union Commonwealth charter school counterparts. Horace Mann charters were granted some of the same autonomies as Commonwealth charter schools, but needed the approval of the local union and school committee to exist. Horace Mann schools, which can also be freed from many but not all of the requirements of union contracts, have not proved nearly as popular in Massachusetts as their commonwealth charter counterparts. Moreover, according to several research studies, these schools and local versions of them (such as pilot schools, in Boston) have not achieved the same academic results.<sup>42</sup>

The 2010 legislation sought to increase the attractiveness of Horace Mann schools to would-be charter founders by waiving the requirement that these schools receive the

approval of the local school committee and union to exist. Horace Mann charters that do not need the approval of a local school committee or union are known as Horace Mann III charter schools.<sup>43</sup>

For some charter founders, the Horace Mann III option did open up new possibilities, especially the possibility to attract teachers to a charter school that paid a union salary but was not subject to union approval or all of the union requirements that come with the collective bargaining process.<sup>44</sup> According to Amanda Gardner, Principal of UP Academy in Boston, one of the first Horace Mann III charters approved after the 2010 legislation: “our founders thought that the Horace Mann III model was the only niche for us to pursue to open the school and do turnaround work . . . without the legislation we would not be able to exist with the autonomies that we have.”<sup>45</sup>

Despite creating this niche for some charter founders, the 2010 legislation included a loophole that undermines the autonomy these schools have at the time of their establishment. For, although it states that “Horace Mann schools shall not be subject to the requirement of an agreement with a local collective bargaining unit prior to Board approval,” the legislation goes on to state “a charter for a Horace Mann charter school shall not be renewed by the Board without a majority vote of the school committee and the local collective bargaining unit in the district where said charter school is located.”<sup>46</sup>

This contradictory provision grants Horace Mann’s some needed autonomies but then threatens to take them away by subjecting the schools to the approval of the bodies they sought to circumvent at their founding. Because none of the Horace Mann III charter schools established under the 2010 legislation have yet come up for reauthorization, the full

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impact of this provision remains to be seen. Even the leaders of these schools realize that the impact of this provision is uncertain. Notes Amanda Gardner, “We are interested to see how reauthorization will go. It’s up in the air as to what impact that element of the legislation will have. We hope that five years from now results will be so strong that people will put political divisions aside.”<sup>47</sup>

In the most unfortunate scenario for a school like Gardner’s UP Academy, the union could apply pressure to reinstate some of the rights that UP’s teachers waived, such as collective bargaining and many work contract rules. Though Gardner believes it “a benefit that our teachers are part of the union,” she also concedes that it is freedom from the constraints that union contracts bring that allowed for the establishment of her school in the first place and, further, that freedom from such constraints is an important part of running her school in a way that is both expedient and effective.<sup>48</sup>

Indeed, in the grand scheme, it could be the requirement for union and board approval that is hampering the growth of the potentially promising Horace Mann model. Until 2010 and the establishment of Horace Mann III charters, very few Horace Mann charter applications had been filed. According to the Rennie Center for Education Research and Policy, between 2004 and 2006 not a single Horace Mann charter application had been filed. With very few applications submitted in the years leading up to the 2010 Act, it seems clear that the union and school committee approval requirement is one reason why Horace Mann charters have been called “the road not taken.”<sup>49</sup>

The Horace Mann III loophole in the 2010 legislation is an important reminder of the politics of charter schooling in Massachusetts:

unions have long perceived charter schools as a threat to maintaining and growing their membership and charter school advocates have long seen unions and the regulations that they impose as a major obstacle that schools must overcome if they are going to be successful. Thus, even in 2012, nearly 20 years after charter schools were established in Massachusetts, the same debate continues, even in the face of clear evidence that charter schools are providing excellent academic opportunities to children who would not otherwise have them.

### Facilities

For all of the aspects of the 2010 charter legislation that hamper charter school autonomy, it could be that the most important challenge facing charter schools today is something that is not mentioned within that legislation at all. For charter schools, the challenge of securing safe and appropriate facilities in which to operate is a daunting one. Unlike their traditional public school counterparts, charters face it with very little support from state and local governments.

Under Massachusetts law, charter schools are funded at the same per-pupil rate as their traditional public school counterparts. When a child opts to attend a charter instead of a district school, the per-pupil amount attached to that child is transferred to the charter school.<sup>50</sup> By many accounts, Massachusetts has a very fair system of charter school funding. That fairness, however, does not extend to funding charter school facilities. Whereas district public schools, via the Massachusetts School Building Authority, receive anywhere from 40 to 80 percent<sup>51</sup> of school construction and renovations costs, charter schools only receive a per-pupil “facilities tuition,” which is “based upon how much school districts, on average, spend on

their facilities.” In FY 2012, the facilities rate was \$893, the same as in 2009.<sup>52</sup>

This is problematic because, as Jose Afonso, formerly of the Massachusetts Charter School Office and currently of Sabis Educational Systems, describes,

*the per-pupil facilities rate that charter schools receive only applies after the schools are ‘up and running.’ It is the up front acquisition that is daunting because charters schools don’t have the leverage, even if they are part of a proven network, to get the financing that they need. Most charters only get high cost financing to open a facility in the beginning, if they get any at all. Also, there is zero guidance from the state [on] how to obtain up-front facilities funding.*

A 2011 report written by William Donovan for Pioneer Institute further outlines the start-up challenges that charters face:

*Charter schools face unique challenges securing outside financing because of how they’re viewed as borrowers. Lenders look at risk when considering loans. That includes judging management’s track record along with its ability to repay the debt. The managers of startup charter schools typically have little experience in starting a school the founders are education activists who put together a board of volunteers with experience in areas such as real estate or finance. . . coupled with concerns about enrollment projections are questions about the ability of the school board to manage growth. Should it lease space at first and expand with enrollment or acquire another building and fill it over time? What is affordable? Lenders expect charters to achieve an increase in assets each year and not lose money.<sup>53</sup>*

The challenges Donovan and Afonso describe have plagued charters since their inception and continue to do so. Not unlike provisions of the 2010 legislation that create unnecessary work for these schools, the issue of finding adequate facilities poses a challenge to charters that is, in some cases, insurmountable—a challenge that traditional public schools do not face. Most problematic, however, is the challenge the facilities problem poses to the children who attend charter schools—children who deserve, like their district school peers, to be in clean, safe facilities that are conducive to learning. Too often, because they cannot secure adequate start-up facilities, charter schools are housed in cramped, rented quarters, even in storefronts, and are forced to relocate as they expand.

Unfortunately, the initial procurement of start-up space is not the only facilities challenge for charters. The second challenge, according to Afonso, is that of the time allotted by the state to procure and open a facility. Even when charter schools do find space that they can afford to buy, those spaces very often need to be renovated or even repurposed entirely to function as schools.

When going through the renovation process, the state requires charters to comply with onerously long request for proposal processes and restrictions that force charters to hire architects and contractors at the “prevailing wage.” Not only do these processes add great cost to construction (at taxpayer expense), the state requires that they be completed within the timeframe of a year. This time frame, notes Afonso, though sensible in theory, can be wholly unrealistic in practice, especially when one considers how long it can take to complete a request for proposal process and the normal problems that can arise in the

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course of a large renovation. Says Afonso, “we are forced into a situation that is more expensive than it would be if we could do the private sector way. Ultimately it is more expensive for our Board . . . which means fewer resources for kids.”<sup>54</sup>

To make matters worse, the state provides no incentives for public school districts to lease closed school buildings to charters at a reasonable price. In many cases, districts that do not want charters to open in their vicinity allow such buildings to remain vacant. This practice is made difficult in other states, like Louisiana, which “gives charter schools a first pass at empty public school buildings.” Massachusetts might take a cue from these kinds of regulations.<sup>55</sup> According to Donovan, “by selling or leasing a public school building to charter schools, cities still receive the income they would otherwise and the area around the school isn’t disrupted by a new tenant with a different use, or negatively impacted by a vacant building. Meanwhile, charters would lease or acquire a building that would likely require minimal renovations.”<sup>56</sup>

Despite some state and federal grant programs and organizations in the non-profit sector that do help charters through the provision of start-up loans and other capital, the state and its School Building Authority (SBA) provide little to no guidance to charter schools when it comes to facilities.<sup>57</sup> Moreover, the one part of the 2010 charter legislation that did address the funds charters have to raise to build and maintain facilities is complicated and almost punitive. The provision requires charters to return to the sending district any surplus tuition revenue that exceeds 20 percent of the school’s operating budget held at the end of the year.<sup>58</sup> While some accounts, such as those held in reserve and earmarked for new construction and facilities maintenance, are

exempt from the provision, the language of the law seems designed to, as one interviewee put it, “punish charters for being efficient, effective, and frugal.”<sup>59</sup>

Despite the capital funding challenges they face, what many charters would like to see from the state isn’t necessarily more money. Instead, they would like support in the form of guidance and information that do not come at the expense of charter school autonomy:

*The charter school office should be a central hub, coordinating banks, public agencies, bringing folks to the table—[when it comes to facilities] it shouldn’t be every school for itself. Now, even if you are an existing school and have less than adequate facilities, there is no help for you. Charters are expected to be expert on everything when they really want to do is teach kids.*<sup>60</sup>

### **Needed: Support That Doesn’t Undermine Autonomy**

Given that some aspects of the 2010 legislation, such as the modest cap lift and even aspects of the recruitment and retention provisions have been a boon to charters, it is fair to say that charter advocates and leaders have hope that the state is moving in the right direction. But what should happen next for charter schooling in Massachusetts? Beyond an overall cap lift what do charter advocates and leaders hope to see at the state level?

There was a recurring theme in interviews conducted for this work: charter schools would benefit from support and guidance housed in a state-level charter school office—an office that is autonomous from the DESE and appropriately funded. Indeed, since the passage of the 2010 legislation, the charter school office, currently housed in DESE, has seen great turnover in leadership,

leaving some charter school leaders feeling unsupported in their efforts to understand the new regulations they need to comply with, among other things. The high turnover is due to many things, and is in great part a symptom of a general lack of support for the office itself.

As former charter school head, Mary Street explains, the charter school office within DESE does not even have its own budget; it is funded through an administrative operating line in the DESE's budget. The ramifications of this is that there is a very small staff working out of the office and no guarantee that when a staff member leaves, the position will still be funded. Given the myriad things that the charter school office is expected to do—oversee the charter approval and authorization process, ensure that all charters are compliant with various (and increasing) state regulations, and, perhaps most importantly, ensure that schools are accountable to the terms of their charters and recommend closure when they fail to perform—it is clear that a small staff without an operating budget and the autonomy to determine what that will look like is not feasible. “The office doesn’t need to be huge. It needs to be adequate, and it’s in everyone’s best interest if it is.”<sup>61</sup>

According to Mary Street, the current lack of support at the state level is even more complicated when one considers that there is now an even greater number of schools to authorize: “everybody wants quality authorizing, but you can’t do it without people—to be good, schools need oversight. . . but it is hard to be rigorous if you can’t cover the territory. . .if the legislature really wants charters to be accountable, then they need to do something.”<sup>62</sup>

A failure to “do something,” as Street puts it, poses a critical problem for the Commonwealth in that it puts at risk the rigorous and effective authorization process that has been in place since the mid-1990s. Many charter supporters believe it was at this time, when the charter office was moved out of the Education Secretariat (which was at the time an autonomous body that existed alongside the DESE), that the quality charter school authorization process in Massachusetts became compromised. Although the deleterious effects were not immediate (some point to early efforts by then-Commissioner David Driscoll to ensure that the new charter school office maintain its independence), over time the status of the new office undermined the original chartering ethos of school autonomy and contributed to the growing burden of regulation and bureaucratic processes.<sup>63</sup>

If charter schools are going to continue to well serve the students of the Commonwealth, a funded and autonomous charter school office is necessary. Moreover, if the Commonwealth is to well serve the tens of thousands of Massachusetts’s families who currently desire charter schools but are not able to access them, it needs to consider a cap raise in conjunction with provisions for the creation of a funded and autonomous charter school office.

Of course, the benefits of the right kind of state support would also extend well beyond authorization to the many successful charter schools that already exist. Many of these schools, in spite of their success, feel the impact of a lack of guidance from above. What charter schools need is a decisive state-level advocate. As one school leader explains:

*A significant challenge of being one of the first Horace Mann III schools in*

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*the Commonwealth is ensuring that all parties (the school, the district, and the DESE) fully understand the various autonomies that are guaranteed by the charter statute. When differences of opinion related to autonomy arise, it's often difficult to determine who the final decision maker should be and this can cause a delay in ensuring that our students receive the exact services that they deserve.*<sup>64</sup>

Thus, two years after the most important charter school legislation in over a decade, it is clear that more action is required if these effective schools are going to remain effective. That action needs to come from the legislature and from a Board of Elementary and Secondary Education (BESE) that understands the benefits of charter schools and the importance of maintaining a high quality charter school system in the Commonwealth.

### Recommendations For Change

***Reestablish a funded charter school office independent of the DESE*** – To ensure quality authorizing and the appropriate supports for charter schools, the state should move the charter school office out of the DESE, making it an independent body that can autonomously make recommendations to the Board of Elementary and Secondary Education. The office should be appropriately staffed and funded in order to authorize and oversee charters and support them in understanding and implementing the law.

***Raise the state cap on the number of charter schools that can exist*** – In conjunction with establishing an independent charter school office and ensuring the continued integrity of the charter school authorizing process, the legislature should raise the overall cap on the number of charter schools that can exist in

the state, allowing all students and families who desire to a high-quality charter school education to access it.

### ***Provide appropriate supports to charter schools for start up and maintenance costs***

– Charter school students, like their district peers, deserve to receive their education in safe, clean facilities that are conducive to learning. The state should establish a program to provide grants to charters and/or aid in the procurement of low-interest loans that will help these schools to reasonably offset the large costs associated with building or renovating a school. Moreover, the Commonwealth should retract onerous request for proposal and ‘prevailing wage’ regulations that can prevent new charters from opening on time and from getting the most for their money in the process of building or renovating a building. Finally, the state should provide districts with incentives to buy or lease to charters unused school buildings at a fair price.

### ***Remove requirement of 2010 legislation that Horace Mann charter schools need school committee and union approval upon reauthorization***

– Though the impact of this requirement remains to be seen, the risk of allowing a school that is successfully serving students to be ultimately shut down by a local school committee or union—who are sometimes characterized as ‘in competition’ with charters—is too great. As autonomous schools, charters are already more accountable to the state than their district counterparts, and it should be up to the state to decide whether a charter is renewed based on clear, pre-determined criteria. Allowing for school committee and union input as to the existence or management of a charter school undermines the entire purpose of charter schooling, which is to allow these



schools to produce results by granting them the autonomy they need to succeed.

***Remove or revise backfill and waitlist provisions of the 2010 legislation*** –Waitlist and backfill regulations included in the 2010 legislation force charter schools to comply with regulations for the sake of compliance. With little to no explanation as to processes or the purpose, charters are hampered by burdensome state regulations. Because charters were intended to be an alternative to traditional public schools, held more accountable for outcomes in exchange for autonomy, it is time to ensure that they are actually autonomous and free from bureaucratic regulations. Student waitlists should be maintained by the state and charters should, within reason and in a way that will not disrupt the culture of a school, be free to admit students off the waitlist as they see fit. Charters have a track record of serving as many students and families as they can. There is therefore no reason to ask them to engage in one more bureaucratic task that takes precious time away from teaching and learning.

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## **Endnotes**

1. MATCH Community Day is collaboration between MATCH Charter Public School of Boston and Lawrence Community Day Charter School of Lawrence.
2. “Governor Patrick visits MATCH community Day School to celebrate ‘Smart Cap’ charters and efforts to close the achievement gap,” Press Release, Dec. 20, 2011.
3. Massachusetts Department of Elementary and Secondary Education, *Application for a Massachusetts Commonwealth Charter Public School, 2012-2013*.
4. Massachusetts Department of Elementary and Secondary Education, Charter School Fact List, 2012-2013, <http://www.doe.mass.edu/charter/about.html>
5. Phillips, Frank. “Leaders Sort Out School Plans: Weld Offers Cap, Delay on Choice,” *The Boston Globe*, May 7, 1993.
6. Massachusetts Education Law 603, CMR 1.00
7. See: Candal, “Putting Children First: The History of Charter Public Schooling in Massachusetts,” Pioneer Institute White Paper No. 48, November 2009.
8. Daley, Vigue & Zernike, “Legislature to consider raising cap on charter schools,” *The Boston Globe*, May 20, 2004.
9. Massachusetts Department of Elementary and Secondary Education, Charter School Fact List, 2012-2013, <http://www.doe.mass.edu/charter/about.html>.
10. See, for example, “Informing the debate: comparing Boston’s charter, pilot and traditional schools,” January 2009. Also, boston.com, 2012 MCAS results, <http://www.boston.com/news/education/>, and Massachusetts Department of Elementary and Secondary Education, “Massachusetts Charter School Achievement Comparison Study: An Analysis of 2001-2005 MCAS Performance,” August 2006, p. 2, retrieved Oct. 3, 2009 from <http://www.doe.mass.edu/charter/reports/datastudy/report.pdf>.
11. See, for example, “Charter School Authorizing: Are States Making the Grade?” The Thomas B. Fordham, Institute, June 5, 2003. See also: Center for Education Reform, Massachusetts Charter Law, downloaded Oct. 1, 2009 from [www.edreform.com](http://www.edreform.com). See also, Candal, “Putting Children First.”
12. See Candal, “Putting Children First.”
13. The Commonwealth of Massachusetts, Executive Department, Press Release, “Governor Patrick names Paul Reville Secretary of Education, March 11, 2008.
14. See: Lehigh, Scott, “Obama’s challenge on charters,” *The Boston Globe*, March 13, 2009.
15. Massachusetts Session Law, Chapter 12, Section 7.

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16. Massachusetts Department of Elementary and Secondary Education, Press Release, “42 groups submit new charter school prospectuses,” August 16, 2010.
17. “Nearly two dozen new charter applications filed with the state” Massachusetts Charter Public School Association, Press Release, July 26, 2012.
18. Vaznis, James, “Charter school moratorium lifted by the state: move could pave way for hundreds of seats in Boston, *The Boston Globe*, May 8 2012.
19. Massachusetts Department of Elementary and Secondary Education, Charter School Fact List, 2012-2013, <http://www.doe.mass.edu/charter/about.html>.
20. For example, of the twenty existing charter schools in Boston each maintains a waitlist that range from 550 to 2, 647 students. See: Vaznis, James, “Charter school moratorium lifted by the state: move could pave way for hundreds of seats in Boston, *The Boston Globe*, May 8 2012.
21. “Parents support school improvement plan, poll shows,” State House News Service, Eagletribune.com, June 14, 2012.
22. Press release “Poll finds Massachusetts voters overwhelmingly favor more school choice,” Pioneer Institute for Public Policy Research, Oct. 1, 2012
23. Massachusetts Department of Elementary and Secondary Education, Charter School Fact List, 2012-2013, <http://www.doe.mass.edu/charter/about.html>.
24. Taken from: Massachusetts Department of Elementary and Secondary Education, Charter School Fact List, 2012-2013, <http://www.doe.mass.edu/charter/about.html>, and Boston.com, 2012 MCAS results.
25. While the number of students on charter school waitlists is high, this number, though accurate according to DESE, is in part reflective of individual students being on more than one waitlist. Also important to note is that charters will not report actual student enrollment until mid-fall 2012, at which point it is expected, according to DESE, that the number of students enrolled will be higher.
26. From: Boston.com 2012 MCAS Results, downloaded Oct. 1, 2012, [http://www.boston.com/news/special/education/mcas/scores12/3rd\\_top\\_districts.htm](http://www.boston.com/news/special/education/mcas/scores12/3rd_top_districts.htm)
27. Interview with Marc Kenen, September 17, 2010.
28. See: “Governor Patrick signs historic education reform bill to close achievement gaps, transform Massachusetts public schools, Press Release, January 18, 2010.
29. Interview with Marc Kenen, September 17, 2010.
30. Chapter 12, Section .7
31. See: Massachusetts Department of Elementary and Secondary Education, Charter School Fact List, 2012-2013, <http://www.doe.mass.edu/charter/about.html>.

32. E-mail correspondence with Paul Hays, September 24, 2012.
33. Interview (anonymous), September 3, 2009.
34. Massachusetts Department of Elementary and Secondary Education, School and District Profiles, downloaded October 1, 2012, <http://profiles.doe.mass.edu/>.
35. *Charter school autonomy: A half broken promise*, Thomas B. Fordham Institute, April 2010.
36. Chapter 12, Section 7.
37. Interview with Marc Kenen, September 24, 2012.
38. Interview (Anonymous), September 23, 2009.
39. Interview with Mary Street, September 20, 2012.
40. In August, 2012, the Boston Conservatory Lab Charter School, one of only two charter schools in the Commonwealth to unionize, quietly disbanded its union. A move that led the *Boston Globe* to run the headline “Union Influence Declining at Mass Charter Schools,” Sept. 24, 2012.
41. See, Candal, “Putting Children First.”
42. See, for example, “Informing the debate: comparing Boston’s charter, pilot and traditional schools,” January 2009. Also, boston.com, 2012 MCAS results, <http://www.boston.com/news/education/>.
43. Massachusetts Department of Elementary and Secondary Education, *Application for a Massachusetts Commonwealth Charter Public School, 2012-2013*.
44. Although the 2010 legislation does allow Horace Mann III schools to opt out of collective bargaining, it does require that these schools honor the salary and benefits that teachers receive as part of the district.
45. Interview with Amanda Gardner, September 26, 2012.
46. Chapter 12, Section 9 (i)(3) and (i)(cc).
47. Interview with Amanda Gardner, September 26, 2012.
48. *ibid*
49. “The Road Not Taken: Horace Mann Charter Schools in Massachusetts,” The Rennie Center for Education Research and Policy, April 2006.
50. See Candal, “Debunking Myths about Charter Public Schools,” Pioneer Institute Policy Brief, January 4, 2010. Also important to point out is “sending districts,” or districts that charter school students would otherwise attend, are reimbursed some of the tuition that follows the child who attends the charter school. That is, the charter school is awarded the full per pupil tuition and the

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state further reimburses the district for the money it would have used to educate a students who is no longer enrolled.

51. Massachusetts Charter Public School Association, “Myths/realities about charter public schools, charter public school financing.”

52. Massachusetts Department of Elementary and Secondary Education, FY 12 rates by charter school and sending districts, [http://www.doe.mass.edu/charter/finance/tuition/fy12/rates\\_jun.html](http://www.doe.mass.edu/charter/finance/tuition/fy12/rates_jun.html).

53. Donovan, William, “Houses of learning: the charter public schools facilities process,” Pioneer Institute White Paper No. 76, June, 2011, p. 3.

54. Interview with Jose Afonso, September 28, 2012.

55. Donovan, William, “Houses of Learning,”p. 15.

56. *ibid*

57. *ibid*

58. “Education bill limits charters surplus revenue,” *Melrose Free Press*, February 14, 2010, <http://www.wickedlocal.com/winchester/news/education/x1631829958/Education-bill-limits-charter-schools-surplus-revenue#axzz280rhepKP>.

59. Interview with Jose Afonso, September 28, 2012.

60. *ibid*

61. Interview with Mary Street, September 28, 2012.

62. *ibid*

63. Candal, “Putting Children First,” interview with Ed Kirby.

64. Correspondence with Amanda Gardner, October 1, 2012.



