The Role of the Authorizer in the Co-Location of Charter Schools in Existing Public School Space in New York City

New York City’s public schools tend to be smaller than the City’s school facilities. In order to best utilize space, most of the public schools in New York City, including charter schools, are co-located with at least one other public school in a shared building. About 60 percent of the public schools in New York City are co-located; charter schools make up approximately 10 percent of the total co-located schools. Co-locations, whether of district public schools or a district public school with a charter school, tend to be controversial because of the potential space and scheduling challenges that can arise when multiple schools share space.

In an environment where the cost of private space is often prohibitive, the potential of shared public space is in many cases deemed essential by charter school applicants. It is important to note that SUNY has no authority to offer or withhold public school space. The many public school buildings in New York City are either owned or controlled by the New York City Department of Education (“NYCDOE”).

Co-Location Process:

The Charter Schools Act requires that before a charter school may be located or co-located in NYCDOE space that the NYC Schools Chancellor must:

1. Publicly identify the buildings that may be subject to charter school location or co-location;
2. Provide the rationale why a building is suitable for location or co-location of a charter school;
3. Make all such information publicly available including on the NYCDOE website; and
4. Provide “widespread” notice of such information including to the community superintendent, community district education council, and the school based management team (not defined in the Charter Schools Act amendments but typically the principals of all of the schools in the building).

After the New York City Schools Chancellor has “selected” or “definitively identified” a NYCDOE building for location or co-location of a charter school, the Chancellor must develop a building usage plan for each building that is identified for a proposed location or co-location. The plan must include, but is not limited to, the following information:
1. The actual allocation and sharing of classroom and administrative space between the charter and traditional school;
2. A proposal for the collaborative use of shared resources and spaces, i.e. cafeteria, library, gym/recreational space (playground) that ensures equitable access to such space in a similar manner and at reasonable times;
3. Justification of the feasibility of the proposed allocations and schedules of items 1 and 2 and how the proposed allocation and shared usage would result in an equitable and comparable use of the public school building;
4. Building safety and security;
5. Communication strategies to be used by the co-located schools; and
6. Collaborative decision-making strategies to be used by the co-located schools including the establishment of a shared space committee consisting of a principal, a teacher and a parent of each co-located school.

A building usage plan must be included in the NYC Schools Chancellor’s educational impact statement, must be subject to that part of the Mayoral Control law, and then must be approved by the PEP. From SUNY’s perspective, any applicant, renewal school or school seeking to add enrollment or grades that proposes to be located in NYCDOE space should discuss in the application at what stage of the process the co-location approval is and provide related evidence.

The determination to locate a charter school in public school space and the implementation or compliance with a building usage plan may be appealed to the Commissioner of Education. A revision of a building usage plan may also be appealed on the grounds that it fails to meet the requirements of the Charter Schools Act. Such appeals must be responded to by the NYCDOE within 10 days and the Commissioner must decide the appeal within 10 days of receiving the NYCDOE’s response.

The school shared space committee must meet regularly at least four times per year to review implementation of the building usage plan. Charter schools must establish a methodology for selecting the charter school teacher and parent who must serve on the committee.

Additionally, no charter school co-located in NYCDOE space may spend more than $5,000 on “capital improvements” or “facility upgrades” regardless of the source of funding (including federal Charter School Program grants and state Charter School Stimulus Fund grants) without prior written approval of the New York City Schools Chancellor. If such upgrades are approved by the Chancellor, then each non-charter school in the building must receive the same dollar amount of facility upgrades or improvements within three months of the completion of the charter school upgrades.
Role of the Authorizer in Co-Location:

Separate and apart from this process, the chartering entity (authorizer) must hold a public hearing when a charter school it authorizes has received an offer from a district to co-locate in a public school building. This responsibility, the active solicitation of public input, is one that SUNY welcomes and takes seriously. Hearings are conducted by the staff of the Charter Schools Institute who in turn brief the SUNY Trustees on the comments received. The intent of these hearings is to give both proponents and opponents—particularly those who work in or have children attending the schools in question—the opportunity to share their comments and concerns.

SUNY Charter Schools Institute staff do inspect school facilities and space plans and must deem the space appropriate for the health, safety and welfare of the students in the building as outlined in the charter agreement.

2014 Updates to the Co-Location Process:

As part of the legislation adopted in the 2014-15 New York State Budget, all charter schools in New York City that first commence instruction or require additional space due to grade expansion from the start of the 2014-15 school year through October 1, 2016 may continue to request space. NYCDOE must offer a site in a public school building or privately/publically owned facility at NYCDOE expense within the later of 30 days of the authorizer’s (SUNY’s) approval or five months of the school’s written request.

The charter school would then have to accept the space offer or appeal through one of three methods that include arbitration, review by Commissioner of Education or court action, which may take substantial time.

Appeal Outcomes:

1. If the charter school loses the appeal, the school may accept the NYCDOE offered space at no cost, or move into a facility at its own expense.

2. If the charter school wins the appeal, the NYCDOE must pay the lesser of (a) the actual rental cost of a private site selected by the charter school or (b) 20% the product of the charter school basic tuition and current year enrollment for each year of the charter term.

It is important to note that NYCDOE is still required to continue following the process outlined above for identifying and approving a co-location. The Institute also continues to reserve the right to review and approve all facilities in accordance with the charter agreement, and, pursuant to the Act, holds a hearing on behalf of the SUNY Trustees prior to the school occupying district school space.