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CHARTER SCHOOL NETWORKS IN NEW YORK: A RANGE OF OPTIONS AND STRUCTURES

Introduction

When it comes to setting up a charter school in New York, there are important considerations to ensure success and sustainability. What is the most effective model for operating a network of charter schools in New York? Is a central oversight organization needed? Or, is a third-party entity not necessary in New York, given unique provisions of state law?

To answer these and other important questions, experts from Classical Charter Schools, which operates several charter schools in New York City, the law firm Barton Gilman LLP, and PKF O'Connor Davies, LLP teamed up to develop this analysis. What these organizations share is a long-standing commitment to serving the needs of families and students who pursue a charter school education in New York. We hope this Guide provides a thorough review of the factors that influence the success of New York Charter Schools and Networks and of what works and what doesn't work.

The History of Charter School Networks

When public charter schools first opened in the early 1990s, each was independent and unique. Independent charter schools remained the norm until the movement grew from a fledgling reform effort into a major force in public education. Today there are more than 7,000 charter schools nationwide, educating approximately 3.2 million students.¹

As the number of successful charter schools grew and expanded their footprint beyond a single site to multiple locations, networks of charter schools emerged. The charter school landscape now offers a mix of independent schools and networked schools that share a common design, management, and governance.

In most parts of the country, charter school networks consist of multiple schools affiliated with the same third-party educational service provider (ESP). These providers can either be nonprofit organizations [often referred to as charter management organizations (CMOs)] or for-profit companies [known as educational management organizations (EMOs)]. In either form, ESPs offer resources, expertise, and centralized services to support their affiliated charter schools. ESPs commonly offer supports, such as curricula, formative assessments, professional development, data analysis, legal, human resources and financial services, back office assistance and special education support.

¹ "Estimated Public Charter School Enrollment, 2017-18 School Year, March 2018," National Alliance for Public Charter Schools, 2018. Available at https://www.publiccharters.org/sites/default/files/documents/2018-03/FINAL%20Estimated%20Public%20Charter%20School%20Enrollment%252c%202017-18_0.pdf.

In New York, a unique aspect of state law allows multiple charter schools to share the same “education corporation.” This means that each campus will be held independently accountable for academic performance, but the corporate elements of the program are shared, including a board of trustees and bank accounts. It may also mean that students can migrate between schools within the same education corporation upon approval from its authorizer. These shared centralized elements allow charter schools with linked education corporations to function as networks without the involvement of an ESP. Some networks opt to contract with an ESP but others instead choose to manage their operations on their own.

Originally, New York charter schools were not considered eligible to share a single education corporation. In 2010, the New York Charter School Act of 1998 was amended to extend the cap on the number of allowable charters, and additional changes were made. Although nothing was added to explicitly describe how charters can share education corporations, adjustments were made to the language of Sections 2852(7) and 2853(1)(b-1) of the Act and Article 9 of the New York Not-For-Profit Corporation Law that would allow for such sharing. According to the State University of New York (SUNY) Charter Schools Institute, the 2010 changes to the law meant that “Two or more existing education corporations may elect to merge into one education corporation with the authority to operate multiple charter schools.”²

This interpretation is shared by the New York State Board of Regents and the New York City Department of Education. All educational institutes agree that existing schools can merge their existing education corporations within the portfolio of a single charter authorizer³ and new charters can be granted to schools that will be added to a pre-existing education corporation. As a result, numerous New York charter schools and networks have taken advantage of the opportunity to consolidate within a single education corporation. Some of these consolidated education corporations contract with ESPs and some of them do not.

Whatever their configuration, networks of charter schools are generally better able to leverage resources and access more established supports than stand-alone schools. Many authorizers, charter support organizations, and philanthropies are facilitating the growth of networks with a proven record of success, hoping to generate a positive impact on a greater scale. Creating networks promotes economies of scale and provides access to a depth of expertise comparable to that of a school district — and likely more robust than an independent charter school. For example, by banding together in networks, charter schools can overcome some of the disadvantages of having to provide special education services independently and away from established district resources and knowledge.

Educational Service Provider (ESP) Support

When a charter school network is formed, member schools look to the central network as a resource for a range of services. To ensure uniformity of programs implemented at all campuses, it can be helpful to have a third-party organization focusing on that.

For example, a large CMO or EMO may have considerable scale across several states and employ a centralized staff to help all network schools with training, data analysis, specialized legal advice, materials and processes. In this case, the cost of this district-like level of support is covered by the fee the network schools pay to the ESP. On the other hand, a smaller ESP, or one with more limited resources, may offer a narrower scope of services. Network school

² “Guide to Merging Education Corporations,” SUNY Charter Schools Institute; May 9, 2018. Can be found at <http://www.newyorkcharters.org/wp-content/uploads/Guide-to-Merging-Education-Corporations.pdf>.

³ In some instances, schools within a network were chartered by different authorizers and, therefore, transferred to a single authorizer all the schools consolidating into a single education corporation. It is not clear whether such transferral is necessary for consolidation, but it would at a minimum be unwieldy to have a single education corporation overseen by more than one authorizer.

contracts with ESPs vary considerably in cost and scope. Generally speaking, as a result of economies of scale, networked charter schools typically pay less for services included as part of a comprehensive management agreement than if they contracted with a local district for the same services.

It is important to note that reliance on an external, third party ESP for centralized offerings can come with some risk to schools within the network. For instance, a network school may determine that it does not want to continue its relationship with a particular CMO or EMO. When its contract with the ESP ends, service will be terminated. This could negatively impact the schools that remain in the network if the ESP is less economically viable because of the defection. The school that terminates may also struggle until it can replicate or secure needed resources from another provider. Moreover, some ESP contracts can be difficult for schools to terminate without incurring significant costs or penalties.

In some instances, a school that initially benefited from a comprehensive (and expensive) set of services from an ESP may, after a few years, no longer need so much assistance. At this point, the school may decide to scale back the services it receives to reduce costs. This can be very problematic for the ESP, which may have invested considerable resources to launch the school and may only start to recoup its investment in the latter years of its contract with the school. This situation can lead to friction.

Support from Philanthropic or Other Funding Organizations

In instances where a network of charter schools is funded and supported by a shared philanthropic foundation or other funding organization, it is unlikely that centralized support from that entity will include district-like expertise and staffing for the networked schools. However, the funding organization is likely to provide financial resources that can help networked schools access services from third-party providers and districts.

Education Corporations With or Without External Support

By allowing charter schools to share an education corporation, New York provides them with unifying structural opportunities that are not available to charter schools in any other states. The need for an external, third-party partnering organization may be limited. Consider the following listings of the features of each approach:

Partnering with an ESP (or Other Third-Party Organization)

- ESP charges a fee for its services (typically 5-15% of per student funding)
- ESP may provide financial resources to support the schools (e.g., start-up funds for new schools; loans to cover shortfalls from delayed public funds installments; and/or capital costs)
- ESP may provide facilities or offer below-market rent
- ESP can centrally manage the schools and ensure uniformity across all schools in the network
- ESP can develop and offer a common curriculum and related materials, as well as professional development aligned to it
- ESP can provide data analysis, human resources, financial (including payroll), legal and other operations services
- By receiving funds from each school, the ESP can direct them where most needed

Relying Only on a Shared Education Corporation

- Single governing board allows for centralized management focus across the network
- Common bank accounts allow network to direct funds where most needed
- Network can develop and implement a common educational approach across its schools
- Network saves the cost of engaging ESP (typically 5-15% of per pupil funding); some of these funds may be used to hire more operations staff in-house, engage with consultants as needed for professional development and other services
- Cannot access any resources or facilities opportunities that might be offered by ESP

ESP Pros and Cons

Over 40% of charter schools approved in New York City are operated by an ESP. Outlined below are the advantages and disadvantages (pros and cons) of using an ESP, as it relates to finance and operations. These can affect schools differently based on the school model, size, growth, strategies, grades served, parent involvement and other important characteristics. It should be noted that some ESPs offer only limited services and charge a correspondingly limited fee.

Advantages of Working With a CMO

- **Economies of scale: This is the most obvious advantage of working with a CMO, as services, personnel and facilities can be scaled across network schools to provide:**
 - Institutional knowledge
 - Collaboration between similar schools
 - Building an organizational/operational support structure
 - Planning, initial implementation, replication and expansion of charter schools
 - Dissemination of best practices
 - Purchasing power and enhanced credit rating
- **Government funding:** The Federal Charter School Program (CSP) Replication and Expansion grant directly provides grants to only CMOs for expansion and replication of high-quality charter schools.
- **Philanthropy, fundraising and support: ESPs often have access to foundations that will invest almost exclusively in CMOs. Philanthropic organizations have promoted and funded the growth of CMO run schools, including:**
 - Charter School Growth Fund
 - New Schools Venture Fund
 - Bill & Melinda Gates Foundation
- **Accountability on the ESP level:** ESPs are not subject to oversight by the authorizer, State Education Department (SED), City and State Controllers' offices or the SED Office of Audit Services. This oversight has been a drain of employee time and resources of charter schools as these audits could last up to 4-6 weeks and possibly months depending on the size of the school(s).

- **Other considerations:**
 - ESPs can incur expenditures that are prohibited under charter school laws, such as the purchase of alcohol.
 - ESPs may enjoy greater autonomy for innovative programs and development that may not be feasible on the charter school level.
 - An ESP that demonstrates a track record of success may be more readily allowed to open multiple schools (although this can also be true for multiple school education corporations without an ESP).
 - An ESP may foster rapid charter school growth that can potentially influence greater change and better outcomes in public education, including at district schools.
 - ESPs may offer an additional layer of legal protection for their affiliated charter schools, limiting risk of lawsuits, dealing with disgruntled employees, facility leases, etc. at the school level.
 - Successful ESPs may receive a preference from authorizers when awarding new charters (although this can also be true for multiple school education corporations without an ESP).

Disadvantages of Working with a CMO

- **Heavy reliance on philanthropy:** Management fee revenue from affiliated charter schools in most cases is not enough to cover the central office expenses. Charter schools should not — and in some cases cannot — provide loans or grants to ESPs.
- **Federal tax-exempt status:** CMOs, like other public charities, are required to meet the public support test on the IRS Form 990. The consequences of not meeting the public support test is the possibility of conversion to a private foundation.
- **Philanthropy, fundraising and support:** Funders who give to CMOs expect the network to grow at a rapid pace, which could force some CMOs to expand faster than they would like or are competently able to do so. This could also create issues with staff capacity.
- **ESPs operating in multiple cities/states may:**
 - Be a drain on resources and capacity
 - Have to deal with multiple governing boards and state authorizers
 - Struggle to stay current with laws and regulations for various states
- **Other Considerations:**
 - ESPs may drain schools of resources by creating another layer of administrative costs that should not — and in some cases cannot — provide loans or grants to the ESP.
 - ESPs may have additional costs for insurance, independent audit, legal fees, and annual filing of Federal Form 990 and state informational returns.
 - ESPs may raise concerns and risks with transparency, lack of accountability, and conflicts of interest due to ESP board and management relationships with the charter schools within its network.
 - ESPs may have difficulty attracting and establishing an active, engaged and a diverse independent governing board with no majority overlap and addressing the contractual relationship between the ESP and charter schools in its network.

Common Expenses of a CMO

- Salaries and benefits
- Staff development
- Grants to related schools
- Education consultants
- Outside services, such as financial and other consultants
- Professional fees
- Replication and expansion costs
- Advertising
- Marketing and recruiting
- Communications
- Technology
- Sponsorship
- Fundraising and development
- Travel
- Conferences, meetings and special events
- Occupancy
- Donated goods and services

Charter School Network Structures

The chart below captures information on numerous charter school networks in New York and how they operate. Some utilize a charter management organization (CMO) as a centralized coordinating entity that is separate from the schools; others share services, management, and operational authority among the schools in a more or less formal way. Most of the organizations described are small (less than 10 schools) and feature either no CMO or one of a modest scale.

New York City networks that operate without a CMO include:

- Classical Charter Schools
- Icahn Charter Schools
- Bronx Charter School for Better Learning
- Family Life Academy Charter Schools
- Manhattan Charter Schools

The structure of charter school networks falls into two main categories – those who work with CMOs and those that do not. There are significant variations within each group. An analysis of a range of programs yields the following breakdown of representative approaches.

Independent Network Models (No CMO)

	Network A	Network B
	Small Network of <u>Independent</u> Schools with No CMO (in a single borough)	Small Network of <u>Linked</u> Schools with No CMO (in a single borough)
Single charter or multiple	Each school has its own charter, education corporation and Local Education Agency (LEA).	Several schools share the same charter, education corporation and constitute one LEA.
Governance	Each school is governed by its own board of trustees	There is one board of trustees that oversees all schools.
Operations	<p>Each school has a separate employer ID and generates their own payrolls.</p> <p>One of the schools is the payroll master for shared “network” staff and their time and effort on the other schools is charged to each school. It serves as the anchor school for purposes of coordinating services and shared operations. Each school is assessed an amount to support the central operations on a per capita basis. It pays the bills for all schools.</p>	<p>Operations are centrally coordinated; each school performs some of its own operational functions</p> <p>Centralized administration consists of CEO, COO, Director of Finance, Director of Human Resources, Director of Instruction and Assessment, Director of Professional Development, Digital Marketing and Communications Manager, Director of Development, Director of Facilities, instructional coaches, fiscal staff, human resources employees and other operations personnel. Teachers and other campus staff are not centralized.</p>
Bank Account(s)	Each school has its own bank account.	The education corporation has a central account; each school has its own bank account for campus needs. Funds can be readily transferred.
Relationship with support organizations	There is a separate foundation that provided seed money to start the schools and provides some ongoing facilities support and other services, such as legal services.	Schools closely partner with a separate 501(c)(3) community organization that owns space leased by one of the schools; missions are aligned. Partnering group has a religious affiliation.
Concerns	Some redundancy exists by keeping entities separate; lack of formality in sharing of resources and structure; no formal fundraising	Centralized structure can mean central risks (e.g., fraud) could impact all campuses; tight links to partnering organization can be tricky.

CMO Models

	Network C	Network D
	Small Network of <u>Independent</u> Schools with a CMO (multi-state)	Large Network of <u>Linked</u> Schools with a CMO (multi-state)
Single charter or multiple	Each school has its own charter, education corporation and LEA.	The many New York City schools share the same charter and education corporation and constitute one LEA.
Governance	Each school is governed by its own board of trustees.	There is one board of trustees that oversees all schools in New York City.
Operations	<p>Each school handles its own operational matters under its respective Director of Operations and is supported by the CFO and the Director of Operations for the CMO. Schools that share a vendor or consultant have that relationship managed by the CMO.</p> <p>Consultants or contractors that serve more than one school may be paid by the CMO with their portion billed back to the school.</p> <p>Schools pay a percentage (12% average) of per pupil funds as a fee to the CMO</p> <p>When it began, the network had no CMO, but eventually turned a friends-of organization into a CMO in order to make operations more centralized.</p> <p>Each school employs its own staff, pays its own bills and meets its payroll obligations.</p>	<p>Operations are centrally coordinated. The CMO handles the full range of education support, HR, finance, operations and legal functions. There are considerable centralized resources and fundraising capacity at the CMO level.</p> <p>Schools pay a percentage (14% average) of per pupil funds as a fee to the CMO.</p> <p>The CMO provides network-wide support for all schools (professional development, pilot programs, equipment and materials).</p> <p>The large number of schools may be hard to manage without a strong central entity.</p>
Bank Account(s)	Each school has its own bank account.	The education corporation has a central account.
Relationship with support organizations	There is a separate foundation that provided seed money to start the schools and provides some ongoing support and other services.	None, except for a friends-of organization.
Concerns	Some redundancy exists by keeping entities separate; some ambiguity in what is handled centrally and what is left to the schools.	Top-down structure; concentrates resources and authority away from schools and puts them in the CMO; may be less relevant for a small cluster of schools.