

Let's end charter school residency wars

By the New York State Association of School Attorneys

Fifteen years ago, in the middle of the night, the New York State Legislature passed the Charter Schools Act. As the story goes, legislators got a salary increase, and the people of New York got charter schools. Flaws in this hastily approved legislation have led to countless disputes between charter schools and local school districts over student residency, and such disagreements cannot be resolved without intervention by the State Education Department (SED) and the state comptroller. The result is a situation that is expensive, time-consuming and frustrating for all parties. Simply put, there has to be a better way.

To fund charter schools, the Legislature decided that state per-pupil money should follow the student. The mechanism is found in Education Law Section 2856. Charter schools must provide SED with a list of students and, for each, the name of the school district in which the student resides. By virtue of his or her residency in a given school district, the charter school student is entitled to attend the charter school of his/her choice at the expense of the district of residence.

But the law does not specify any method that charter schools should use to verify each student's district of residence. This is a gross oversight because, long before former Gov. George Pataki even heard about charter schools, residency had been a common subject of dispute in public education. Disputes arise often between parents and districts, or among districts. A large body of decisions of the commissioner of education has established what kinds of documents are considered sufficient to establish residency.

The financial implications go far beyond the allocation of state aid per student. The current statutory construct has resulted in some school districts paying hundreds of thousands, if not millions, of dollars to educate and transport students who, they contend, do not reside within their districts. In some cases, the districts have asserted that students actually live outside New York State.

In fairness to all concerned, it's often hard to determine where a given student resides, particularly in small urban areas with an economically disadvantaged and transient population. Many charter schools have located in exactly such communities.

Whether or not a student resides in a given district is a fact-intensive question, and each case turns on the unique facts of the particular case. As currently written, neither the charter school law, nor other provisions of Education Law, nor commissioner's regulations provide for an efficient, fair or cost-effective way of

sorting through residency issues when a dispute arises involving a charter school student.

Instead, here is how it often works. A school district might receive a notification that a certain student is enrolled in a charter school, and that the student is described by the charter school as a resident of the district. In the interest of due dili-



gence, a district official contacts the charter to request information on the student's proof of residency. The charter school cites a two-year-old cable bill.

The district requests further documentation. The charter school might respond that it views the cable bill as sufficient proof or that the district has no right to review the student's residency, or both. Eventually the district decides to withhold payment from the charter school for that student. After all, the district has a fiduciary responsibility to its taxpayers, and it would be a breach of that duty to pay for the education of a charter school student whom it believes is a non-resident.

So the charter school is denied the money? No, because the law gives charter schools access to a so-called "state intercept" process. It requires action by both the State Education Department and the Office of the State Comptroller.

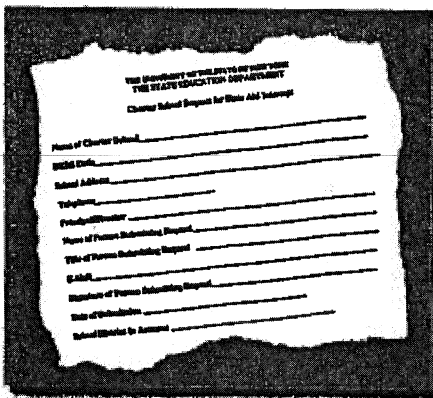
SED's role is described in Section 119.1(2) of commissioner's regulations, which states that "...upon notification by the charter school (of a non-payment), the commissioner shall certify the amounts of the unpaid obligations to the comptroller to be deducted from state aid due the school district and paid to the applicable charter schools."

The process has become so commonplace that SED has created a "Charter School Request for State Aid Intercept" form, found on its website at www.p12.nysed.gov/pac/form. The form asks charter schools to provide the name, address, and telephone number of the charter school, the name of the school's director/principal, the email address and the name and title of the person submitting the intercept request. But SED does not require the charter school to submit proof of student residency or to attest that the students for whom an intercept is requested actually reside within the district being charged. In fact, the "Directions" provided on the website accompanying

the form never even mention student residence!

Nor does SED require that the school director or principal personally submit the request, nor does it require the chief school officer's certification attesting to the accuracy of the request or to the charter's entitlement to the state aid. Any representative of the charter school can fill out the form, and - in accordance with the wording of commissioner's regulations - the intercept "shall" be granted, regardless of whether the student is or is not a bona fide resident of the claimed school district.

The independent power of a charter school to deem a student a resident of a given district could be described as not only a threat to a district's fiduciary duty to taxpayers, but a moral peril for charter school operators. Under the charter school tuition formula, different districts pay different amounts of tuition per



Charter schools can use this form to declare that a school district is "in arrears" for failing to forward state aid for a specific student. But the form overlooks the issue of residency. Invariably, the reason the school district is "in arrears" is that school officials do not believe the student is actually a resident. Currently there is no mechanism in New York State for resolving questions about the residency of charter school students.

pupil. While it should be assumed that charter school officials are acting in good faith, it could be argued that the tuition formula may actually incentivize charters to attribute students to the highest-paying neighboring districts.

Some school districts have sought a different outcome in at least three ways:

- A number of districts have sought a role in an annual "reconciliation" process. Each year before July 1, charter schools are required to submit a final report on their actual enrollment, including a detailed list of students. School districts have submitted evidence that certain students were, in fact, non-residents. But SED officials assert that they have no authority to consider such information in the "reconciliation" process, which they view as a two-way interaction between charter schools and the state. Unless the charter school is open to considering the district's evidence and agrees that it made

a mistake, SED past practice is that it will affirm prior interceptions of state aid regardless of any district claims of errors in residency.

- One district attempted to use the three-tier "complaint process" set forth in Education Law Section 2855(4), which provides that any individual or group may bring a complaint about a violation of the charter school law to the trustees of the charter school, and then present the complaint to the chartering entity, and then finally to the Board of Regents. This also has been unsuccessful.

- The Enlarged City School District of Troy has held more than 100 hearings in which it required parents of charter school students to submit proof of residency directly to the district. Although charter school operators object, the district contends it is entitled to hold such hearings under Section 100.2(y) of the commissioner's regulations, which state

that a "board of education or its designee shall determine whether a child is entitled to attend the schools of the district." While some families were deemed non-residents, to date only one student has filed an appeal. That petition was withdrawn after the district received a copy of a current lease, which it deemed as proof of residency.

Although promising, the process used by Troy is time-consuming, labor-intensive and expensive, as it requires individual hearings. Many problems could be avoided with minor changes to either law or regulations. For instance, parents of charter school students should be required to register with their local school district and submit residency documentation, so the district can make a residency determination prior to paying tuition and providing transportation. If the initial documentation seems inadequate,

the district could work with the parents to remedy that. And when disputes arise, there ought to be a way to resolve them in the annual intercept process. At the very least, SED officials should change the intercept request process to require the chief school officers of charter schools to personally submit proof of residency and certify the intercept request, just as superintendents of schools have been asked multiple times to certify adherence to various state requirements.

Members of the New York State Association of School Attorneys represent school boards and school districts.

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