Charter Schools and HB1363

The proponents of HB1363 have made many claims about Colorado public charter schools that either misrepresent the facts or simply are not true. The provisions of HB1363 then go on to reinforce these inaccuracies in the form of proposed statute. What follows is a document that responds to these misrepresentations in an effort to ensure accuracy in the debate and deliberation over HB1363.

TRANSPARENCY

Many of the provisions of HB1363 have to do with transparency and the claim or belief that Colorado charter schools are not being transparent when it comes to such things as revenue, expenditures, turnover rates, waivers, etc. Robust transparency requirements are already in place across each of these areas:

- Revenue and expenditures
  - Charter schools are subject to the same Financial Transparency Act as school districts, which requires each district and school to disclose all budget (income and expenditure) information online for free public access. See C.R.S. § 22-44-301, et seq. In addition, tax-exempt 501c3 charter schools must post the link to their federal form 990, which uses an additional method of accounting to disclose all financial information. Districts are listed in the state law as required to report a 990, but school districts as IRS-recognized "governmental units" of the state are not required to file a form 990. This means districts can maintain wholly owned subsidiaries for which neither the Transparency Act nor the IRS requires publicly accessible filing.

    The current situation is therefore as follows:
    - School districts have transparency websites but not 990 filings;
    - School districts are able to organize "affiliates" for which no 990 is required;
    - Charter schools have transparency filings AND 990 filings AND their transparency site must link to their 990.

    Just as the law requires transparency regarding revenue, it also mandates transparency on expenditures for charter schools. Specifically, the uniform Chart of Accounts established by the Colorado Department of Education dictates that detailed information on expenditures must be provided, similar to the requirements for revenue (§ 22-44-105 (1) (d.5) (IV), C.R.S.).

    Taken all together, Colorado charter schools are currently required to provide more transparency to the public on their finances than school districts. Districts are under less scrutiny at the federal level, do not need to link to their "foundation" 990s, and can create affiliated entities with no publicly disclosed filing. The assertion under HB1363 that charter schools are not being transparent with financial information is simply not accurate.

- Waivers
    - Under current law, not only is each charter school required to post its waivers to its website, every charter school waiver in Colorado is also available from the Colorado Department of Education on the web at a very easily accessed and user-friendly site. This site contains the following information:

        - A list of all automatic waivers, with a brief description of each statute.
        - A list of prohibited waivers, briefly describing each statute.
        - A link to an alphabetical list of all charter schools, with:
            - A list of each statute waived for each school;
            - A separate, introductory list of each such statute, a brief description of that statute, and a count of the number of charter schools that have sought and received that particular waiver.

      See https://www.cde.state.co.us/cdechart/waivers. Notably, no comparable online list of waivers obtained by districts is found when one searches for "Colorado school district waivers."

- Staff and student turnover
    - Much of this information is already included in CDE's State of Colorado Charter Schools report, the most recent version of which shows charter schools with lower rates of student mobility than non-charter schools across the state. It is our understanding that CDE's forthcoming update to this report will show similarly lower rates of turnover when it comes to charter school teachers/staff.

- District Accountability Committees (DACs)
    - HB1363 also tries to mandate the use of DACs in all charter renewal decisions. We have heard from district partners that the current statute strikes the right balance where it allows districts that want to do this the ability to do so but does not require it across the board. Many districts do not have the capacity to do this. In last year's bill on the charter application timeline, the Rural Alliance asked for a specific amendment allowing for more flexibility on this very point.

WAIVERS

HB1363 attempts to do away with the use of so-called "automatic waivers," in part because of the claim/belief that waivers are a way for charters to "avoid following laws." This is not how waivers work. Even if a charter school successfully secures a waiver, it must still abide by the intent of the law in question. What's more, that waiver must go through a multistage review and approval process, being first reviewed/approved by the local school district, then by CDE, and finally by the State Board of Education.

On the specific topic of "automatic waivers," these are waivers that have a long history of being requested and routinely granted to every or virtually every charter school in Colorado. As these

waivers were requested year after year, by school after school, they clogged up the State Board calendar and caused similar needless repetition at the district, CSI, and school levels. Thus, the original establishment of “automatic waivers” (which total only 15 currently) eliminated what had become repetitive, routinized, and needless paperwork. This was a successful paperwork reduction and efficiency measure that would be reversed under the provisions of HB1363.

CONFLICT OF INTEREST

Charter school boards are already subject to every conflict-of-interest rule that applies to a district board of education. For most of the history of charter schools in Colorado it has been clear that the conflict-of-interest rules in C.R.S. § 7-128-501 apply to charter schools. With the passage of C.R.S. § 22-30.5-104.9, it became doubly clear that charter schools were also covered by the same conflict-of-interest rules that apply to school districts. See C.R.S. §§ 24-18-101, et seq. In other words, the conflict-of-interest rules that govern city council members, county commissioners, and school district boards of education apply on exactly the same terms to charter schools.

USE OF DISTRICT BUILDINGS

There is no “right of first refusal” for charter schools to use vacant district buildings under current Colorado law. In all cases districts retain complete control over their facilities and whether or not they choose to share them with their charters. There is provision that allows interested parties to request information from a district about any open buildings or land they might have (a provision HB1363 seeks to strike), but nothing about this provision then obligates a district to actually allow anyone, including a charter, to use these open buildings or land.

In the few places where districts do share some of their facilities with their charters, this is certainly not done in a cost-free way. District charter schools pay districts extensively for the use of facilities. It may not technically be categorized as "rent," but it is captured. For example, in one large metro district, the district charges its charters upwards of $1000 per student in facilities-specific "operations and maintenance" fees. This sort of arrangement is common practice in the handful of places where districts do actually share their buildings with charter schools.

STATE BOARD APPEALS PROCESS

The State Board appeals process for charter schools has proven remarkably objective and balanced over time. Since the inception of charter schools in Colorado, the State Board has sided with the district roughly 50% of the time and with the charter roughly 50% of the time, fulfilling its important checks-and-balances function in ensuring “the general supervision of the public schools of the state.” HB1363 would fundamentally disrupt and dismantle this process.

DECLINING ENROLLMENT

HB1363 operates off the mistaken assumption that charter schools are immune from the impacts of declining enrollment. This couldn’t be further from the truth. In recent years a number of charter schools have been forced to close their doors on account of declining or insufficient enrollment. The difference is simply that this happens of its own accord in the

charter context as opposed to as the result of directed district action. If a charter school has persistent insufficient enrollment, it will be left with little option except to close its doors at some point because the budget won't sustain it – a fact that has born itself out in reality in a number of instances in recent years.

On the topic of declining enrollment more generally, what would be very unfortunate is if we allowed decisions related to this factor to completely drown out considerations based on ensuring <u>every</u> student in Colorado has access to a *high-quality* public school education. By seeking to place moratoria on new charter schools or enabling the closure of high-quality charter schools solely on account of declining enrollment in the surrounding district, we fear that this is exactly what some of the provisions of HB1363 would do.