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## EXECUTIVE SUMMARY

This report concentrates on the need to achieve and maintain uniformity in per student funding between the District of Columbia Public Schools (DCPS) and the District's public charter schools. Although the adequacy of this funding is a significant concern for both sectors, assessing adequacy requires more research and analysis than can be provided here. The report deals primarily with uniformity in funding the operating costs of both systems. However, because of the urgency of FY 2013 budget preparation, the report also discusses the per student facilities allowance for charter schools intended to serve as the functional equivalent to the DCPS capital budget.

### Findings and Background

1. Uniformity of per student funding between DCPS and the public charter schools is a statutory requirement to ensure that funding follows students. The underlying principle is that students with similar needs should have the same funding behind them whether they are in DCPS or a public charter school. The idea is that funding should follow the student and vary with specified characteristics of the student irrespective of which charter school or school system the student attends. The Uniform Per Student Funding Formula (UPSFF or "Formula") is intended to implement this requirement and this goal.
  - The DC School Reform Act of 1995 requires that local per student operating funding for DCPS and individual public charter schools be uniform. The law specifies the permissible variances, which are based on student characteristics, not school or system characteristics.
  - The UPSFF is a per student "foundation plus weightings" system like that used in many states to distribute state aid to local districts – with the difference that it determines the entirety of state-local funding. The foundation, or base, is the minimum per student amount; weightings generate percentage add-on amounts for students at more costly grade levels, and students identified as needing special education or instruction in English as a Second Language.
  - The Mayor and DC Council enact the UPSFF. It was originally constructed and periodically updated based on recommendations of the DC State Superintendent of Education, informed by working groups of government and community representatives. The studies were based on research into best practices, practice and costs elsewhere, and cost-outs of programs and legal compliance requirements. These studies ended shortly after the 2007 mayoral takeover of public education.
2. The Formula is intended to fund all the traditional school system functions for which DCPS and charter schools are responsible, instructional, non-instructional, and administrative.

- The School Reform Act intended the Formula to cover all functions included in the DCPS operating budget when it was enacted. Except for retirement contributions for educational personnel, that budget covered all DCPS instructional and non-instructional costs, including facilities maintenance, legal services, and other functions now performed or subsidized by other city agencies.
  - “State-level services” such as special education tuition and transportation for which charter schools were not responsible were excepted and funded separately, but since FY 2009 are no longer in the DCPS budget. However, all functions for which charter schools are responsible have to be included in their budgets.
  - Public health and safety services, such as school nurses, police protection, social services and crossing guards, were never included in the DCPS budget or UPSFF. They are city-wide services delivered at schools because that is where the children are. The DC Code requires that they be provided on “an equal basis,” but the bases used by DOH, MPD, DMH, and DDOT are not yet sufficiently known to be evaluated.
3. The total amount of extra non-uniform local operating funds that DCPS receives and public charter schools do not ranges from \$72-\$127 million annually. Specific disparities arise from varying year-to-year circumstances, but they are persistent and large.
- Funding for UPSFF functions provided only to DCPS via extra appropriations and coverage of overspending ranges from \$12 million to \$72 million annually
  - Subsidies and free in-kind services, particularly facilities maintenance and legal costs, provided to DCPS for UPSFF functions by other city agencies totals \$40 million to \$60 million annually.
  - Non-uniform pupil counts in the UPSFF itself, notably the use of projected rather than actual enrollment to determine DCPS appropriations, results in \$4 million to \$45 million higher annual funding for DCPS.
  - While the above examples of non-uniform funding favor DCPS over charters, one example does not. Special education funding based solely on October 5 enrollment is problematic, since their number increases significantly by December, and federal law mandates provision of prescribed services. The UPSFF recognizes the problem only for charter schools.

The above disparities contravene the DC School Reform Act. If the DC government funds only DCPS or only the charter schools outside the UPSFF, via mid-year allocations or budgeting funds for some DCPS functions in other city agencies, uniformity is meaningless.

4. The DCPS and charter school systems differ in some respects, but most are difficult or impossible to quantify.

- The biggest differences potentially relevant to funding are DCPS' obligation to provide reasonably accessible neighborhood schools throughout the city and to enroll students whenever they appear. Charter schools have no boundaries and no obligation to enroll students after October 5, the official pupil count date for funding purposes.
- The effect of these differences has, however, never been documented by data showing post-October 5 enrollments, transfers out, and dropouts, or by data showing how small neighborhood schools are more costly than the small charter schools that constitute the majority of that sector.
- Comparative additional costs flowing from differences such as organizational size, government regulation, unionization, teacher certification, and pension arrangements are not only unknown, but subject to offsetting factors and subjective judgments.

Basing funding on system or school differences unrelated to student enrollment and characteristics would likely result in fights between advocates during each annual budget process resolved by ad hoc, unpredictable, and subjectively based annual funding decisions. However, some concerns of both sectors could be addressed by refining the student-based measures, such as mid-year transfers of funding along with students, supplemental funding for newly identified special education and ELL students for DCPS, and recognition of additional costs for over-age and low-income students.

5. Charter school facilities generally are more crowded and less adequate than most DCPS facilities. Their capital-type facility costs differ enormously among themselves and from year to year; data are very limited; and the need for predictability is strong. The facilities allowance needs to be guaranteed at no less than \$3,000 per student annually.
  - The District's system for funding capital-type facilities costs is split between a mostly bond-funded capital budget for DCPS facilities and a per student "facilities allowance" for charter school leases, payments on construction loan principal and interest, and direct payments for construction. Neither set of costs has ever been covered by the UPSFF.
  - The facilities allowance, once tied to DCPS capital spending by a five-year rolling average per student, generated \$3,109 per student in FY 2009. Thereafter, it was set at \$2,800, supplemented by \$200 taken from federal funds intended for charter school academic improvement and expansion. DCPS capital facility spending is currently considerably higher per pupil.
  - Many charter schools have difficulty in securing appropriate facilities that they can afford, and must use converted warehouse, office, and retail space that is often cramped and lacking in spaces such as gymnasiums, cafeterias, and athletic facilities. They have had difficulty in accessing DCPS' excess space. In addition, instability in the facilities allowance will make most if not all lenders unwilling to provide acquisition and construction loans.

- Individual charter school expenditures on capital-type facilities costs are not well-documented, but limited data show that they differ greatly among schools and from one year to the next.

# PART I: UNIFORMITY OF PER STUDENT FUNDING

## CHAPTER 1: BACKGROUND

### Governing law on DCPS and public charter school funding:

The legislation governing DCPS-charter funding requires the Mayor and Council to fund DCPS and public charter schools through an enrollment-based formula, a mandate realized as the Uniform Per Student Fund Formula (UPSFF or “Formula”). The three principles of the legislation governing the UPSFF are:

- **Uniformity:** The DC School Reform Act of 1995 mandates uniform per student local operating funding for DCPS and public charter schools.
- **No double funding:** The FY 2011 Budget Support Act of 2010 limits local funding for services provided to DCPS by other city agencies to either agency budgets or UPSFF – not both, and preferably the latter.
- **Services on an equal basis:** The same Act also mandates that DC agency services to DCPS and charter schools be provided on an “equal basis.”

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**Uniformity:** The basic concept underlying the uniformity mandate is that students similarly situated should have the same funding behind them whether they are in DCPS or a public charter school. The 1996 Congressional legislation that established charter schools in the District requires that annual payments from the DC general fund for DCPS and charter operating budgets be calculated by a formula providing a “uniform dollar amount” per resident student. The law allows the “uniform dollar amount” to vary on the basis of student characteristics -- grade level, special needs, failure to meet minimum literacy requirements, and enrollment in a residential school.<sup>1</sup> Thus the Formula calculates funding based on students and their characteristics, but not on school or school system differences. The uniformity requirement applies to:

- Local funding – not federal or private
- Operating budgets – not capital
- DCPS and charter school budgets

Both the language and the legislative history of the uniformity requirement make clear that uniformity is not an elastic concept. The dictionary definition of “uniform” (from Webster’s New World Dictionary) is “always the same,” “identical throughout a state, country, etc.” The UPSFF is the exclusive mechanism for allocating all local operating funding to both DCPS and charter schools, no matter the existence of “special circumstances” or the point in the fiscal year. The law itself states that if funds are insufficient the Mayor must reduce allocations “ratably ... on the basis of the formula ...;” and if funds become available they must be restored likewise.<sup>2</sup> No additional mechanism is recognized in the School Reform Act or in contemporary legislative

<sup>1</sup> See DC Code §38-1804.01, Appendix 1. This appendix includes statutory text and relevant legislative history.

<sup>2</sup> DC Code §38-1804.03.

reports, and exceptions to uniform per student funding are specified, with no indication that others could exist.<sup>3</sup>

**No double funding:** The Council’s FY 2011 Budget Support Act as amended mandates that services funded in the Formula not be funded again in other DC agency budgets.<sup>4</sup> Current examples of duplicative funding in the UPSFF and again elsewhere are DCPS building maintenance (Office of Public Education Facilities Modernization or OPEFM), and DCPS attorneys and legal costs (Office of the Attorney General or OAG). The intent is to prevent the District’s paying twice for the same service, and to “restore uniformity.” The Council’s Committee of the Whole directed that “double funding be eliminated in FY 2012 and years thereafter” and recommended that funding for all such functions be provided in the DCPS budget, with subsequent transfers to agencies performing services for DCPS but not public charter schools.<sup>5</sup>

**Services on an equal basis.** The same legislation mandates that beginning in FY 2013 services provided by DC government agencies to public schools, for example police protection and school nurses, must be provided “on an equal basis” to DCPS and charter schools. The legislation does not define “equal basis,” but the language suggests that agencies have some flexibility in determining the criteria, as long as they are applied equally.

### **History of the Uniform Per Student Funding Formula (UPSFF)**

The UPSFF was first enacted into the DC Code by the Mayor and DC Council in 1998. The Formula was initially developed and updated through recommendations to the Council by a working group of government and community representatives under the aegis of the Council’s Committee on Education. As of 2001, the function of UPSFF research and recommendations was shifted by statute<sup>6</sup> to the newly established State Education Office (now the Office of the State Superintendent of Education or OSSE). Based on the work of its staff and a Technical Work Group (TWG) of government and community representatives, the State Superintendent submitted annual findings and recommendations to the Mayor. Shortly after the mayoral takeover of DCPS, the TWG was disbanded and despite the continued existence of statutory UPSFF responsibilities, OSSE ceased to perform research and recommendations. The Mayor’s office now proposes the foundation and weights on its own.

### **Basic Provisions of the UPSFF**

The UPSFF is modeled on the per student foundation and weightings systems used by many states to calculate state aid for school districts, as a supplement to revenues from their local

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<sup>3</sup> DC Code §38-1801(b)(2-3). *Inclusio unius est exclusio alterius* -- the inclusion of one means the exclusion of others -- is a venerable rule of statutory interpretation.

<sup>4</sup>DC Code §38-2913. As codified, the full name is the Public Education Finance Reform Commission Establishment Amendment Act of 2010

<sup>5</sup> Report and Recommendations of the Committee of the Whole on the Fiscal Year 2011 Budget for Agencies under Its Purview, May 10, 2010, p. 23. Excerpts appear in Appendix 1. A later amendment extended the start date to FY 2013.

<sup>6</sup> DC Code § 38-2602.

tax base. The most significant difference here is that since the District combines state and local taxes, the UPSFF provides 100 percent of state-local funding to its public schools. The Formula:

- sets a minimum *foundation* or base cost per student -- intended to provide an adequate general education for pupils without special needs at the least costly grade levels. The FY 2012 foundation is \$8,943.
- uses *weightings* to generate additional percentages of the base funding for students at other grade levels and add-on percentages for special education, English language learners (ELL or limited English proficiency), summer school, and students in residential schools. Weightings are cumulative.

The per pupil amounts and weights used to be based on OSSE recommendations, last done in 2008. The foundation was calculated on estimates of the cost of a set of goods and services in an educational “market basket” for students in proto-typical schools at different grade levels. These included specific class sizes, ratios of pupils to specialty teachers, counselors, librarians, instructional coaches, principals and other school office personnel, costs of substitutes, texts, supplies, technology, athletics, maintenance and other facilities operating costs, security, and all central office costs, including central management, instructional support, business, and other non-instructional services. The cost-out was based on (1) current salary, benefit, and non-personnel costs, (2) the cost of compliance with federal law and compliance agreements for special education and ELL; (3) practices in the states, suburbs, and other cities determining per pupil amounts used in state aid and minimum spending requirements; (4) studies in various states attempting to determine costs of enabling students to achieve state standards; (5) research literature on best practices.<sup>7</sup>

The annual calculations are illustrated by that for DCPS in the FY 2012 Congressional budget submission, shown on the following page.

The pupil count used for the calculation of charter school payments is their October 5 audited enrollment, with later quarterly payments reduced if audited enrollment is lower than projections. DCPS is funded in the spring preceding the fiscal year based on enrollment projections, done by DCPS and OSSE.<sup>8</sup> These have tended to be higher than actual audited enrollment, giving DCPS funding higher than if actual enrollment were used. This difference results in DCPS’ routinely being over-funded relative to charter schools. There is no mechanism to reconcile DCPS funding to audited enrollment. Occasionally DCPS is subject to a mid-year reduction unrelated to enrollment, e.g., the FY 2011 District-wide employee furlough, but more often DCPS receives additional funding, also unrelated to enrollment. None of this practice is in keeping with the School Reform Act, which specifies the use of actual enrollment as of October 5 each year for both DCPS and charter schools, and directs that there be an independent audit of these counts.<sup>9</sup>

<sup>7</sup> See Appendix 2.

<sup>8</sup> DC Code § 38-2906.

<sup>9</sup> DC Code §§1801.01(b) and 1801.02.

**Per Pupil Funding Allocation Analysis**  
 Uniform Per Student Funding Formula (D.C. Official Code 38-2901 et seq.)  
 and Local Funds Appropriation

**UPSFF Foundation Level Per Pupil \$8,945**

<b>General Education</b>	<b>Weighting Factor</b>	<b>FY 2012 Budgeted Enrollment</b>	<b>Per Pupil Allocation (Rounded)</b>	<b>Total Budget (Rounded)</b>
Pre-Kindergarten 3	1.34	2,236	\$11,986	\$26,801,000
Pre-Kindergarten 4	1.30	3,336	\$11,629	\$38,793,000
Kindergarten	1.30	3,952	\$11,629	\$45,956,000
Grades 1-3	1.00	10,193	\$8,945	\$91,176,000
Grades 4-5	1.00	6,328	\$8,945	\$56,604,000
Grades 6-8	1.03	6,973	\$9,213	\$64,245,000
Grades 9-12	1.16	11,690	\$10,376	\$121,298,000
Alternative	1.17	98	\$10,466	\$1,026,000
Special Education School	1.17	400	\$10,466	\$4,186,000
Adult	0.75	2,041	\$6,709	\$13,693,000
<b>Subtotal General Education</b>		<b>47,247</b>	<b>\$9,816</b>	<b>\$463,778,000</b>
			<i>average</i>	
<b>Special Education</b>				
Level 1	0.58	2,633	\$5,188	\$13,660,000
Level 2	0.81	2,333	\$7,245	\$16,903,000
Level 3	1.58	399	\$14,133	\$5,639,000
Level 4	3.10	1,522	\$27,730	\$42,205,000
Special Education Capacity Fund	0.40	6,887	\$3,578	\$24,642,000
Special Education Compliance Fund	0.16	6,887	\$1,431	\$9,855,000
<b>Subtotal for Special Education</b>		<b>20,661</b>		<b>\$112,904,000</b>
<b>Other Categories</b>				
LEP/NEP	0.45	4,418	\$4,025	\$17,784,000
Summer School	0.17	10,867	\$1,521	\$16,525,000
ESY Allowance				\$826,320
<b>Subtotal for Other Categories</b>				<b>\$35,135,320</b>
<b>Total FY 2012 Proposed Local Budget</b>				<b>\$611,817,320</b>

## Functions Covered by UPSFF Funding

Until the 2007 mayoral takeover, DCPS was an independent agency, with a self-contained budget, governed by an independent Board of Education. The Formula was intended to cover everything then in the DCPS budget, other than District-wide functions since removed, such as special education tuition and transportation. The latter were always funded separately from the UPSFF because they served all District children, not just those in DCPS. Because charter schools were free of these responsibilities, they received no pro rata funding for them. Functions not in the DCPS budget when the uniformity mandate was enacted were capital, public health and safety services, such as police protection and school nurses, and the Teacher Retirement Fund, the pension plan for all DCPS staff with educational certification. Employer pension contributions have never been in the DCPS budget.<sup>10</sup> Congress deliberately excluded this funding from the uniformity requirement.

Legislative intent appears in H.R. Rep. 104-689, at 49-50 (1996), a discussion by the House Appropriations Committee of the Council's implementation of the Formula in 1996. Under the heading "Components of Funding Formula," the Committee stated:

the funding formula and annual payments derived from per pupil allocations to both public charter schools and public schools under the control of the Board of Education must include the total costs of the operations of the Board of Education itself, all central administration and central office costs, including those applicable to the Superintendent of Schools, all facilities operating costs, including utilities, all local education agency evaluation, assessment, and monitoring costs, and any other direct or indirect costs normally incurred by, or allocated to, schools under the control of the Board of Education and the overall public school system.

Although the Board of Education no longer exists, the intent remains that all costs then attributable to the school system be included. When the School Reform Act was enacted, no one foresaw DCPS' becoming an executive agency, some of whose functions would be funded by other city agencies, while charters remained responsible for the same functions. Even though performed by other agencies, maintenance, legal services, and special education compliance remain school system functions.

## DCPS and Public Charter School Perceived Differences

**Enrollment.**<sup>11</sup> Total public school enrollment in the District declined for many years, but in FY 2010 rose, and in FY 2011 and FY 2012 rose significantly. The bulk of the increase has occurred in charter schools, but DCPS enrollment may have stabilized after four decades of decline.

The District's special education enrollment as of October 5 has remained at about 11,000 students over the last four years. Over one-fifth are in private special education placements.

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<sup>10</sup> DCPS teachers who change to charter school employment are entitled to remain in the DC Teacher Retirement Fund, and their charter employer must pay the employer's share.

<sup>11</sup> Appendix 3 provides more detailed figures.

Special education students have remained at about 13% of total DCPS enrollment over the past four years, compared with about 10% for charter school enrollment. The federally mandated counts of December 10 are higher, due to newly identified students, but specific data are so far unavailable as to the distribution of the increases among DCPS and individual charter schools. The needs of students who are generally more severely disabled and more expensive to educate are recognized by the UPSFF special education weights, which provide over \$14,000 extra per Level 3 student and almost \$28,000 extra per Level 4 student. DCPS usually enrolls one percentage point more students than charter schools as a group at Levels 1, 2, and 4, and about the same percentage at Level 3.

The number of ELL or limited English proficiency students in District public schools has increased by almost 1,000 over the last four years. As a percentage of enrollment DCPS usually has 8-10% and charter schools 6-7%. As with special education students, there is a difference, but not great.

***Non-local revenue sources.*** Both DCPS and charter schools have access to non-local revenue sources: federal grants, private support, and collection of fees and reimbursements. Federal entitlement grants, which account for the bulk of federal funding, are allocated to both systems by OSSE in compliance with federal rules. As Local Education Agencies (LEA), both can compete for smaller federal grants awarded directly to local districts. Some charter schools enjoy significant private financial support, but the amount varies greatly from school to school, and DCPS is now receiving over \$20 million per year in direct private grants and additional support – amount unknown – from work on its behalf by contractors engaged by foundations.

***Governance and other conditions.*** The 2007 mayoral takeover made DCPS an executive agency of the DC government, but the system has always been subject to government rules and oversight. Charter schools are non-profit corporations, governed by boards of trustees, and chartered and overseen by the DC Public Charter School Board (PCSB), an independent body appointed by the Mayor from a list provided by the U.S. Secretary of Education. Despite the differing structure of the two systems, they have a number of parallel restrictions. The biggest differences between them are the obligation of DCPS to enroll students whenever and wherever they appear, the unionization of much of the DCPS workforce, and the difference in organizational size.

Legal structure	DCPS	Charter schools
Authority and accountability	DC executive agency Chancellor to Mayor and Council; schools to Chancellor, plenary authority	Non-profit corporation Schools to their boards of trustees, and to PCSB, autonomous within charter law and charter terms
Accountability standards	DC academic standards and tests; otherwise per Chancellor	DC academic standards and tests, charter terms
Admissions	Must take all, but may operate selective schools	Must take all if room available; lottery if more applicants than space
Area where required to enroll students	Neighborhood zones, except selective schools	City-wide only; geographic limits not allowed
Date when required to enroll students	At all times	Up until October 5
Contracting constraints	DC government rules	Notice in DC Register, approval by PCSB
Fiscal reporting requirements	DC CFO and federal grants requirements	Annual audit and federal grants requirements
Revenue flow	Spring appropriation, accessible October 1 plus July advance	Quarterly payments, starting July 1
Local fund carryover	Not permitted	Permitted
Unionization	Teachers, principals, non-instructional workers unionized	School by school potential but none so far
Teacher certification	Required, but teachers entering Teach for America and similar programs are certifiable.	Not required, but subject to NCLB "highly qualified" requirements
Teacher salaries & benefits	Per teachers union contract	Set by each school
Teacher pensions	Funded separately through the Teacher Retirement Fund	Funded from UPSFF payments
Size of LEA	1 LEA, about 46,000 students and 120 facilities	53 LEAs, from 86 to 3,978 students, on 100 campuses
Facilities	City-owned and controlled property, no rent	Charter controlled property, owned or leased, funded by separate per pupil facilities allowance

## CHAPTER 2: FINDINGS ON UNIFORMITY

In recent years, the DC government has disregarded uniformity by providing DCPS with millions of dollars in addition to UPSFF funding, money not provided to public charter schools. Moreover, the UPSFF itself is in need of significant revisions to restore uniformity between DCPS and public charter schools. First, the city appears to be gradually integrating DCPS non-instructional functions into its agency-wide operations, by shifting non-instructional functions covered by the UPSFF into other city agencies, without considering uniformity. Second, the use of different pupil counts – projected enrollment for DCPS and actual enrollment for public charter schools – results in non-uniform per student funding. Third, charter schools are eligible to receive funding for special education and ELL students identified after the October 5 count, while DCPS is not; the difference between special education counts in October and December is substantial.

The Formula is also in need of other changes and updates because new circumstances have affected the adequacy and affordability of the UPSFF. For example, the funding basis of adult education and summer school have not been studied for years; virtual schooling is not recognized as different in any way; a new adequacy cost-out is needed due to significant cost changes and proposals about educational needs such as more time in school; special education provisions have multiple deficiencies. These, however, are beyond the scope of this paper.

This chapter presents data and analysis of DCPS and charter school allocations and expenditures of local funding.

### DC Government Local Funding of DCPS Formula Functions Outside the UPSFF

For the last four to five years the DC government has supported Formula functions in DCPS in a variety of ways beyond the UPSFF, all of which contravene the uniformity mandate of the School Reform Act. Direct extra funding for DCPS, subsidies from other agencies, and free in-kind services for Formula functions constitute local funding outside the UPSFF that is not given to public charter schools. The Formula's current practice of basing DCPS appropriations on projections consistently higher than actual enrollment means that UPSFF per pupil allocations themselves are higher for DCPS than for charter schools. **The results, summarized in the table on the following page, add up to between \$72 million and \$127 million annually provided to DCPS outside the Uniform Per Student Funding Formula.**

*Direct funding outside UPSFF:* DCPS is supposed to receive local funding through the UPSFF, but the city has a history of providing extra local funding for UPSFF functions that is not given to charter schools. Occasionally these come with the initial budget, but more often they are realized in supplementals, reprogrammings, or late-year coverage of overspending and shortfalls in non-local revenue. The disparity ranges between \$12 million and \$72 million annually. Despite past arguments citing exceptional circumstances and “one-time only” funding, the Mayor’s spokesperson now says that “This is the way it has traditionally been done.”<sup>12</sup>

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<sup>12</sup> Pedro Ribeira, quoted by Bill Turque, “Charters Challenge Unfairness of \$21 million to DCPS,” Washington Post website, <http://www.washingtonpost.com/blogs/dc-schools-insider/>

**Local Funding for UPSFF Functions Provided to DCPS Outside the UPSFF**

\$\$ in millions

	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>TO DCPS ONLY</b>	<b>actuals</b>	<b>actuals</b>	<b>actuals</b>	<b>budget</b>	<b>budget*</b>
<b>I. Direct funding outside UPSFF</b>					
UPSFF allocation (local funds)	\$554.7	\$562.1	\$502.9	\$551.5	\$606.1
Additional non-UPSFF funding				\$21.0	[\$21.4]
Actual expenditures on UPSFF functions from local funds	\$631.8	\$582.4	\$514.8		
<b>Extra/(shortfall)</b>	\$77.1	\$20.3	\$11.9	\$21.0	[\$21.4]
<b>II. DC agency in kind/subsidized services for UPSFF functions</b>					
MPD-security contract subsidy	\$3.9	\$3.9	\$6.0	\$4.7	\$0.5
OSSE-Blackman Jones funding	\$1.9	\$6.3	\$9.1	\$7.2	\$9.6
OPEFM-facilities maintenance	\$35.2	\$23.8	\$26.9	\$25.8	\$45.8
OAG-legal services and costs	\$3.2	\$3.6	\$1.7	\$3.1	\$2.7
DME-ICSIC social services	\$2.0	\$2.5			
OSSE-swing space transport			\$0.1		
DDOT-swing space transport					\$1.0
<b>Subtotal</b>	\$46.2	\$40.1	\$43.8	\$40.8	\$59.7
<b>III. Students projected but not enrolled as of October 5**</b>					
General education	\$(1.7)	\$31.1	\$2.1	\$2.0	[\$10.0]
Special education	\$6.3	\$14.6	\$13.3	\$10.7	
ELL education	\$(0.5)	\$(1.1)	\$0.7	\$0.4	
<b>Subtotal</b>	\$4.1	\$44.6	\$16.1	\$13.1	
<b>TOTAL Local Funding for DCPS only</b>	<b>\$127.4</b>	<b>\$105.0</b>	<b>\$71.7</b>	<b>\$74.8</b>	<b>\$91.1</b>
Teacher retirement (excluded)	\$6.0	\$0	\$3.0	\$3.0	\$3.0

\*Supplemental of \$21.4 M to be proposed, according to Mayoral press release 12/23/2011. Enrollment projection was 47,247, but reported enrollment is 46,191. Details are unavailable, and the audit is not yet issued, but the enrollment shortfall is likely to be worth at least \$10 million in higher funding to DCPS.

\*\*Charter schools are funded on actual audited enrollment, except for special education weight funding for special education students identified after October 5. They have received no other direct local funding outside UPSFF.

**Local Funding for UPSFF Functions Provided to DCPCS Outside the UPSFF**

\$\$ in millions

	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>TO PCS ONLY</b>	<b>actuals</b>	<b>actuals</b>	<b>actuals</b>	<b>budget</b>	<b>budget</b>
PCSB*	\$1.7	\$1.7	\$1.6	\$1.3	\$1.1
Special education post-Oct 5	?	?	?	?	?

\*The DC Public Charter School Board performs some of the functions performed by the Chancellor and staff in DCPS. Additional funds come from public charter school fees already counted in their UPSFF allocations.

**Subsidies and free provision of UPSFF services by other DC agencies:** Subsidies from local funds may be paid directly from another agency budget, as was the MPD security contract subsidy or to DCPS via intra-District transfer, as is OSSE funding for special education. The city has shifted several DCPS functions into its government-wide service operations, including fiscal operations, school security, information technology, facilities maintenance, and legal services. These functions are all covered by the UPSFF, and before the mayoral takeover remained in the DCPS budget. Fiscal operations are controlled by the District’s Chief Financial Officer, but DCPS CFO employees are on the DCPS payroll. The DCPS funding for the school security contract is passed to MPD through intra-District transfer, as is payment for information technology from OCTO. But facilities maintenance and legal services are provided to DCPS without charge; DCPS keeps the UPSFF funding for these functions and can use it for other purposes, while charter schools continue to pay for them from UPSFF allocations. Total subsidies and free in-kind services add up to \$40 to \$60 million annually.<sup>13</sup>

**Use of enrollment projections as basis for DCPS Formula funding:** Because funding is based on enrollment, the choice of pupil count can make a difference of millions of dollars. DCPS is funded on the basis of enrollment projections done by DCPS and OSSE. These have usually been higher than actual enrollment:

**DCPS Enrollment Projection vs. Audited Enrollment FY 2008-2012**

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012*
DCPS projected total	49,158	47,744	44,701	45,881	47,247
DCPS audited total	49,422	44,643	44,467	45,630	46,191
Below/(Above) projection	(264)	3,101	234	251	1,056
DCPS projected special education	7,019	7,019	6,545	6,532	6,887
DCPS audited special education	6,480	5,759	5,717	6,048	
Below/(Above) projection	539	1,260	828	484	
DCPS projected LEP/NEP	3,956	3,956	4,508	4,421	4,418
DCPS audited LEP/NEP	4,110	4,273	4,341	4,316	
Below/(Above) projection	(154)	(317)	167	105	

\*FY 2012 reported enrollment only; special education and LEP/NEP not yet reported. Audit not yet released.

Charter school projections have varied from audited enrollment, both up and down, but since charter funding is reconciled annually to enrollment as audited, differences have no dollar impact. The effect of DCPS over-projections, as shown on the table on the preceding page, has ranged from \$4 million to \$45 million annually, money that DCPS retains. Note, however, that much of this funding flows from the over-projection of special education enrollment as of October 5. The December count reported by OSSE to the federal government shows that that the District-wide number rises significantly, presumably due to students newly identified in the

<sup>13</sup> Facilities maintenance is discussed further in the chapter on facilities.

course of the school year. Charter schools as a group apparently account for a pro rata part of the increase.<sup>14</sup>

Year	October 5 audit	December 10 IDEA count	Change	Number from “independent” PCS
FY 2009	10,857	11,346	+489	284
FY 2010	10,989	11,904	+915	411

However, charter schools are eligible to receive special education and ELL weighting funds prorated from the date services are provided to such students, and DCPS is not. The dollar effect of the disparity is unknown.

#### **Equal Basis Services: DC Agency Services to Schools Never Part of UPSFF**

DC agency services traditionally provided at schools without charge are general public health and safety measures delivered at schools because DC children are there. They are not subject to the uniformity requirement, never having been in the DCPS budget, but must be provided to DCPS and charter schools on an “equal” basis. They have been slow in coming to the public charter schools. The current status, according to information provided by the agencies to PEFRC:

- DOH school nursing program—DOH says virtually all schools covered, but some charter schools report that they are ineligible due to lack of appropriate health facilities in their buildings.
- DMH school mental health specialists serving non-special education students:
  - DCPS: 41 schools, 30 full-time, 11 part-time clinicians + 12 schools with wrap-around services
  - PCS: 12 schools, 3 full-time, 9 part-time clinicians
- MPD officers assigned to cover schools
  - DCPS: 46 School Resource Officers
  - PCS: 11 School Resource Officers
- DDOT crossing guards

PEFRC staff states that inquiries as to the basis for assignment of all these services to DCPS vs. charter schools are pending.

<sup>14</sup> OSSE, Child Count FFY 2010 A Comparison to FFY 2009, November 2011. <http://osse.dc.gov/publication/osse-idea-child-count-comparative-data-summary-2009-and-2010>. Figures are shown for charter schools (“independent”) that have not elected DCPS as their LEA for purposes of Part B of IDEA, and for “DCPS,” but the DCPS number includes special education students in private or county placements and charter schools (about one-fourth) that have elected DCPS as their LEA. See Appendix 4 for information on this peculiarity of the School Reform Act. OSSE has been asked for a breakout of these figures for all LEAs by level of service.

### CHAPTER 3: CONCLUSIONS AND RECOMMENDATIONS ON UNIFORMITY

The principle underlying the uniformity mandate of the DC School Reform Act is that students similarly situated should have the same funding behind them whether they are in DCPS or a public charter school. Uniformity in local per student funding is a legal requirement, not an option.<sup>15</sup> For reasons set forth in the Background section, the UPSFF is the only mechanism for allocating local operating funding to both DCPS and charter schools, no matter the existence of “special circumstances” or the point in the fiscal year. If the government could provide charter schools with lower per student funding simply by waiting until after the initial appropriations process, uniformity would be meaningless.

The total value of non-uniform funding for DCPS in the last four to five years ranges from \$72-\$127 million annually. These disparities may arise from varying year-to-year circumstances, but they are persistent, not one-time only and they are large. The disparities clearly contravene the uniformity mandate of the DC School Reform Act, and the DC Code’s bar on double funding of the same services.

Permitted variances from uniformity are specified in the School Reform Act, and are based on student characteristics entailing greater needs, not school or system characteristics and not ad hoc situations such as “budget pressures.” Yet every year since FY 2008, the DC government, without regard to student enrollment, has supplemented DCPS funding over the UPSFF by \$12 million to \$77 million annually. The law requires that these payments be made through the UPSFF, with charter schools receiving a pro rata enrollment-based share.

The legislative history is clear that the Formula was intended to cover all functions included in the DCPS operating budget when the School Reform Act was enacted in 1996. Official fiscal records show that except for retirement contributions for educational personnel, that budget covered all DCPS instructional and non-instructional costs, including functions now performed free or paid for by other city agencies, such as facilities maintenance and legal services. The OSSE cost-outs setting the amount of the UPSFF base have always included these functions, meaning that while charter schools pay for them from UPSFF funds, DCPS does not, and uses the money for other purposes. The cost to the city is \$40 million to \$60 million each year. This is not only a violation of the uniformity requirement, but of Council legislation barring the city from paying twice for the same services. The fairest and most transparent remedy would be, as the Council’s Committee of the Whole recommended, to budget all such functions through the UPSFF, with DCPS transferring funds to agencies performing services.<sup>16</sup>

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<sup>15</sup> Potential for changing the law is discussed at the end of this section.

<sup>16</sup> “True budgeting would dictate that DCPS-related functions and responsibilities be funded through DCPS’ budget, with Intra-District transfers to OPEFM and OAG, as is already done with DCPS services provided through the Metropolitan Police Department (MPD) and the Office of the Chief Technology Officer (OCTO). This arrangement would restore uniformity to DCPS and charter school funding and would enable a more accurate report of DCPS funding and per student spending. The Committee directs that double funding be eliminated in FY 2012 and years thereafter, and recommends that funding be provided through the DCPS budget with Intra- District transfers to all agencies providing services to DCPS but not public charter schools.” Report and Recommendations of the Committee of the Whole on the Fiscal Year 2011 Budget for Agencies under Its Purview, May 10, 2010, p. 23.

The School Reform Act is also clear that the student count on which funding is to be based is actual enrollment, not projections. The projections used to fund DCPS since FY 2009 have always been higher than actual enrollment, leading DCPS to receive \$13 million to \$45 million annually above its actual enrollment entitlement. Charter schools are funded strictly on actual enrollment. DCPS and charter schools should be funded on the same count, either actual enrollment, or projections if they can be shown to match actual enrollment with reasonable proximity. One other disparity merits discussion: charter schools receive pro-rated special-purpose funding for special education and ELL students identified after October 5, while DCPS does not. UPSFF uniformity would be improved by providing DCPS with the same funding, especially since special education enrollment rises significantly in both systems after October 5, and services are mandated by federal law.

The uniformity mandate does not recognize differences between the DCPS and charter school systems other than student enrollment and student characteristics.<sup>17</sup> The biggest such differences potentially relevant to funding are DCPS' obligation to enroll students whenever they appear, and to provide reasonably accessible schools throughout the city. Charter schools have no obligation to enroll students after October 5, the official pupil count date for funding purposes, and no boundaries. The effect of these differences has, however, never been documented. The UPSFF could be revised to be more uniform by recognizing new enrollments after October 5,<sup>18</sup> but neither DCPS nor OSSE has produced reports showing total DCPS or charter school enrollment after October 5.<sup>19</sup> What is the extent of new or transfer enrollment, and are new enrollments offset by transfers out and dropouts?

DCPS' obligation to provide neighborhood schools is increasingly forcing the system to maintain small schools but the cost implications are undemonstrated and would in any event be hard to quantify. DCPS has been closing schools for years, but has never produced an accounting of savings or cost avoidance. Although small schools face challenges in providing specialized staff, such as art and music teachers and specialized instruction such as special education, some of DCPS' highest performing schools have fewer than 300 students. Two-thirds of the charter schools have fewer than 300 students, including half those recently top-rated by the PCSB. Almost all the others have fewer than 400 students.

Other differences are likewise difficult if not impossible to quantify, and tend to weigh in different directions with regard to funding. For example, DCPS has bureaucratic burdens and constraints in areas like procurement, fiscal operations, reporting, and oversight requirements. Charter schools have similar, though less extensive constraints, but how would one quantify the

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<sup>17</sup> D.C. Code § 38-1802.10(d) explicitly bars changing the School Reform Act to do so. *“Waiver of application of duplicate and conflicting provisions. – Notwithstanding any other provision of law, and except as otherwise provided in this chapter, no provision of any law regarding the establishment, administration, or operation of public charter schools in the District of Columbia shall apply with respect to a public charter school or an eligible chartering authority to the extent that the provision duplicates or is inconsistent with any provision of this chapter.”* The School Reform Act is Congressional legislation.

<sup>18</sup> The Public Charter School Board is on record as supporting such a policy. Minutes of the meeting of the DC Public Charter School Board, April 21, 2008; Testimony of Darren Woodruff, Board Member of DC PCSB Before the District of Columbia Council, FY 2012 Budget Hearing for the DC PCSB, April 8, 2011.

<sup>19</sup> The partial exception is a 2007-08 OSSE report, which showed a significant number of new DCPS enrollments from October through April, but which did not reflect dropouts and transfers out. The report states that at the time OSSE and the school system were still cleaning individual student records to reduce errors.

cost difference? DCPS, on the other hand has the advantage of economies of scale, not only in purchasing and business service functions, but in providing specialized services in areas such as special education. Most of DCPS' workforce is unionized, but charter schools need to offer salaries competitive not only with those of DCPS, but of surrounding suburban school districts. Charter school private plan pensions, employer contributions to which are paid from UPSFF funds, are not likely to be competitive with DC government retirement benefits, which include continuation of health insurance coverage.

The danger in recognizing such system differences, all apart from the difficulties and cost of calculating them, is that every year DCPS and charter school advocates would argue their needs based cases to a Mayor and Council unprepared and unable to evaluate them on any objective basis. Charter schools differ enormously among themselves, with the possibility of special treatment for individual LEAs. The result would be funding that is ad hoc, unpredictable, and subjectively based -- probably more generous to those with more political influence.

Differences between the systems and schools based on certain student characteristics can, of course, be recognized, as they are in the weightings for special education and ELL students. Candidates for additional weightings would be students over-age for their grade, who clearly satisfy the statutory requirement of "not meet[ing] minimum literacy requirements."<sup>20</sup> If a sufficiently close correlation between minimum literacy and free lunch eligibility or some other indicator is found, the same provision would authorize a weighting for that indicator. Post October 5 enrollment increases, if documented, could be funded from a small reserve fund, and post October 5 student transfers between sectors could be accompanied by their funding.

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<sup>20</sup> DC Code §1804.01(b)(3)(B)(ii).

## PART II: FACILITIES

### CHAPTER 4: FINDINGS ON CHARTER SCHOOL FACILITIES

DCPS programs are housed in city-owned buildings which they use rent-free. Public charter schools are responsible for securing and funding their own facilities. Some own buildings, while others lease facilities, sometimes surplus school buildings from the DC government, but more often in the private sector. The District's school finance system splits funding between operating and capital costs. Operating costs consist of utilities, custodial services, facilities maintenance, and related equipment and supplies, which are included in the UPSFF for both DCPS and charter schools. Capital costs are covered differently:

- For DCPS: by the city's capital budget, funded primarily by long-term bonds
- For public charter schools: a per student facilities allowance included as an add-on in the city's annual operating budget allocations

The facilities allowance is technically part of the UPSFF, but not subject to the uniformity requirement. The pertinent School Reform Act provision directs that there be a facilities allowance that would "take into account" leases, purchases and improvements to real property.<sup>21</sup> Neither an amount nor standards for calculating it are specified, but the language indicates that the funding should be adequate, and fairness for students means it should be equitable.<sup>22</sup> Expenditures under this heading are:

- Direct payments for purchase of, or major improvements on facilities including leasehold improvements
- Loan/interest payments for purchase of, or major improvements on facilities including leasehold facilities
- Rent payments for facilities excluding utilities, custodial, and maintenance to the extent that these are part of the rent
- Property taxes and property insurance
- Depreciation and amortization on facilities and improvements

The UPSFF has never included funding for any of these functions.

The facilities allowance was originally set using a five-year rolling average of DCPS capital spending per student. DCPS capital revenues were at first relatively low, as was the facilities allowance. After DCPS began receiving between \$100 and \$200 million in capital revenues per year, its capital revenues rose to as much as \$5,348 per student in one year.<sup>23</sup> The facilities allowance eventually rose to \$3,109 per student, but in 2009, the Mayor and Council set the allowance at a flat \$2,800 per student.<sup>24</sup> In FY 2011 and FY 2012, the amount was

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<sup>21</sup> DC Code §38-1804.01(b)(3)(C).

<sup>22</sup> The allowance applies only to students attending a charter school facility, DC Code §38-2908(e).

<sup>23</sup> Data assembled by the Public Charter School Facilities Allotment Working Group in 2009, submitted to the DC Council on January 19, 2010.

<sup>24</sup> DC Code §38-2908(b-1). Despite the Code language, Congressional budget submissions indicate that the reduction actually took place in FY 2010.

supplemented by \$200 per student at the cost of taking \$6.3 million from the charter schools' share of a special federal payment of \$20 million "to expand quality charter schools."<sup>25</sup>

Charter school officials and supporters find the amount inadequate. First, with available funding, many schools have difficulty in securing suitable space. About one-third of charter students are housed in former DCPS school buildings;<sup>26</sup> although built as schools, they usually are in poor condition and need extensive renovation at the charter schools' expense. The rest are in private sector facilities that tend to be more expensive and also inadequate. Although a few charter schools have built facilities privately, most of the rest are in converted commercial space such as warehouses, offices, and retail space that need major construction for conversion to school space that meets code requirements. As small non-profits, their interest rates are higher than those paid for the bonds that support DCPS capital projects.

Second, facilities that charter schools can afford are often cramped and lacking in specialized spaces and grounds. A 2008 study commissioned by OSSE found that charter school facilities are "far more likely to be crowded and to lack adequate educational spaces, such as a gymnasium, library, art room, or other specialty spaces," and that "[m]any charter schools also lack outdoor space for athletics, play, or environmental education."<sup>27</sup> According to the PCSB, the average charter school in 2009 provided 100 square feet of space per student.<sup>28</sup> DCPS standards are 150 sq. ft./elementary, 170 sq. ft./middle, and 200 sq.ft./high school. Actual square footage as of FY 2011 was 227 sq. ft./elementary, 251 sq. ft./PK-8, 346 sq. ft./middle, and 327 sq. ft./high school, for an overall average of 272 square feet per DCPS student.<sup>29</sup> Some charter schools state that the DC DOH does not assign them school nurses because they lack a 600 square foot nurse's suite. The DC Healthy Schools Act, imposing new school lunch and physical education requirements has exacerbated these concerns, since many charter schools lack cafeterias, gyms, and outdoor athletic facilities.

Charter school officials are equally concerned with the reliability of the allowance, because lenders and financial institutions require stable funding sources. In order to obtain acquisition and construction loans, charter schools must show equity and provide a security interest satisfactory to lenders. As explained by Thomas Nida, a banker and then chair of the PCSB, annual variation in the facilities allowance:

... creates uncertainty in the lending market, which ... places charter schools in major jeopardy vis-à-vis securing space. Lenders expressed concern that a reduction in the

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<sup>25</sup> The Senate Committee report contemplates "enhancing the academic quality of existing charter schools, expanding the capacity of high-performing charter schools, and executing a robust performance management system to help identify low-performing schools and close them." Sen. Rep. 112-79, p. 62. The use of this funding is also problematic because lenders consider only the local funding as collateral for loans, creating ongoing problems for facilities financing. See discussion on reliability of the allowance immediately below..

<sup>26</sup> Derived from US Government Accountability Office, District of Columbia Charter Schools, Criteria for Awarding School Buildings to Charter Schools Needs Additional Transparency, GAO 11-263, Appendix I, March 2011

<sup>27</sup> OSSE, Policy Report: Quality Schools, Healthy Neighborhoods, and the Future of DC, based on research conducted by the 21<sup>st</sup> Century School Fund, Brookings Institution, and the Urban Institute, Sept 2008.

<sup>28</sup> Testimony before the Council of the District of Columbia, Public Hearing on the FY 2010 Budget Support Act of 2009, April 23, 2009, <http://www.dcpubliccharter.com/Board-Testimony/April-23-2009-Public-Hearing-on-Budget-Support-Act-of-2009.aspx>.

<sup>29</sup> Derived by the author from DCPS enrollment and facilities data. Special education and administrative buildings are excluded.

facility allowance – the schools’ security interest – will adversely impact the schools’ control over related cash flow. This issue takes on greater importance in the current tight credit market, where lenders are much more focused on cash flow to service debt, more than collateral values for special purpose properties such as schools.<sup>30</sup>

If the allowance is subject to being reduced year to year, or is tied to “allowable costs,” as was once proposed, as a practical matter, charter schools will be unable to obtain loans.

Use by some charter schools of part of the facilities allowance for operating costs or cash reserves has raised questions as to its funding.<sup>31</sup> For some the only facility they could find and afford is inexpensive but inadequate. The excess goes into facilities operations or program. Some are saving to build equity for construction or acquisition loans; according to a PCSB survey, lenders require a number of charter schools to maintain significant cash reserves as part of financing requirements.

The amount actually spent on facilities allowance functions has been subject to conflicting reports and confusion due to incomplete data and inconsistent inclusion of functions. Research by the 21<sup>st</sup> Century School Fund found that in FY 2008 many charter schools spent less than \$3,000 per student on most facilities allowance functions, permitting them to use the remainder for operating expenditures, including maintenance.<sup>32</sup> A study by the DC Public Charter School Board concluded that in FY 2009 most schools spent more than \$3,000 – on all facilities functions, including operating costs.<sup>33</sup> The author’s study, limited to the facilities allowance functions listed above, found that in FY 2009, the average per pupil expenditure was almost exactly \$3,000.<sup>34</sup>

All agree, however, that there is a tremendous range in charter facilities costs per student. Moreover, a comparison of per student costs between the FY 2008 study based on audits and the FY 2009 study based on audits plus survey data shows enormous variations for the same schools. Expenditures vary by more than \$500 per student in two-thirds of the schools and by more than \$1,000 per student in over one-third of the schools. Several schools vary in these two years by \$3,000 to \$4,000, and one differs by over \$6,000 per student. These findings are unsurprising since capital expenditures in many enterprises vary greatly from year to year, but they also suggest that the data available are insufficiently reliable to support any conclusion that charter schools could manage with less than a \$3,000 per student facilities allowance.

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<sup>30</sup> Testimony before the Council of the District of Columbia, Public Hearing on the FY 2010 Budget Support Act of 2009, April 23, 2009, <http://www.dcpubliccharter.com/Board-Testimony/April-23-2009-Public-Hearing-on-Budget-Support-Act-of-2009.aspx>.

<sup>31</sup> E.g., 21<sup>st</sup> Century School Fund, Financing Public Charter School Facilities in the District of Columbia, A Report to the State Superintendent of Education’s Office of Charter School Financing and Support, Sept 5, 2008, pp. 10-13.

<sup>32</sup> Unpublished spreadsheet provided to the author.

<sup>33</sup> Summarized in Testimony of Brian Jones, Chair, DC PCSB before the Council of the District of Columbia, Public Hearing on the FY 11 Education Budget, April 14, 2010. <http://www.dcpubliccharter.com/Board-Testimony/April-14.-2010-Hearing-FY11-Education-Budget.aspx>. The PCSB provided its underlying data to the author.

<sup>34</sup> The Levy study was based on the FY 2009 charter school audits, supplemented by the data used in the PCSB study where it was consistent with the audits. The study disregarded refinancing, and imputed costs to separate operating from . In the table above the first two data sets have been slightly re-analyzed to eliminate the SEED school (residential facility) and St. Coletta (highly specialized facility for very severely disabled students).

Study	Data Source	Average per pupil	Range per pupil	Comment
21 <sup>st</sup> CSF FY 2008	Audits of 56 schools	\$2,061	\$259 - \$8,675	Excluded non-financed capital costs, property taxes, property insurance, lender-required reserves
PCSB FY 2009	Survey from 40 schools	\$4,296	\$973 - \$11,295	Included maintenance, custodial, utilities, lender-required reserves
Levy FY 2009	FY 2009 Audits + survey	\$2,953	\$468 - \$7,841	Includes only facilities allowance functions as listed above

## **CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS ON THE PUBLIC CHARTER SCHOOL FACILITIES ALLOWANCE**

The School Reform Act directs that the per student facilities allowance for charter schools “take into account” leases, purchases and improvements to real property. At the least, the allowance should enable schools to secure facilities that satisfy legal requirements such as code provisions governing early childhood education and the nutrition and exercise requirements of the DC Healthy Schools Act. Equity says that all children should be in comparable facilities whether occupied by DCPS or public charter schools. But the average space per student in charter schools is 100 square feet, compared to a minimum of 150 to 200 by DCPS standards, and an actuality of an average 272 square feet per DCPS pupil. Many facilities lack gyms, libraries, arts spaces, cooking facilities, playgrounds, and playing fields.

Charter schools have not wanted to convert and use warehouse and other commercial space; they have consistently sought space in closed and significantly under-utilized DCPS buildings. The city should not displace or crowd DCPS students in order to accommodate DC charter schools. But where space is genuinely excess, it would make sense to make this space available for lease or purchase by charter schools, if for no other reason than to relieve the burden of paying maintenance, custodial, utilities, and debt service costs unnecessarily. However, closed buildings are more often turned to government use or sale to developers. Meanwhile, privately owned charter facilities, which are not on the property tax rolls, multiply.

Such is the existing situation where the charter facilities allowance is \$3,000 per student total, and \$2,800 per student for long-term facilities initiatives. Although some charter schools pay less for capital-type functions, some pay more, and the limited data available show that such amounts vary not only among charter schools, but from year to year for the same schools. There is no basis for setting the level lower, and no way identified to set different levels for different schools. The DC government should set the level at at least \$3,000 per student in local funding, with a construction cost inflation escalator so as to accommodate loan security requirements and otherwise do no harm.

APPENDIX 1 DC CODE PROVISIONS:

**DC SCHOOL REFORM ACT OF 1995**

**D.C. Code § 38-1804.01**

(a) *In general.* -- For fiscal year 1997 and for each subsequent fiscal year, the Mayor shall make annual payments from the general fund of the District of Columbia in accordance with the formula established under subsection (b) of this section.

(b) *Formula.* --

(1) *In general.* -- The Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, shall establish not later than 90 days after April 26, 1996, a formula to determine the amount of:

- (A) The annual payment to the Board of Education for the operating expenses of the District of Columbia public schools, which for purposes of this paragraph includes the operating expenses of the Board of Education and the Office of the Superintendent; and
- (B) The annual payment to each public charter school for the operating expenses of each public charter school.

(2) *Formula calculation.* -- Except as provided in paragraph (3) of this subsection the amount of the annual payment under paragraph (1) of this subsection shall be calculated by multiplying a uniform dollar amount used in the formula established under such paragraph by:

- (A) The number of students calculated under § 38-1804.02 that are enrolled at District of Columbia public schools, in the case of the payment under paragraph (1)(A) of this subsection; or
- (B) The number of students calculated under § 38-1804.02 that are enrolled at each public charter school, in the case of a payment under paragraph (1)(B) of this subsection.

(3) *Exceptions.* --

(A) *Formula.* -- Notwithstanding paragraph (2) of this subsection, the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, may adjust the formula to increase or decrease the amount of the annual payment to the District of Columbia public schools or each public charter school based on a calculation of:

- (i) The number of students served by such schools in certain grade levels; and
- (ii) The cost of educating students at such certain grade levels.

(B) *Payment.* -- Notwithstanding paragraph (2) of this subsection, the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, may adjust the amount of the annual payment under paragraph (1) of this subsection to increase the amount of such payment if a District of Columbia public school or a public charter school serves a high number of students:

- (i) With special needs;
- (ii) Who do not meet minimum literacy standards; or
- (iii) To whom the school provides room and board in a residential setting.

(C) *Adjustment for facilities costs.* -- Notwithstanding paragraph (2) of this subsection, the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, shall adjust the amount of the annual payment under paragraph (1) of this subsection to increase the amount of such payment for a public charter school to take into account leases or purchases of, or improvements to, real property, if the school, not later than April 1 of the fiscal year preceding the payment, requests such an adjustment."

(D) Notwithstanding paragraph (2) of this subsection:

- (i) The Office of the State Superintendent of Education shall develop a plan to address deficiencies in the current uniform per student funding formula assumptions funding students requiring an intensive program of special education services and to support improved services and the expanded availability of appropriate programs for these students in the public schools and public charter schools, including in self-contained and non-self-contained settings.

(ii) The OSSE shall study and recommend, prior to the beginning of school year 2007-2008, alternative approaches for funding such students that support the actual costs of services required by a student's Individual Education Plan.

(iii) The OSSE may provide supplemental funding, in accordance with the plan, in addition to the uniform per pupil funding formula amount to a special education school serving students in need of an intensive program of special education services who have been diagnosed as having one or more disabling conditions for which the students' Individual Educational Plans require services in a self-contained setting during the regular school day; provided, that the amount of the total per student funding shall not exceed the negotiated rate for education and related services approved for such students by the Maryland Department of Education.

(E) Notwithstanding paragraph (2) of this subsection, for fiscal year 2011, supplemental funding in addition to the supplemental allocations authorized by § 38-2905 may be provided to local education agencies ("LEAs") for special education services, including programs that increase the capacity of the LEA to provide special education services.

#### **§ 38-1804.02. Calculation of number of students.**

(a) *Quarterly reporting requirement.* -- On June 30, October 15, December 15, and March 30 of each year the District of Columbia public schools and each eligible chartering authority shall submit a report to the Mayor containing the information described in subsection (b) of this section that is applicable to the schools under their respective authorities; provided, that in the case of the June 30 report, the information submitted by each eligible chartering authority shall be in the form of estimates of the number of students who will fall into each category on the following October 5.

(b) *Calculation of number of students.* -- Not later than 30 days after April 26, 1996, and not later than October 15 of each year thereafter, the State Education Office shall calculate the following:

- (1) The number of students, including nonresident students and students with special needs, enrolled in each grade from kindergarten through grade 12 of the District of Columbia public schools and in public charter schools, and the number of students whose tuition for enrollment in other schools is paid for with funds available to the District of Columbia public schools;
- (2) The amount of fees and tuition assessed and collected from the nonresident students described in paragraph (1) of this subsection;
- (3) The number of students, including nonresident students, enrolled in preschool and prekindergarten in the District of Columbia public schools and in public charter schools;
- (4) The amount of fees and tuition assessed and collected from the nonresident students described in paragraph (3) of this subsection;
- (5) The number of full time equivalent adult students enrolled in adult, community, continuing, and vocational education programs in the District of Columbia public schools and in public charter schools;
- (6) The amount of fees and tuition assessed and collected from resident and nonresident adult students described in paragraph (5) of this subsection;
- (7) The number of students, including nonresident students, enrolled in nongrade level programs in District of Columbia public schools and in public charter schools; and
- (8) The amount of fees and tuition assessed and collected from nonresident students described in paragraph (7) of this subsection.

(c) *Annual reports.* -- Not later than October 30 of each year the Mayor shall prepare and submit to the Authority (during a control year), the Council, the Comptroller General of the United States, and the appropriate congressional committees a report containing a summary of the calculations made pursuant to subsection (b) of this subsection, including the 4 immediately prior reporting periods specified in subsection (a) of this section.

(d) *Audit of initial calculations.* --

(1) *In general.* -- The State Education Office shall arrange with the Authority to provide for the conduct of an independent audit of the initial calculations described in subsection (b) of this subsection.

(2) *Conduct of audit.* -- In conducting the audit, the independent auditor:

(A) Shall provide an opinion as to the accuracy of the information contained in the report described in subsection (c) of this subsection; and

(B) Shall identify any material weaknesses in the systems, procedures, or methodology used by the State Education Office:

(i) In determining the number of students, including nonresident students, enrolled in the District of Columbia public schools and in public charter schools, and the number of students whose tuition for enrollment in other school systems is paid for by funds available to the District of Columbia public schools; and

(ii) In assessing and collecting fees and tuition from nonresident students.

(3) *Submission of audit.* -- Not later than 45 days, or as soon thereafter as is practicable, after the date on which the Authority receives the initial annual report from the State Education Office under subsection (c) of this subsection, the Authority shall submit to the State Education Office, the Mayor, the District of Columbia Council, and the appropriate congressional committees, the audit conducted under this subsection.

(4) *Cost of the audit.* -- The State Education Office shall reimburse the Authority for the cost of the independent audit, solely from amounts appropriated to the State Education Office for staff, stipends, and other-than-personal-services of the State Education Office by an act making appropriations for the District of Columbia.

CREDIT(S)

(Apr. 26, 1996, 110 Stat. 1321 [257], Pub. L. 104-134, § 2402; Oct. 21, 2000, D.C. Law 13-176, § 8(c), 47 DCR 6835; Apr. 13, 2005, D.C. Law 15-348, § 102(b), 52 DCR 1991.)

### **§ 38-1804.03. Payments.**

(a) *In general.* --

(1) *Escrow for public charter schools.* -- Except as provided in subsection (b) of this section, for any fiscal year, not later than 10 days after the date of enactment of an act making appropriations for the (District of Columbia for such fiscal year, the Mayor shall place in escrow an amount equal to the aggregate of the amounts determined under § 38-1804.01(b)(1)(B) for use only by District of Columbia public charter schools.

(2) *Transfer of escrow funds.* --

(A) *Initial payment.* --

(i) *In General.* -- Except as provided in sub-subparagraphs (ii) and (iii) of this subparagraph, no later than July 15, October 15, January 15, and April 15 of each year, the Mayor shall transfer, by electronic funds transfer, the quarterly payments for each public charter school as prescribed in § 38-2906.02 to a bank designated by such school.

(ii) *Reduction in case of a new school.* -- In the case of a public charter school that has received a payment pursuant to subsection (b) of this section in the fiscal year immediately preceding the fiscal year in which a transfer pursuant to sub-subparagraph (i) of this subparagraph is made, the amounts transferred to the school under sub-subparagraph (i) of this subparagraph shall be reduced by an amount equal to 25% of the amount of the payment made pursuant to subsection (b) of this section.

(iii) Funds received from the Education Jobs Fund, established by section 101 of An Act To modernize the air traffic control system, improve the safety, reliability, and availability of transportation by air in the United States, provides for modernization of the air traffic control system, reauthorizes the Federal Aviation Administration, and for other purposes, approved August 10, 2010 (Pub. L. No.111-226; 124

Stat. 2389) ("Act"), shall be disbursed to public charter schools at such times as are consistent with the requirements of the Act, its implementing regulations, and other applicable federal regulations.

(B) Repealed.

(C) *Pro rata reduction or increase in payments.* –

(i) *Pro rata reduction.* -- If the funds made available to the District of Columbia Government for the District of Columbia public school system and each public charter school for any fiscal year are insufficient to pay the full amount that such system and each public charter school is eligible to receive under this subchapter for such year, the Mayor shall ratably reduce such amounts for such year on the basis of the formula described in § 38- 1804.01(b).

(ii) *Increase.* -- If additional funds become available for making payments under this subchapter for such fiscal year, amounts that were reduced under subparagraph (A) of this paragraph shall be increased on the same basis as such amounts were reduced.

(D) *Unexpended funds.* -- Any funds that remain in the escrow account for public charter schools on September 30 of a fiscal year shall revert to the general fund of the District of Columbia.

(b) *Payments to public schools and public charter schools.*

(1) *Establishment of fund.* -- The fund previously established in the General Fund of the District of Columbia as the "Charter School Fund" shall be redesignated the Student Enrollment Fund. Amounts deposited in the Student Enrollment Fund shall be available for expenditure without further appropriation and shall remain available until expended for the purposes described in paragraph (3) of this subsection. Amounts remaining unobligated or unexpended at the end of a fiscal year shall not revert to the General Fund of the District of Columbia.

(2) *Contents of fund.* -- The Student Enrollment Fund shall consist of:

(A) Unexpended and unobligated amounts appropriated from local funds for public charter schools for each fiscal year that reverted to the General Fund of the District of Columbia, together with any other local funds that the Chief Financial Officer certifies are necessary to effect the purposes of the fund during the fiscal year; provided, that the amount of funds deposited shall not exceed \$8 million in any fiscal year; and

(B) Any interest earned on such amounts.

(3) *Purposes of fund.* -- The Student Enrollment Fund shall be used to assist public schools and public charter schools in the District of Columbia by providing funding in cases where the total audited enrollment, including enrollment in special needs categories, exceeds the projected student enrollment on which the annual appropriation is based in that fiscal year.

(4) *Expenditures from fund.* –

(A) Expenditures from the Student Enrollment Fund for enrollment in excess of the annual public charter school projection for any public charter school operating in that fiscal year shall be authorized in cases where the total audited actual enrollment, including enrollment in special needs categories, exceeds the projected student enrollment on which the annual appropriation is based in that fiscal year.

(B) Expenditures from the Student Enrollment Fund for enrollment in excess of annual public school projections shall be authorized in cases where the total audited actual enrollment exceeds that of the student enrollment on which the annual appropriation is based in that fiscal year.

(5) *Form of payment.* -- Payments under this subsection shall be made by electronic funds transfer from the Student Enrollment Fund to a bank designated by a public charter school.

(6) *Authorization of appropriations.* -- There are authorized to be appropriated to the Chief Financial Officer such sums as may be necessary to effect the purposes of this subsection for each fiscal year.

(c) *Assignment of payments.* -- A public charter school may assign any payments made to the school under this section to a financial institution for use as collateral to secure a loan or for the repayment of a loan.

#### CREDIT(S)

(Apr. 26, 1996, 110 Stat. 1321 [259], Pub. L. 104-134, § 2403; Nov. 19, 1997, 111 Stat. 2191, Pub. L. 105-100, § 172; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 120(d); Feb. 20, 2003, 117 Stat. 132, Pub. L. 108-7, Div. C, title III, § 146(a); Oct. 18, 2004, 118 Stat. 1347, Pub. L. 108-335, § 335(a), (b); Apr. 13, 2005, D.C. Law 15-348, § 102(c)(1), 52 DCR 1991; Mar. 2, 2007, D.C. Law 16-191, § 59, 53 DCR 6794; Sept. 18, 2007, D.C. Law 17-20, § 4032(d), 54 DCR 7052.)

#### Legislative history: (excerpts)

H.R. Rep. No. 104-455, at 146 (1996).

Subtitle E of the conference agreement directs the District of Columbia to develop a per pupil formula for funding K–12 education starting in FY 1997. This uniform formula will be used to provide operating budgets on the basis of enrollment for the school system as a whole and for individual public charter schools. According to the January 1995 report by COPE, “Of the 40 largest school systems in the country, the District ranked first in per pupil expenditures.” In the context of low student academic achievement, this information is disturbing and as a result the District of Columbia is directed to establish a uniform and efficient formula for funding public education. The same formula will be used for students enrolled in individual public charter schools authorized in subtitle B of this agreement and the District of Columbia Public School System. The formula may take into account such variations as students at different grade levels and students with special needs. Such a formula will clarify and focus decisions regarding funding for public education around students’ needs.

Senate.

H.R. Rep. 104-689, at 49-50 (1996)

#### BOARD OF EDUCATION—PUBLIC SCHOOLS

The appropriation of \$479,679,000 of local funds for the public schools of the District of Columbia in FY 1997 will be allocated to the Board of Education on the basis of a per pupil funding formula in accordance with City Council Resolution 11–441, “Approval of

a Fiscal Year 1997 Uniform Per Student Funding Formula for Public Schools Emergency Resolution of 1996.” The Committee’s recommendation is in accordance with section 2401(b)(1)(A) of the District of Columbia School Reform Act of 1995 (Public Law 104–134).

The Committee notes that the appropriation to the Board of Education assumes that the students attracted to public charter schools are drawn from the students currently enrolled in the public schools under the control of the Board of Education, thus not increasing the total estimated number of 79,805 students currently served through publicly funded education. The Committee additionally notes that in the event the total payment to the Board of Education, as determined by the funding formula on the basis of the actual student enrollment count verified by the Financial Management Authority, should be higher than the amount of \$479,679,000 appropriated by this Act, adjustments will be made to the “Public education system” appropriation title during the supplemental budget process to reallocate any additional funds that are necessary to ensure full payment to the Board of Education. Such a case may result if new public charter schools attract students currently enrolled in private schools or students newly moved into the District, and the estimated figure for the number of students currently enrolled in public schools is not reduced for any reason.

#### COMPONENTS OF FUNDING FORMULA

Section 2401 of the District of Columbia School Reform Act of 1995 (Public Law 104–134), mandated in relevant part that “the Mayor and the District of Columbia Council, in consultation with the Board of Education and the Superintendent, shall establish not later than 90 days after the enactment of this Act, a formula to determine” . . . the annual payment . . . “(f)or fiscal year 1997 and for each subsequent year” . . . for public schools under the control of the Board of Education and for each public charter school, with such annual payments to be . . . “calculated by multiplying a uniform dollar amount . . . by the number of students” in specified grade levels. Public Law 104–134 became effective on April 26, 1996, and thus the uniform per student funding formula had to be established by the Mayor and Council by no later than July 25, 1996.

After a series of meetings involving members of the Board of Education, Board staff, school system officials and representatives of the Superintendent of Schools, Council Committee on Education and Libraries staff, representatives of the Mayor, staff of the Control Board, and community representatives, agreement was reached on a weighted funding formula that would allocate in fiscal year 1997 uniform amounts per student for students enrolled in preschool, prekindergarten, kindergarten through grade three, grades four through six, junior high school, and senior high school, respectively, with “add on” funds to be provided for limited English proficient and handicapped students.

Subsequently on July 3, 1996, the Council of the District of Columbia approved resolution 11-441, "Approval of a Fiscal Year 1997 Uniform Per Student Funding Formula for Public Schools Emergency Resolution of 1996." It is the Committee's understanding that this Resolution will be formally transmitted to Congress by the Mayor and the Council Chairman.

The Committee notes that for Fiscal Year 1998 and subsequent years, the funding formula and annual payments derived from per pupil allocations to both public charter schools and public schools under the control of the Board of Education must include the total costs of the operations of the Board of Education itself, all central administration and central office costs, including those applicable to the Superintendent of Schools, all facilities operating costs, including utilities, all local education agency evaluation, assessment, and monitoring costs, and any other direct or indirect costs normally incurred by, or allocated to, schools under the control of the Board of Education and the overall public school system. Costs that may be excluded from the funding formula, per pupil allocations, and consequently annual payments to charter schools are expenditures incurred by the Board of Education for state level (agency) functions, expenditures for Federal grant programs (insofar as each public charter school is deemed a local education agency and is entitled to receipt of federal grant funds if and when eligible on the same basis as public schools under the control of the Board of Education), and expenditures to comply with court-ordered mandates that are not applicable to public charter schools.

**§ 38-1802.10. Application of law.**

(a) *Elementary and Secondary Education Act of 1965.* --

(1) *Treatment as local educational agency.* --

(A) *In general.* -- For any fiscal year, a public charter school shall be considered to be a local educational agency for purposes of part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.), and shall be eligible for assistance under such part, if the fraction the numerator of which is the number of low-income students enrolled in the public charter school during the fiscal year preceding the fiscal year for which the determination is made and the denominator of which is the total number of students enrolled in such public charter school for such preceding year, is equal to or greater than the lowest fraction determined for any District of Columbia public school receiving assistance under such part A where the numerator is the number of low-income students enrolled in such public school for such preceding year and the denominator is the total number of students enrolled in such public school for such preceding year.

(B) *Definition.* -- For the purposes of this subsection, the term "low-income student" means a student from a low-income family determined according to the measure adopted by the District of Columbia to carry out the provisions of part A of title I of the Elementary and Secondary Education Act of 1965 that is consistent with the measures described in §

1113(a)(5) of such Act (20 U.S.C. 6313(a)(5)) for the fiscal year for which the determination is made.

(2) *Allocation for fiscal years 1996 through 1998.* --

(A) *Public charter schools.* -- For fiscal years 1996 through 1998, each public charter school that is eligible to receive assistance under part A of title I of the Elementary and Secondary Education Act of 1965 shall receive a portion of the District of Columbia's total allocation under such part which bears the same ratio to such total allocation as the number described in subparagraph (C) of this paragraph bears to the number described in subparagraph (D) of this paragraph.

(B) *District of Columbia public schools.* -- For fiscal years 1996 through 1998, the District of Columbia public schools shall receive a portion of the District of Columbia's total allocation under part A of title I of the Elementary and Secondary Education Act of 1965 which bears the same ratio to such total allocation as the total of the numbers described in subparagraphs (ii) and (iii) of subparagraph (D) bears to the aggregate total described in subparagraph (D) of this paragraph.

(C) *Number of eligible students enrolled in the public charter school.* -- The number described in this subparagraph is the number of low-income students enrolled in the public charter school during the fiscal year preceding the fiscal year for which the determination is made.

(D) *Aggregate number of eligible students.* -- The number described in this subparagraph is the aggregate total of the following numbers:

(i) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made, were enrolled in a public charter school.

(ii) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made, were enrolled in a District of Columbia public school selected to provide services under part A of title I of the Elementary and Secondary Education Act of 1965; and

(iii) The number of low-income students who, during the fiscal year preceding the fiscal year for which the determination is made:

(I) Were enrolled in a private or independent school; and

(II) Resided in an attendance area of a District of Columbia public school selected to provide services under part A of title I of the Elementary and Secondary Education Act of 1965.

(3) *Allocation for fiscal year 1999 and thereafter.* --

(A) *Calculation by secretary.* -- Notwithstanding §§ 1124(a)(2), 1124A(a)(4), and 1125(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(a)(2), 6334(a)(4), and 6335(d)), for fiscal year 1999 and each fiscal year thereafter, the total allocation under part A of title I of such Act for all local educational agencies in the District of Columbia, including public charter schools that are eligible to receive assistance under such part, shall be calculated by the Secretary of Education. In making such calculation, such Secretary shall treat all such local educational agencies as if such agencies were a single local educational agency for the District of Columbia.

(B) *Allocation.* --

(i) *Public charter schools.* -- For fiscal year 1999 and each fiscal year thereafter, each public charter school that is eligible to receive assistance under part A of title I of the Elementary and Secondary Education Act of 1965 shall receive a portion of the total allocation calculated under subparagraph (A) of this paragraph which bears the same ratio to such total allocation as the number described in paragraph (2)(C) of this subsection bears to the aggregate total described in paragraph (2)(D) of this subsection.

(ii) *District of Columbia public school.* -- For fiscal year 1999 and each fiscal year thereafter, the District of Columbia public schools shall receive a portion of the total allocation calculated under subparagraph (A) of this paragraph which bears the same ratio to such total allocation as the total of the numbers described in subparagraphs (ii) and (iii) of paragraph (2)(D) of this subsection bears to the aggregate total described in paragraph (2)(D) of this subsection.

(4) *Use of ESEA funds.* -- The Board of Education may not direct a public charter school in the school's use of funds under part A of title I of the Elementary and Secondary Education Act of 1965.

(5) *ESEA requirements.* -- Except as provided in paragraph (6) of this subsection, a public charter school receiving funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) shall comply with all requirements applicable to schools receiving such funds.

(6) *Inapplicability of certain ESEA provisions.* -- The following provisions of the Elementary and Secondary Education Act of 1965 shall not apply to a public charter school:

(A) Paragraphs (5) and (8) of § 1112(b) (20 U.S.C. 6312(b));

(B) Paragraphs (1)(A), (1)(B), (1)(C), (1)(D), (1)(F), (1)(H), and (3) of § 1112(c) (20 U.S.C. 6312(c));

(C) Section 1113 (20 U.S.C. 6313);

(D) Section 1115A (20 U.S.C. 6316);

(E) Subsections (a), (b), and (c) of § 1116 (20 U.S.C. 6317);

(F) Subsections (d) and (e) of § 1118 (20 U.S.C. 6319);

(G) Section 1120 (20 U.S.C. 6321);

(H) Subsections (a) and (c) of § 1120A (20 U.S.C. 6322); and

(I) Section 1126 (20 U.S.C. 6337).

(b) *Property and sales taxes.* -- A public charter school shall be exempt from District of Columbia property and sales taxes.

(c) *Education of Children With Disabilities.* -- Notwithstanding any other provision of this chapter, each public charter school shall elect to be treated as a local educational agency or a District of Columbia public school for the purpose of part B of the Individuals With Disabilities Education Act (20 U.S.C. 1411 et seq.) and § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(d) *Waiver of application of duplicate and conflicting provisions.* -- Notwithstanding any other provision of law, and except as otherwise provided in this chapter, no provision of any law regarding the establishment, administration, or operation of public charter schools in the District of Columbia shall apply with respect to a public charter school or an eligible chartering authority to the extent that the provision duplicates or is inconsistent with any provision of this chapter.

(e) *Participation in GSA programs.* --

(1) *In general.* -- Notwithstanding any provision of this chapter or any other provision of law, a public charter school may acquire goods and services through the General Services Administration and may participate in programs of the Administration in the same manner and to the same extent as any entity of the District of Columbia government.

(2) *Participation by certain organizations.* -- A public charter school may delegate to a nonprofit, tax-exempt organization in the District of Columbia the public charter school's authority under paragraph (1) of this subsection.

CREDIT(S)

(Apr. 26, 1996, 110 Stat. 1321 [244], Pub. L. 104-134, § 2210; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 120(b)(1), (e).)

## **UNIFORM PER STUDENT FUNDING FORMULA**

### **§ 38-2906.02. Payments to public charter schools.**

(a) The Mayor shall make payments to each public charter school from the escrow account established under § 38-1804.03 to a bank designated by each school. The annual payment shall be made in the form of 4 equal quarterly payments calculated in accordance with this section; provided, that the entire annual payment for facilities calculated pursuant to § 38-2908 shall be included in the first payment of the fiscal year and that any payment for new charter schools determined pursuant to § 38-1804.03 shall also be included in the first payment of the fiscal year. The first payment shall be made no later than July 15. Subsequent payments shall be made no later than October 15, January 15, and April 15.

(b) Each payment shall be one-fourth of each public charter school's entitlement, determined as follows:

(1) The basis of the July 15 payment to a public charter school shall be the estimate used in the June 30 quarterly reports submitted by the eligible chartering authorities pursuant to § 38-1804.02(a).

(2) The basis of the October 25 and January 15 payments shall be the unaudited October enrollment numbers for that school contained in the reports submitted by the eligible chartering authorities on October 5.

(3) The basis of the April 15 payment shall be the audited October enrollment numbers; provided, that these amounts shall be adjusted in accordance with the provisions of subsection (c) of this section.

(c) Payments shall not be reduced or delayed pending the conduct and results of the audit prescribed by § 38-2906(d). If the audit finds that the number of verified resident students enrolled at any public charter school differs from that on which its July 15 and October 15 payments were based, the Mayor shall recalculate the appropriate amount of subsequent payments accordingly, adjusting them by the amount of the discrepancy.

(d) Payments for special education, limited English proficient students, and other add-on components of the Funding Formula shall be included in the quarterly payments to public charter schools. Payments shall reflect one-quarter of the annual per student amount for each add-on; provided, that add-ons for special education and limited English proficient students shall be added on a pro-rata basis from the date on which a public charter school begins to provide add-on services for such students.

(e) Prior to, or concurrent with, any payment made pursuant to this section, the Chief Financial Officer of the District of Columbia shall provide to each public charter school an accounting indicating the purpose of the payment and how the payment was calculated.

(f) During any period in which payments to public charter schools become due on a date when District funding is authorized pursuant to a continuing resolution rather than pursuant to an appropriations act, the Chief Financial Officer of the District of Columbia shall provide payments for new public charter schools and increased enrollments in other public charter schools from any unexpended and unobligated funds.

(g) Upon application to the Chief Financial Officer of the District of Columbia, charter schools offering

alternative education or special education services may receive payment for eligible students enrolling after October 5, on a pro-rata basis from the date on which the school begins to provide services to that student; provided, that the student represents a net increase to the school's enrollment as of October 5. The pro-rata payments for special education students enrolling after October 5 based on the public charter school's predetermined enrollment schedule shall be disbursed in addition to the quarterly payments at the discretion of the Chief Financial Officer.

**§ 38-2906. Pupil count.**

(a) Annual appropriations for DCPS pursuant to the Formula shall equal the total estimated costs for the number of resident students projected to be enrolled in DCPS during the fiscal year for which the appropriation is made; provided, that for fiscal year 2008, the projected change in enrollment shall equal the average annual change in enrollment for the preceding 3 years.

(b) Annual appropriations for public charter schools pursuant to the Formula shall equal the total estimated costs for the following:

(1) The number of resident students projected to be enrolled in all public charter schools combined during the fiscal year for which the appropriation is made, plus;

(2) The annual budget of the District of Columbia Public Charter School Board and, beginning in Fiscal Year 2002, the Public Charter School Office of the Board of Education, plus;

(3) Repealed.

(c) Repealed.

(d) (1) The student counts reported for October 5 of each year shall be verified by an independent contractor commissioned by the Office of the State Superintendent of Education. The independent contractor shall perform an audit on the student enrollment of each DCPS school and of each public charter school to:

(A) Verify the accuracy of the information contained in the membership report; and

(B) Identify any material weaknesses in the systems, procedures, or methodology used by the DCPS system and public charter schools in:

(i) Determining the number of students, including non-resident students, enrolled in the DCPS and in public charter schools and the number of students whose tuition for enrollment in other school systems is paid for by funds available to the District of Columbia public schools; and

(ii) Assessing and collecting fees and tuition from non-resident students.

(2) The verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by § 38-1804.02, and shall be transmitted by the Mayor to the Council, the Comptroller General of the United States, and the appropriate congressional committees no later than the following December 31. Until the verification is transmitted, the unaudited October count shall serve as the basis for quarterly payments.

(e) Preliminary projections of public charter school enrollment shall be made by each eligible chartering authority for the public charter schools under its supervision, and submitted to the Mayor by the date on which the Chancellor is required to submit his or her budget request to the Mayor. The eligible chartering authorities may submit revisions of the projections to the Mayor and the Council at

any time before the Council committee with oversight responsibilities for the public education budget reports its recommendations on that budget to the Council.

CREDIT(S)

(Mar. 26, 1999, D.C. Law 12-207, § 107, 45 DCR 8095; Dec. 7, 2004, D.C. Law 15-205, § 4002(d), 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-348, § 101(c), 52 DCR 1991; Oct. 20, 2005, D.C. Law 16-33, § 4012(d), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-192, § 4002(e), 53 DCR 6899; Sept. 18, 2007, D.C. Law 17-20, § 4002(e), 54 DCR 7052; Mar. 3, 2010, D.C. Law 18-111, § 4002(c), 57 DCR 181.)

**§ 38-2908. Facilities allowance for Public Charter Schools.**

(a) Except as provided in subsections (b) and (b-1) of this section, the fiscal year facility allowance for Public Charter Schools shall be determined as follows: DCPS approved capital budget shall be divided by the previous school year ("SY") DCPS total pupil count, as defined in § 38-2906, to determine the DCPS per pupil facility cost.

(b) For fiscal year 2004 through fiscal year 2008, the facility allowance for Public Charter Schools shall be determined as described in subsection (a) of this section, except that the DCPS per pupil facility cost for all previous years shall be averaged with the current year's DCPS per pupil facility cost to determine the Public Charter School per pupil facility allowance. The facility allowance shall then be multiplied by the number of students estimated to be attending each Public Charter School to determine the actual facility allowance payments to be received by each Public Charter School. For each year after FY 2004, this "moving average" shall only include the most recent 5-year's DCPS per pupil facility cost.

(b-1) For fiscal year 2009 and succeeding fiscal years, the per pupil facility allowance for Public Charter Schools shall be \$2,800. The facility allowance shall then be multiplied by the number of students estimated to be attending each Public Charter School to determine the actual facility allowance payments to be received by each Public Charter School.

(c) The entire annual payment for facilities shall be included in the first payment of the fiscal year and that any payment for new charter schools shall also be included in the first payment of the fiscal year.

(d) For DCPS or Public Charter Schools that provide students with room and board in a residential setting, in addition to their instructional program, the facilities allowance determined pursuant to this section shall be multiplied by 2.7 for those students in residence at the school.

(e) The facilities allowance shall only apply to students receiving instruction at a Public Charter School educational facility or as otherwise approved by the Office of the State Superintendent of Education.

CREDIT(S)

(Mar. 26, 1999, D.C. Law 12-207, § 109, 45 DCR 8095; Oct. 1, 2002, D.C. Law 14-190, § 3402(e), 49 DCR 6968; Mar. 2, 2007, D.C. Law 16-192, § 4002(g), 53 DCR 6899; Aug. 16, 2008, D.C. Law 17-219, § 4016(d), 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 4011, 57 DCR 181.)

**§ 38-2910. Procedure for adjusting appropriation in case of revenue unavailability.**

If in any given fiscal year the Council finds that full funding of the Formula from local revenues is inconsistent with legal requirements for a balanced budget, the following shall apply:

(1) The Council shall reduce the foundation level accordingly, and set a schedule for achieving or restoring full funding, however, funding shall not be less than 95% of the previous fiscal year's funding; and

(2) The Mayor, Council, Superintendent/CEO, and Board of Education shall use their best efforts to obtain temporary supplemental funding from other revenue sources.

CREDIT(S)

(Mar. 26, 1999, D.C. Law 12-207, § 111, 45 DCR 8095; Mar. 2, 2007, D.C. Law 16-192, § 4002(h), 53 DCR 6899.)

**EQUAL SERVICES: FY 2011 BUDGET SUPPORT ACT**

**§ 38-2913. Services.**

Beginning in fiscal year 2013, services provided by District of Columbia government agencies to public schools shall be provided on an equal basis to the District of Columbia Public Schools and public charter schools. Any services that are funded apart from the Uniform per Student Funding Formula shall not also be funded by the Uniform Per Student Funding Formula.

CREDIT(S)

(Mar. 26, 1999, D.C. Law 12-207, § 115, as added Sept. 24, 2010, D.C. Law 18-223, § 4062, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 402(d), 58 DCR 1008.)

**§ 38-2914. Public Education Finance Reform Commission.**

(a)(1) An independent organization shall be retained by the Mayor of the District of Columbia to convene and staff an independent commission on public education finance reform in the District of Columbia, to be known as the Public Education Finance Reform Commission ("Commission").

(2) The Commission shall:

(A) Be conducted according to the standard procedures of the independent organization, with full cooperation of the:

- (i) Council;
- (ii) Mayor;
- (iii) Chancellor;
- (iv) State Superintendent of Education; and
- (v) Other government personnel;

(B) Establish a process by which the public may participate in providing information, opinion, and reaction to Commission proceedings and reports; and

(C) Post all documents that it produces on the Internet.

(3) All Commission meetings and deliberations shall be open to the public.

(b) The Commission shall study and report on revisions to the Uniform Per Student Funding Formula with regard to improvements in:

- (1) Equity;
- (2) Adequacy;

(3) Affordability; and

(4) Transparency, including:

(A) The maintenance of uniformity in funding between District of Columbia Public Schools ("DCPS") and public charter schools, taking into account services provided without charge by other District of Columbia agencies;

(B) The determination of the funding level needed by DCPS and the public charter schools to provide educational services sufficient to enable public school students, including special education students and English-language learners, to meet the academic standards of the District of Columbia;

(C) The fiscal ability of the District of Columbia government to provide the necessary funding level; and

(D) The presentation of the Uniform Per Student Funding Formula and calculations made pursuant to it so that the public may clearly understand the basis of the calculations and related budget appropriations.

(c)(1) No later than March 31, 2011, the Commission shall provide to the Mayor an equity report detailing for fiscal years 2009 and 2010:

(2) The equity report shall include:

(A) An analysis of the impact of these payments, transfers, in-kind services, and reprogramming on the uniformity of funding for DCPS and public charter schools;

(B) Recommendations for increasing uniformity in the 2013 budget and succeeding years; and

(C) Weaknesses in the Uniform Per Student Funding Formula Act or in its implementation, if any, that interfere with uniformity of funding.

(d) No later than September 30, 2011, the Commission shall provide the Mayor and Council with a final report and its recommendations for consideration in the development of the fiscal year 2013 budget.

CREDIT(S)

(Mar. 26, 1999, D.C. Law 12-207, § 116, as added Sept. 24, 2010, D.C. Law 18-223, § 4062, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 402(e), 58 DCR 1008.)

Legislative history: excerpts from the COW report on FY 2011 budget

“Two past problems in determining the local funds appropriation pursuant to the Uniform Per Student Funding Formula (UPSFF) have recurred in the FY 2011 budget process. .... The second is double funding of the facilities maintenance and legal functions, for which DCPS is funded in the UPSFF, but which are funded again in the budgets of the agencies actually carrying out the functions, the Office of Public Education Facilities Modernization (OPEFM) and the Office of the Attorney General (OAG). At this point,

the Committee does not wish to penalize DCPS for these choices in the FY 2011 budget, but directs that in FY 2012 and thereafter, audited enrollment be the base for projections and that the double funding be eliminated.” (p. 14)

**“Double funding of functions performed by other District agencies.** The UPSFF allocates operating funds to DCPS and charter schools on a base amount that includes funding for facilities maintenance and legal services. Charter schools pay for these services from their UPSFF allotments. However, DCPS does not pay for these services, as the Office of Public Education Facilities Modernization (OPEFM) performs DCPS maintenance from their own funds. Likewise, the Office of Attorney General (OAG) provides and funds DCPS legal operations. Thus the District is paying for these functions twice, though they are only performed once.

“True budgeting would dictate that DCPS-related functions and responsibilities be funded through DCPS' budget, with Intra-District transfers to OPEFM and OAG, as is already done with DCPS services provided through the Metropolitan Police Department (MPD) and the Office of the Chief Technology Officer (OCTO). This arrangement would restore uniformity to DCPS and charter school funding and would enable a more accurate report of DCPS funding and per student spending. The Committee directs that double funding be eliminated in FY 2012 and years thereafter, and recommends that funding be provided through the DCPS budget with Intra- District transfers to all agencies providing services to DCPS but not public charter schools.” (p. 23)

**STATE EDUCATION OFFICE ESTABLISHMENT ACT OF 2000 AND THE PUBLIC EDUCATION REFORM AMENDMENT ACT OF 2007**

**§ 38-2602. Responsibilities.**

(a) Within one year of the Officer's appointment, but not later than October 2001, and except as provided in § 38-2604, the OSSE shall assume the responsibilities listed in subsection (b) of this section. The transfer and assumption of responsibilities shall take place in accordance with the short-term plan to be submitted by the Officer to the Mayor for approval by February 15, 2001, or 5 weeks from the establishment of the OSSE, whichever is later.

(b) The OSSE shall:

....

(4) Make recommendations to the Mayor and Council for periodic revisions to the Uniform Per Student Funding Formula pursuant to § 38-2911, and provide information and data related to such revisions including the study of actual costs of education in the District of Columbia, consideration of performance incentives created by the formula in practice, research in education and education finance, and public comment;

APPENDIX 3 AUDITED ENROLLMENT DC PUBLIC EDUCATION

**DC Public Education Audited Enrollment by Sector FY 2008–FY 2012**

School year	FY 2008	FY 2009	FY 2010	FY 2011*	FY 2012*
<b>Total public enrollment</b>					
DCPS	49,001	44,681	44,467	45,630	46,191
Charter schools	21,866	25,614	27,617	29,366	32,009
Private/county tuition	2,631	2,802	2,782	2,362	N/A
Total	73,498	73,097	74,866	77,358	
DCPS	67%	61%	60%	59%	
Charter schools	30%	35%	37%	38%	
Private/county tuition	3%	3%	3%	3%	

\*FY 2011: tuition is reported enrollment only; FY 2012: reported enrollment only; audited will be lower.

**DC Special Education Audited Enrollment by Sector FY 2008–FY 2011**

School year	FY 2008	FY 2009	FY 2010	FY 2011*
DCPS	6,504	5,761	5,717	6,048
Charter schools	2,300	2,558	2,819	2,966
Private/county tuition	2,359	2,538	2,453	2,203
Total	11,163	10,857	10,989	11,217
DCPS	58%	53%	52%	54%
Charter schools	21%	24%	26%	26%
Private/county tuition	21%	23%	22%	20%
Share of DCPS enrollment	13.2%	12.7%	12.8%	13.3%
Share of charter enrollment	10.5%	9.9%	10.2%	10.1%

\*FY 2011 private/county tuition enrollment as reported by DCPS; audit did not cover.

Special education service levels go by eight hour increments: Level 1 is 0-8 hours per week; Level 2 is 8-16 hours; Level 3 is 16-24 hours; and Level 4 is 24 hours or more. Students at Levels 3 and 4 are generally more severely disabled and more expensive to educate.

**DC Special Education Students as Percent of Total Audited Enrollment by Sector and Level of Service, FY 2008-FY 2011**

	FY 2008	FY 2009	FY 2010	FY 2011
DCPS Level 1	3%	3%	3%	4%
Level 2	5%	5%	5%	8%
Level 3	2%	2%	1%	1%
Level 4	4%	4%	3%	3%

	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
PCS Level 1	2%	3%	3%	3%
Level 2	4%	4%	4%	4%
Level 3	2%	2%	2%	2%
Level 4	3%	2%	2%	2%

**DC Limited English Proficient Audited Student Enrollment by Sector, FY 2008-FY 2011**

<b>School year</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
DCPS	4,110	4,273	4,341	4,316
Charter schools	1,240	1,630	1,933	1,922
Total	5,350	5,903	6,274	6,238
DCPS	77%	72%	69%	69%
Charter schools	23%	28%	31%	31%
Share of DCPS enrollment	8%	10%	10%	9%
Share of charter enrollment	6%	6%	7%	7%

## APPENDIX 4

### CHARTER SCHOOL ELECTION OF DCPS AS LEA FOR SPECIAL EDUCATION

#### § 38-1802.10. Application of law.

(c) *Education of Children With Disabilities*. -- Notwithstanding any other provision of this chapter, each public charter school shall elect to be treated as a local educational agency or a District of Columbia public school for the purpose of part B of the Individuals With Disabilities Education Act (20 U.S.C. 1411 et seq.) and § 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

**Description:** Parrish, et al., American Institutes for Research, Special Education Financing Study for the District of Columbia, November 28, 2007, p. 55:

#### **Charter Schools Selecting DCPS as LEA for Special Education**

The DC School Reform Act of 1995 requires that each charter school determine whether it will be its own LEA (“LEA-charter”) or elect DCPS (“District-charter”) as its LEA for special education. This issue was a point of considerable confusion among our stakeholder group, in terms of the exact nature of the relationship and funding implications. Of the 60 charter sites included in our analyses, 22 had selected DCPS as the LEA for special education, representing more than a quarter of the special education population enrolled in charter schools.

According to the D.C. Public Charter School Board (PCBS) website, “District-charters will be required to meet DCPS standards for certification and evaluation of special education personnel and to implement Individualized Education Programs developed in conjunction with DCPS special education staff.”<sup>59</sup> DCPS is responsible for special education assessments for these charter schools; however, District-charters can seek reimbursement for the costs of evaluations they conduct on their own.

From a funding standpoint, District-charters receive their full UPSFF amount, but DCPS retains their federal IDEA funds in exchange for the assessment services.<sup>60</sup> In Fiscal Year 2006, the “state” retained 15 percent of the \$14.98 million in Part B IDEA funds. DCPS received \$11.06 million, of which approximately \$650,000 was on behalf of charters that selected DCPS as their LEA for special education. This averaged to \$1,430 per special education students attending DCPS and District-charter schools. Charters serving as their own LEA for special education were allocated \$1.67 million, or about \$1,050 per special education student.<sup>61</sup>

The distinction between LEA-charters and District-charters seems to end there. The guidance provided on the PCSB website states that if a charter (whether an LEA- or District-charter) determines that it cannot serve a student with disabilities within the UPSFF allocations, it should contact DCPS. As DCPS has a dual role as the LEA for District-charters and as the “State Educational Authority (SEA)” for special education for LEA-charters, DCPS assumes responsibility for charter students for whom the IEP team approves placement in an NPS or public special education school. In the case of alternative placements, the charter school must remit to DCPS the student’s UPSFF amount, prorated for the time remaining in the school year.

**History:** Mary Levy – participant in drafting process of the DC School Reform Act of 1995.

Section 1802.10 was put into the School Reform Act to protect individual public charter schools from having to pay tuition for students found to need special education placement in a private or county school, the intention being that the DC government should pay. At the time DCPS as the State Education Agency

paid such costs; that function was transferred to OSSE as of FY 2009. The provision became unnecessary with the adoption of the Uniform Per Student Funding Formula, which put tuition, along with other costs for which charter schools were not responsible, into a separate funding stream that covers all private/county placements, whatever their provenance. In the absence of any formal explanation of the presence of section 1802.10, DC and DCPS officials apparently concluded that it meant that DCPS should be responsible for special education assessments of dependent charter schools and for monitoring any former charter school students in alternative placements.