

**Written Testimony to the Massachusetts General Court,
Joint Committee on Education
Senate Chair, Sonia Chang-Diaz
House Chair Alice Peisch
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My name is Leigh Dingerson, and I'm a consultant with the Annenberg Institute for School Reform at Brown University. Thank you for giving me the opportunity to provide testimony today. And thank you for your commitment to public education and the schools that all our children deserve.

My testimony today will focus on two broad areas: Considerations in deciding whether or not to lift the cap on charter schools in Massachusetts, and the need for greater public accountability and regulation in the state's charter sector. I will be referring to a report released a year ago by the Annenberg Institute. That report is called "*Public Accountability for Charter Schools, Standards and Policy Recommendations for Effective Oversight.*" Copies of the report have been distributed to members of the Joint Committee on Education. It is also available online at <http://annenberginstitute.org/sites/default/files/CharterAccountabilityStds.pdf>

As you know, the charter experiment began in the early 1990s. Early charter proponents believed that small, experimental schools led by educators and freed from district constraints, could serve as research and development sites for new practices in education that might better support students—particularly low-income and students of color. The Massachusetts charter law explicitly recognizes that vision of charters as innovators.

Hundreds of charter schools around the country are pursuing this vision. But over the last two decades, the dominant *policy* agenda for the charter movement has focused on expansion and competition, not innovation. Forty-two states now allow chartering, and about 2.5 million students attend more than 6,000 independently managed schools. Almost 2,000 new charter schools have opened in just the past five years, along with a burgeoning market of management service providers, vendors, think tanks, policy associations, and advocacy organizations. Chartering has become an industry. Expansion—not innovation—has become the industry's top goal.

The Role of Charter Caps and Challenges with Growth

When state lawmakers viewed charter schools as experiments in educational innovation, it made sense to limit their numbers. But as the focus shifted, and advocates began to actually *replacing* traditional school districts with all-charter districts, the demand to lift caps and became the first priority for many state charter associations. The federal government reinforced this trend with the creation of the federal charter school program, which has now spent over \$3 billion in federal funds to support new charter start-ups--\$50 million of that in Massachusetts—and the 2009 Race to the Top program, which incentivized states to lift

charter caps. The number of students across the country who are attending charter schools has nearly doubled since that time.

With that growth has come concern over some practices that seem prevalent in the sector, and over the impact of chartering on traditional public school systems. These concerns have been raised in Massachusetts as well. It is incumbent on you, as policy-makers, to ensure that this charter experiment is conducted in the open, with equity, access and accountability as the primary goals. Here are two things you will face as your charter sector grows across the state:

(a) Increased Financial Instability in Traditional School Districts

In 2013 Moody's Investor Services found that increasing charter school enrollments can create negative credit pressure on school districts in economically weak urban areas.ⁱ

According to the report, charter schools can pull students and revenues away from districts faster than the districts can reduce their costs. As the charter market share grows, these districts must balance out declining revenues by cutting programs and staff, and even closing schools. These cuts further drive families out of the district, creating what some have called a "death spiral" for the public district. This effect has been identified in several other studies:

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- In November 2014, a proposed expansion of one charter network in Los Angeles was found to be a credit negative for the Los Angeles Unified Public School District.ⁱⁱ
- In 2015, an audit in Nashville warned that the district might not be able to achieve expenditure reductions commensurate with revenue reductions caused by enrollment transfers from public to charter schools.ⁱⁱⁱ
- In Milwaukee, there are estimates that only a few more new charter schools in the city could render the Milwaukee Public Schools permanently insolvent.

Researchers nationally are looking at this "tipping point" phenomenon. They are trying to understand how to identify how many charters are too many, and actually begin to undermine public school systems. Some put it at about 20% market share – meaning when about 20% of the district's students are in charter schools.

In Boston, each student that moves from a Boston Public School to a charter school carries in her backpack about \$14,000 in state funding that would otherwise have gone to BPS. The Department of Elementary and Secondary Education estimates that, in 2016, charters will divert about \$419 million in Chapter 70 funds from the Boston Public Schools, even after the state's reimbursement is taken into consideration. Boston currently funds about 15% of its students to attend charter schools. At what point will Boston reach that benchmark? Might other, smaller school systems across the state be similarly at risk?

Boston is currently at about 15% market share.

What is particularly troubling for me in this notion of a "tipping point," is that by all accounts, it is well below the 50% mark. Which means that

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this dismantling, or undermining of traditional school districts happens while a significant majority of students are attending district schools that have been stripped of the resources needed to serve them—and have little hope of recovery.

It is the role of the Massachusetts General Court to ensure that the state’s system of free, compulsory public education continues to adequately serve *all* students. And that means being absolutely sure that your administration of public schools in this state does not undermine the quality of education for the many, while funneling public resources to the relatively few.

(b) Loss of Oversight Capacity

Rapid expansion of charter schools can lead to a lack of oversight capacity.

Strong oversight of the charter sector is critical. These are public institutions, being handed hundreds of millions of taxpayer dollars and entrusted to educate our children. *Most* charter schools—and I want to stress this—*most charter schools are following the rules*. We think. In fact, without complete and honest transparency sometimes, it can be hard to tell. But let’s assume that most charters are following the rules. Are the current rules enough? And are they being fully enforced in the best interest of the State?

A series of reports^{iv} released by the Center for Popular Democracy (CPD) over the last 18 months has exposed millions of dollars in public funding lost to fraud, waste and abuse in charter schools across the country, including Massachusetts. The distressing reports of embezzlement, waste, and profiteering are likely, as CPD notes, just the tip of the iceberg. They represent only what’s been discovered.

One of the indicators of vulnerability identified by the Center is the lack of oversight capacity. When the number of charter schools grows, there must be a corresponding increase in the staffing and capacity of the oversight agencies—in this case, the Massachusetts Department of Elementary and Secondary Education, and probably the Office of the State Auditor as well.

In Pennsylvania, state budget constraints in 2011 forced a 24% reduction in the number of employees at the state’s Department of the Auditor General. As a result, the Department was unable to conduct their full schedule of audits.^v At the same time, the local charter authorizer in Philadelphia, the School Reform Commission, was also squeezed and admittedly understaffed for their authorizing and oversight responsibilities. No matter, between 2011 and 2013, the state’s charter sector grew by 31 schools—from 144 to 175, according to the National Alliance of Public Charter Schools. The CPD reports found multiple examples of charter schools in Philadelphia where fraud, misappropriation of funds and other severe problems were festering unchecked during this time.

A decision to open more schools or expand existing schools must also include a determination that the state is also prepared to meet the additional needs of the various boards, offices and panels tasked with monitoring and oversight of charters. Not just having additional resources.

The lesson from the many in-depth assessments conducted by CPD researchers is clear. States must be absolutely clear that charter growth is controlled to avoid negative impact on traditional school systems, and to ensure adequate oversight and monitoring.

Increased Regulation is Needed

Twenty-plus years in to the charter experiment, we've learned many things. One tension being experienced in the charter movement right now is between the need for *flexibility* and the need for *public accountability*.

At the Annenberg Institute, we believe in flexibility. Many charters are testing reforms like longer school days or school years. They're grouping children in different ways, rather than the strict grade groupings that we see in our public schools today. They're experimenting with curriculum and themes and classroom techniques that might be difficult to implement in traditional public schools. Having the flexibility to try new things is the whole idea of chartering, in our mind.

However, our support for flexibility does not extend into areas of public responsibility and accountability. When it comes to transparency, reporting of data and policies, ensuring that parents and educators have a voice in their schools, fully reporting the role of management companies and contractors—in these areas, charter schools should be regulated as any public institution is. "Flexibility" doesn't mean that charters should have the flexibility to educate kids on the cheap, or to manipulate enrollment to avoid serving certain children, or to suspend or expel students without due process. Yet, all of these things have happened in city after city, school after school. Even in Massachusetts. That is flexibility gone too far. That's why the Annenberg Institute developed the Public Accountability Standards.

The Annenberg Standards for Public Accountability

The Annenberg Standards were developed through an inclusive process that involved parents, educators, students and community members from cities across the country.

Charter laws and advocacy groups talk a lot about "accountability." Usually, it's a pledge that if schools don't deliver on the promise of higher test scores, they will be shut down. Every one of the parents and community participants we worked with oppose school closings as an educational strategy. Whether traditional or charter schools, we all agreed that education reform should seek to *improve schools* and *stabilize communities* rather than create the churn and instability that school closures cause.

The working group came up with the concept of *public* accountability – the idea that public schools need to be accountable in many more ways than just for the test scores of the students they enroll. They need to be accountable to the taxpayers who fund them, the districts that host them, and the communities in which they locate and those they serve.

The Annenberg "*Public Accountability Standards*" offer seven overarching Standards that we believe embody *public* accountability. Along with each Standard, we lift up examples of why additional regulation is needed, then offer policy recommendations designed to be useful at the individual school level, for charter authorizers, charter management organization, or as adjustments to state charter laws. They offer enforceable steps towards public accountability.

The balance of my testimony here focuses on a few of those Standards and recommendations. Most of them are embedded in Representative Smizik's proposed petition, H. 490.

Traditional districts and charter schools should work together to ensure a coordinated approach that serves all children

Charters that view themselves as competitors to traditional districts do a disservice to the promise of equity in public education. The possibility of undermining a district's financial stability (discussed above) is perhaps the worst result of a competitive system. But there are others—inequities in enrollment, increased segregation, and school openings and closings that leave some neighborhoods with a dearth of school options and others with a glut of them.

The Annenberg Standards recommend regular assessments of the *impact of the dual sectors* on both traditional and charter schools and students across the board. This assessment should be conducted by an independent entity—not by the charter sector, not by the DESE, and not by the Boston Charter Compact board.

School governance should be representative and transparent

One of the most common complaints about charter schools is lack of transparency. Although charter schools are organized as private non-profits, the fact that they are largely funded with public money and are explicitly created to provide a public good, requires them to be held to the same standards of transparency as public sector entities.

That means that both schools, and the management organizations that sometimes run them, need to allow public access to financial reports, policies and contracts.

The Annenberg report recommends that 50% of charter school governing boards be made up of elected representatives of parents at the school and, in the case of high schools, that student representation be included as well.

In addition to public access, we believe that public schools must be places where community, parental, educator and civic engagement is expected, and modeled. We believe that parents, students and educators have the right to a voice in policy-setting in their schools.

In the District of Columbia, where I live, the district's charter law requires that every charter school governing board include two parents of students attending the school. The Annenberg report recommends that 50% of charter

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school governing boards be made up of elected representatives of parents at the school and, in the case of high schools, that student representation be included as well.

We have conducted a preliminary scan of charter school boards of trustees in Massachusetts. Out of about 3 dozen schools so far where the affiliations of the Trustees are provided on the school's website, we have found only 3 schools that have current parents identified on the Board, and only 1 school that includes student representatives.

Across the country, and in Massachusetts as well (based on our preliminary scan), charter school governing boards are overwhelmingly dominated by corporate, real estate and financial services industry representatives. It is not difficult to imagine that parents of students in these schools would feel out of their league approaching what are essentially corporate governing

boards. We strongly urge you to consider requiring that all charter schools reserve at least 50% of their Trustee seats to parents.

Charter schools should ensure equal access to interested students and prohibit practices that discourage enrollment or disproportionately push enrolled students out of the school

As schools of choice, charters enjoy advantages over traditional public schools. First, they are allowed to cap enrollment. There's no such thing as an overcrowded charter school. They also passively benefit from the choice process. Many parents don't have the luxury to be active "consumers" in their children's education. At a recent event in New Orleans, I heard many highly educated middle class parents express frustration with the hours required in that city to investigate options, meet registration deadlines and requirements, visit schools, and jump through the hoops required to enroll their children in the city's charter schools. For parents with multiple students (or multiple jobs, or without transportation or computer skills), the requirements are simply prohibitive. In city after city, charter associations have acknowledged that significant numbers of parents don't bother with the requirements of "choice." Instead of recognizing the problem with the system, they blame the parents.

Research shows that, in fact, the self-selection process inherent in a choice system results in charter schools having disproportionate numbers of students from families that are better resourced and more engaged in their child's education.

In addition, many charter schools erect subtle barriers to enrollment—sometimes intentionally, probably most often not—that serve to deter more disadvantaged students. These barriers include requirements that parents contribute volunteer hours at the school, that students attend an interview, that they present Social Security cards as proof of identification and more. Many parents report that they were encouraged to look elsewhere when they appeared at a charter school and asked about services for their special needs child.

Roxbury Prep High School in Boston asks parents to pay a \$400 in fees to the school.

I would note, for example, that Roxbury Prep High School in Boston asks parents to pay a combined \$400 in fees to the school. <http://www.roxburyprephighschool.org/technology/> While Roxbury Prep may in fact be lenient if a parent is unable to pay the fee, the very fact that the \$400 price tag is featured on their website may be sufficient to drive away many low-income parents.

While Massachusetts law, regulation in this area appears strong, the facts are troubling. As in other states, students with disabilities and English Language Learners are under-represented in the state's charter schools. In Boston, for example, while nearly 30% of Boston Public School students are English Language Learners (ELL), we found only 2 out of 19 charter schools that have anywhere close to that percentage of ELL students. The numbers are a little better for students with disabilities: about 20% of BPS students are identified as having disabilities. Out of the 19 charters we scanned, 5 had equivalent percentages. This however, is

Charter schools serve fewer English Language Learners and students with disabilities than traditional public schools. In addition, they tend to serve *many* fewer students with more significant needs.

As more students migrate to charter schools, this trend results in an over-concentration of the most disadvantaged students in traditional public schools—at the same time that funding for the services these students need and have a right to, is disproportionately siphoned off to the charter sector.

somewhat deceptive. At KIPP Academy in Lynn, for example, their reported percentage of students with disabilities appears to be roughly comparable with that of the Lynn Public Schools—12.6% for KIPP, and 15.8% in the LPS. But when the numbers are broken down to reflect the severity of the disability—or the level of services needed—it becomes clear that KIPP is dramatically under-serving students with more substantial needs. This has been found to be the case in multiple districts across the country.

The charter sorting process concentrates a district’s hardest-to-serve (and most expensive to serve) students in the traditional public schools, meaning that these schools ironically need even more resources to serve these students at the same time that funds are being siphoned off to the charter sector.

The Annenberg Standards call for explicit policies prohibiting enrollment barriers and ensuring that charters are serving equitable numbers of disadvantaged or special needs students. We also recommend an ombudsman or similar entity with the authority to investigate when parents believe their child was inappropriately deterred from enrolling, or was pushed out unfairly.

Charter school discipline policy should be fair and transparent

Charter schools and networks are free to establish their own discipline policies. Across the country, charter schools have higher rates of disciplinary actions and out of school suspensions than traditional public schools. Again, Massachusetts is typical in this area.

In a check of Boston and Springfield charter schools, we found significantly higher out-of-school suspension (OSS) rates, according to data provided by the Massachusetts Department of Education. For the Boston Public Schools, the OSS rate in 2013-14 was 5.5%. Among Boston charter schools, we found only 2 schools with lower rates, and the majority much higher—as high as 44% and 48%. In Springfield, where the OSS rate was 9.5% in 2013-14, we found Springfield charter schools with rates as high as 19%.

For the Boston Public Schools, the out-of-school suspension rate in 2013-14 was 5.5%. Among Boston charter schools, we found only 2 schools with lower rates, and the majority much higher—as high as 48%.

This is consistent with findings nationally. In fact, the U.S. Departments of Education and Justice issued guidance in March 2014, relating to the use of discipline policy and explicitly recommending that charter schools comply with the guidance.^{vi}

The Annenberg Standards stop short of opposing strict, zero tolerance discipline policies. We do, however, note that in many public districts across the country including Massachusetts community and student-based groups have fought for and won new school discipline codes that move towards alternatives to suspension and increased restorative practices. In Massachusetts this law does apply to charters. We recommend full transparency about charter discipline policies, and strict oversight of suspensions and expulsions, along with mandatory due process and appeals procedures.

Conclusions

As our ongoing experiment with charter schooling continues, we must ensure that, as public schools, charters are accountable to the public for more than just good test scores. When it

comes to our children, and the use of public funds, we know that strong oversight and appropriate regulation is necessary to protect the public good. Too many bad apples have gotten into the barrel around the country. Massachusetts has been spared the worst of these embarrassments. But that doesn't mean that you won't face them as you continue to build a vibrant charter sector. Most charter schools follow the rules. But it takes only one scandal to shake the public's trust.

Other states are addressing these issues.

- In Illinois, several accountability laws have been enacted in the past year. One addressed funding procedures to ensure that per pupil funding is adjusted throughout the school year according to enrollment counts. Another addressed the use of public funding for charter marketing and advertising. Conflict of interest provisions were extended to charters, and just a few weeks ago, a sweeping new law addressing discipline reporting and disparities was passed.
- In Delaware last spring, the governor signed HB 56, which imposes a moratorium on new charter schools while plans are developed to ensure that new charters won't undermine the public districts.
- New York prohibited charter contracts with for-profit management organizations.
- The California General Assembly is debating a package of bills that would codify almost every one of the Annenberg Standards.
- Just this year, the New York State general assembly debated, and decided not to lift their charter cap.

We need to invest in the schools ALL our children deserve. The Annenberg Institute cautions against lifting the charter cap. and the General Court can be assured that increased charter growth will not undermine the state's highly successful system of public education.

NOTES

ⁱ "Moody's: Charter schools pose greatest credit challenge to school districts in economically weak urban areas." Global Credit Research, October 15, 2013. Moody's Investor Services. Available at: https://www.moody.com/research/Moodys-Charter-schools-pose-greatest-credit-challenge-to-school-districts--PR_284505

ⁱⁱ "Moody's: Charter school expansion credit negative for LAUSD." The Bond Buyer, November 3, 2014. Available at: <http://www.bondbuyer.com/news/regionalnews/moodys-charter-school-expansion-credit-negative-for-laUSD-1067623-1.html>

ⁱⁱⁱ "Operational and Performance Audit Report for Metropolitan Nashville Public Schools," by McConnell, Jones, Lanier, Murphy, LLP. February 10, 2015. P 3-16. Available at: <http://www.nashville.gov/Portals/0/SiteContent/InternalAudit/docs/FY2015/MNPSAudit/MNPSPerformanceAudit20150210HighQuality.pdf>

^{iv} See: "The Tip of the Iceberg: Charter School Vulnerabilities to Waste, Fraud and Abuse," Center for Popular Democracy, April 2015. Available at: <http://www.populardemocracy.org/news/tip-iceberg-charter-school-vulnerabilities-waste-fraud-and-abuse>

Also, "Systems Failure: Louisiana's Broken Charter School Law," Center for Popular Democracy, May 2015. Available at: <http://www.populardemocracy.org/news/system-failure-louisianas-broken-charter-school-law>, and

"Risking Public Money: California Charter School Fraud," Center for Popular Democracy, March 2015. Available at: <http://www.populardemocracy.org/CaliforniaCharterFraud> . Additional reports focus on charter vulnerabilities in

Pennsylvania, New York and Illinois. These publications are available at www.populardemocracy.org/news/publications

^v <http://www.auditor.gen.state.pa.us/media/default/misc/2014-15%20Budget%20Request-Justification.pdf> page 11

^{vi} “Rethinking School Discipline,” U.S. Department of Education. January 8, 2014.
<http://www.ed.gov/news/speeches/rethinking-school-discipline>