



# The Program on Human Rights and the Global Economy

NORTHEASTERN UNIVERSITY SCHOOL OF LAW

## Examining the Massachusetts Charter School cap through the lens of the human right to education

The Massachusetts Joint Committee on Education is currently considering S.235/H.425, *An Act to further narrow the achievement gap*, that would, amongst other things, lift the cap on charter school creation in those districts deemed “low performing” by the Commonwealth. The Program for Human Rights and the Global Economy urges the committee to refrain from providing a favorable report on this proposal in the current session and to instead thoroughly investigate alternative funding mechanisms that would support the charter school system without jeopardizing traditional public schools.

### Charter School Growth and Funding

Since the 1995-96 school year, when Massachusetts first opened 15 schools, charter schools have grown to 71 schools with an enrollment of over 30,000 students.<sup>1</sup> Charters now make up roughly 4% of public schools in the Commonwealth. During the period from 2000 to 2014, when public school enrollment across the Commonwealth fell from a high of 979,593 students in the 2000-01 school year to 955,739 during the current 2013-14 year, charter school growth outstripped new school

enrollments substantially.<sup>2</sup> The Commonwealth finances charter schools directly out of the same Chapter 70 local aid allotment that supports individual districts. Charter funds are removed automatically from the district’s total local aid allotment, without a legislative appropriation. The cost to fund charter schools in FY14 is projected to be close to \$403 million, and is estimated to represent 42% of new Chapter 70 in FY15. In some districts, the growth in charter schools means the traditional public school system will see lower local aid in 2014-15 than the current school year.<sup>3</sup>

Particularly in districts like Boston, this cut in local aid is substantial. Chapter 70 aid to the Boston Public Schools in FY14 covered 14% of the district’s budget, nearly a 20-percentage point drop from FY99, even though total funding provided under Chapter 70 to the entire district increased.<sup>4</sup>

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<sup>1</sup> Department of Elementary and Secondary Education, Charter School Factsheet: <http://www.doe.mass.edu/charter/factsheet.pdf>

<sup>2</sup> DESE enrollment by grade reports:

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<sup>3</sup> “Underfunding of charter account hurting public schools,” *Massachusetts Municipal Association*: <http://www.mma.org/local-aid-and-finance/12971-underfunding-of-charter-account-hurting-public-schools>

<sup>4</sup> The FY2014 Budget, *Boston Public Schools*: <http://www.bostonpublicschools.org/Page/263>

In order to ease the burden of losing a portion of its administrative and teacher costs with each departing student, each affected district is supposed to receive tuition reimbursement on a six-year step-down program under Chapter 46. However, these reimbursements *do* require legislative appropriation, and the legislature has not always authorized full reimbursement. In FY14, full reimbursement to public schools would require \$103 million, but the current appropriation in proposed budgets covers only \$75 million, leaving a 37% shortfall.<sup>5</sup> The burden of making up the gap falls on local public schools. This has destabilized some schools, and caused others to consider teacher and staff layoffs.<sup>6</sup>

### **The Human Right to Education**

Formalized in a number of international treaties, the human right to education provides a more holistic toolset for looking at effective education. Commonly cited sources of the right to education stipulate that education must be:<sup>7</sup>

- *Available* to all students, with sufficient seats and space;
- *Accessible* to all students, without economic or cultural barriers to entry;
- *Acceptable* in its quality, cultural appropriateness and relevance;
- *Adaptable* and capable of responding to the needs of a diverse student body, and

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<sup>5</sup> "School finance issues influence debate on charter cap lift," *Dot Reporter*: <http://www.dotnews.com/2014/school-finance-issues-influence-debate-charter-cap-lift>

<sup>6</sup> James Vaznis, "Boston schools chief says job cuts ahead," *Boston Globe*, Feb 05.

<sup>7</sup> Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999)

- *Equitable* in distributing resources across communities according to need.

### **Why consider the human right?**

Discussions about charter schools often degenerate into a comparative review of test scores, without giving proper weight to valuable educational considerations Such as equity, access, and availability.

The cost of educating individual pupils in the traditional public school system cannot be easily compared with charter costs: charter schools serve smaller populations and have fewer logistical needs and physical plant concerns. Public schools are required to accept all students, including those not selected in a charter school lottery and those withdrawn or expelled from charter schools. In order to serve this population, the traditional public school system requires a large enough infrastructure to support the necessary facilities, specialists, and instructors. The current education funding mechanism diverts resources from public schools and undermines their ability to provide education that is *acceptable* under the human right. Lifting the charter cap will only aggravate the problem. Charters do not provide enough *availability* to satisfy the right – only a well-resourced public system can do that.

We urge the committee to act prudently and carefully investigate the potential impact of charter school expansion—as well as alternative charter funding mechanisms—before lifting the current limitations on charter growth.