



**Submitted Testimony from Bill Phillips, President of the
Northeast Charter Schools Network,
to the Senate Standing Committee on Education
October 1, 2013**

Senator Flanagan and Distinguished Committee Members:

Thank you for the opportunity to offer comments regarding the implementation of the Regents Reform Agenda. My name is Bill Phillips, president of the Northeast Charter Schools Network (formerly the New York Charter Schools Association). We are a regional membership organization whose mission is to support the growth of *high-quality* public charter schools.

While charter schools are not affected by the Regents Reform Agenda exactly the same way as district schools,¹ there are some ways in which we are impacted deeply. In particular, I will focus on the high-stakes consequences aspect of the agenda and ways it can be improved for chartering. Also, I would like to make a few general observations as to why the state is now feeling so much pressure regarding the RRA and offer a few suggestions regarding priorities as well as the need for flexibility.

Overall, the changes we've seen over the last few years have been crucial. Such changes as the adoption of the Common Core Learning Standards (CCLS) are vital to achieving the goal of dramatically increasing our college- and career-ready graduation rates. It was also important to implement the new assessments that reflect the CCLS quickly. The first year was difficult, but understanding where we stood in the implementation was necessary. I applaud the Regents for making the difficult decision to move forward.

The problems arise when the Regents and State Education Department (SED) implement consequences in a way that lacks finesse and fails to adequately sort out what is important and what isn't. Again, it was critical that the Common Core standards were implemented. It is now important that we relieve schools of some of the non-essential pressure associated with the changes.

¹ <http://usny.nysed.gov/rttt/ntinstitute/docs/nti-rra.pdf>

High Stakes Accountability and School Closures

Charters are the one group of schools with an explicit acceptance of closure-based accountability; it's what we accept in exchange for autonomy. This means charter schools accept high-stakes consequences as an important part of their existence. However, we've seen sporadic and ineffective implementation when it comes to this accountability from the Regents, and it has the potential to balloon into an even larger issue in the coming months.

The Struggle to Improve Accountability and School Closures

As I mentioned, charter schools embrace performance-based accountability in exchange for freedom and flexibility. Accordingly, closures are at the foundation of the movement and both advocates and operators have supported the Regents' effort to shift from compliance accountability to achievement and performance-based accountability. Last year, the Regents approved a new Charter School Performance Framework, with the goal of formalizing the process and standards for evaluating schools during charter renewal.²

It was widely known that prior to 2012, the Regents standards for renewal were inconsistent and generally compliance-based. As a result, closing Pinnacle Charter School in Buffalo took 14 months as the school obtained a restraining order preventing closure while a judge ruled on whether the Regents' closure decision was fair.³ Similarly, the Regents voted to close COMMUNITY Charter School in April 2013, yet the school still operates because it also was able to secure an order against closure while the school litigates against the Regents' process.

The adoption of the Performance Framework represents a step in the right direction but we still have a long way to go. If implemented well, the a new performance framework can help avoid future lawsuits over closures and more importantly refocus schools on the urgency of improving their quality. Unfortunately, the new Framework and its use have resulted in a number of new challenges. The problems now plaguing Regents-authorized charter schools include:

- 1) Confusion about which performance measures actually matter during evaluation and renewal, with an excessive number of performance indicators that still focus on systems and compliance and no clarity from the Department about how to weight the indicators;
- 2) A lack of communication to schools about the new Performance Framework, with minimal explanations and a failure to share data with the schools that highlights if goals have been met;
- 3) The Department and Regents' refusal to consider common-sense solutions to end the excessive use of short-term renewals, and provide clarity and specificity for struggling

² <http://www.regents.nysed.gov/meetings/2012Meetings/November2012/1112p12a1.pdf>

³ <http://www.buffalonews.com/city-region/announcement-comes-less-than-2-weeks-before-start-of-classes-state-to-close-pinnacle-20130825>

schools, by implementing a default closure provision in exchange for very clear academic performance metrics.

In greater detail:

1) Confusion about Performance Indicators:

The Framework identifies 10 major Benchmarks to evaluate schools, but only one of these actually consists of academic performance outcomes. Each Benchmark is broken down either into sub-components or key “elements” the Department staff will examine while making renewal recommendations. *There are a total of 76 various sub-components or elements, with an addition four for High Schools. Only 12 of these (16 for high schools) are based on academic outcomes.* For a Framework intended to correct a major deficiency in the Regents chartering work – going from compliance to outcomes – this misses the mark. Almost all of the sub-components and key elements focus on compliance, systems and inputs.

The Framework says schools must meet or “come close to meeting” the Benchmark that does focus on student performance (which has 12-16 sub-components). But, what “come close to meeting” means, or how many of the sub-components must be met to be “close to meeting” the overall Benchmark, is never defined. The obvious goal is to meet or exceed all sub-components but the reality for many schools, particularly as they work to implement the Common Core Learning Standards, is they do not know what must be accomplished to receive a full-term, or short-term renewal. Other Benchmarks focus on “evidence that the following elements are generally present.” There is a concern that the evidence will be based on individual perception from qualitative observations.

The adoption memo indicates that the Regents will weigh the first Benchmark (student performance) mostly heavily when making renewal decisions. But there is no system or formula for weighting the elements.⁴ It is clear that decisions will be based on qualitative and quantitative factors, but the overall result remains unpredictable for schools.

One final illustrative note on the development of the Performance Framework: two of the Benchmarks (with a combined 24 elements) are aligned with New York’s Diagnostic Tool for School and District Effectiveness. This is unfortunate because the Framework was meant to enhance performance-based accountability for charter schools and pivot away from compliance and inputs, not mimic standards used to evaluate the systems and inputs of traditional district schools. It raises the question whether the Regents, 15 years into the movement in New York, are truly willing to embrace their role as a quality charter school authorizer.

⁴ <http://www.regents.nysed.gov/meetings/2012Meetings/November2012/1112p12a1.pdf>

2) Lack of Communication and Explanation:

One stated goal is to provide schools with feedback on whether they are meeting the expectations in the Framework. But thus far, data analysis updates and feedback have not been provided to the schools currently operating under the Performance Framework. Further, the student performance Benchmark has a component that is still being developed (namely, the academic outcomes that will be examined to determine growth and attainment related to college and career readiness for high schools). Schools are not confident they understand the new expectations. Overall, communication to schools has been sparse. We routinely hear from schools asking whether we can help make sense of the new Framework generally, what the actual performance expectations are, and whether the process will be fair, transparent and clear.

3) Refusal to Consider Better Options:

There will continue to be tough renewal decisions for the next few years for the Regents, in large part because many schools in their portfolio with weaker programs now will be held accountable to a higher standard. In addition, the Common Core Learning Standards and accompanying testing program is more difficult, with new scores that will affect these high stakes decisions. Many schools will face a situation where there isn't enough evidence to support a full term renewal, but there also isn't enough evidence to warrant immediate closure. A new approach, identified as a best practice by the National Association of Charter School Authorizers and used recently by the SUNY Trustees in the renewal of the UFT Charter School, is to implement a short-term charter renewal for struggling schools that incorporates an "default closure" provision if the evidence is not compelling enough to either close the school or renew it for five years.⁵ We think this approach is particularly promising for schools in need of a short-term renewal. The Regents had the opportunity to adopt this approach last spring with three schools but declined.⁶

This type of default closure agreement benefits schools by providing very clear metrics that must be met to achieve the goal of a longer renewal term, and it benefits the authorizer by securing agreements from school officials that if the goals are not met, then closure occurs by default. It is fair to schools, better for families than living through lawsuits and drawn out closure process, and it allows the Regents to adopt a nationally recognized best practice and emerge as a leader among authorizers across the country.

How the Legislature Can Help

If we continue to seek clarity and fairness in the renewal process, and continue to face non-responsiveness from the Department and the Board of Regents, we will request the Legislature's

⁵ <http://www.newyorkcharters.org/documents/UFTCharterSchoolResolution.pdf>

⁶ March 8, 2013 memo to the State Education Department from NECSN, available upon request; http://www.buffalonews.com/20130507/another_voice_rules_for_renewal_must_focus_on_academic_quality.html

involvement. Charter schools simply cannot thrive without quality authorizing, and children suffer from sloppy authorizing. While we applauded the Regents for their initial efforts to improve, and we do support the CCLS and tougher assessments, the Regents have been unresponsive to best practices. Furthermore, the Regents demonstrate through the Performance Framework and their actions that they are stumbling on the path to go from a compliance-based authorizer to a performance-based one. It is not ideal to take away the Regents discretion in this way, but we may have no choice. The alternative approach is wrong for schools and children, and opens up the potential for further lawsuits.

General Observations about the Implementation of the Regents Reform Agenda

No one should be surprised at the public discomfort around the RRA. Public education in New York currently must deal with *five* fundamental and simultaneous tensions:

1. Implementation of Common Core Standards;
2. Introduction of new accountability initiatives – new tests aligned to the Common Core and teacher and leader evaluations;
3. High-stakes consequences – loss of employment as a result of evaluations, as well as school turnaround and closure efforts that cause upheaval for families;
4. Timing – all these efforts are coming into effect at the same time;
5. Money – there are limited new revenues attached to these initiatives, and schools are being asked to do more with the same amount of money.

I want to talk about money briefly because the fiscal health of the state is rarely discussed in the education reform context. We know the state budget faces pressure from multiple interests across the state – education, health care, and transportation, not to mention the ongoing need to reduce costs for employers. While NECSN obviously has a bias towards education, we know many sectors across the state have significant and legitimate needs, too. As such, and remembering that schools continue to have ongoing structural demands such as pension costs, it's hard to imagine a major infusion of resources accompanying these dramatic changes to the school operating environment. Also, as legislators, you have a legitimate need to know and show that the money has been well spent.

As to the first three tensions points mentioned above, we acknowledge the need to use as many levers as possible to improve public education. It is much more likely that we will get improvements through “100, 1 percent solutions” rather than “1, 100 percent solution.” However, there is no getting around that all these initiatives are complex and create discomfort.

Essentially, what we have done is built up a lot of pressure, but the state has been hesitant to use pressure valve relief.

If I am to criticize SED anywhere when it comes to the CCLS, new accountability initiatives and high stakes consequences, I think SED has been clumsy in the implementation. It comes from good motives – there is a sense of urgency and there are so many areas that need improvement. However, SED has also shown an inability to set priorities and to be flexible.⁷ If we don't get this mix of urgency, priority, and flexibility right, we risk a “baby and the bathwater” scenario.

The Common Core Implementation is by far the most important initiative currently underway. Knowing what “good enough is” underpins everything. Parents and students have a right to know whether they are on track to be college and career ready after high school, and schools need to know whether they're fulfilling their obligation to provide all students with the level of rigor needed to thrive in the 21st Century economy. While these issues stand on their own, this information is fundamental to choice supporters because the concept of choosing implies you have something to measure against.

NECSN fully supports the decision to rollout the new CCLS aligned tests this year. In my opinion, the test results simply tell the state and the public the current pace of our Common Core implementation efforts. We should accept that it is human nature that we are never as far along as we think we are, and that a uniform sense of urgency will not arise until there is some pressure in this area. That's why we needed the test results to present data on this measure publicly. Getting a baseline out early will be healthy in the long run.

This observation is especially so if we get the consequences right. The Regents have been clear that this first year of testing was a baseline. They've also been clear that schools and districts should not misuse the data. There should not be immediate “all or nothing” consequences, and the timing of consequences generally can be thoughtful and deliberate. Using time wisely is one common-sense pressure valve to use while schools, teachers and parents adjust to the new expectations. As it relates to charter schools coming up for renewal this year, these baseline tests should not be the data that dictates a school closure.

Another key way to release pressure is with the targeting of these consequences. There is a major difference between the bottom 15 percent of the schools in the state and the rest of the state. If we continue to struggle with implementation issues at scale, then consider reducing the scale, at least for the short-term. Target the worst performing districts first, and focus consequences and turnaround efforts accordingly.

I have one final note on consequences. The public can only endure so much well-intentioned suffering. Consequences without the tangible hope of something better will have a short political

⁷ We've already discussed the lack of flexibility regarding improving renewal transparency and closure effectiveness for charter schools. We have also struggled with the state's application of teacher evaluation and data reporting standards to charter schools, which were not included in the APPR law.

shelf life. We strongly suggest that the public should have access to new schools – district or charter – to ease the ongoing burden of fixing the existing ones.

If the Regents and SED continue to approach consequences with a lack of nuance and reasonableness, we would be open to the Legislature stepping in to moderate the behavior. If the public is going to trust this effort it is important to consider stepping back, using some smart pressure valves, and producing some success stories that can be highlighted. Having some “wins” often will help others know things can get better.

Lastly, I want to compliment the Senate Education Chairman and the Committee for calling these hearings. While we support most of the basic premises of the RRA, the pressure and the dissatisfaction you are hearing is real, and it should be talked over rather than plowed through. NECSN appreciates you providing a feedback loop that was long overdue.