

NEW YORK

Policy

The New York State Charter Schools Act of 1998 allows charter schools to participate in state and/or local retirement systems. The law itself does not specifically identify the systems (there are two) in which charter schools can elect to participate, but charter schools in New York City exercise the option to participate only in the Teachers' Retirement System of the City of New York (TRS NYC), while charter schools outside of the city exercise the option to participate only in the New York State Teachers' Retirement System (NYSTRS). New York State Department of Education regulations state that once a charter school has been accepted as a participating employer by a retirement system, it cannot revoke its participation.³⁶

Participation Rate

The National Center for Education Statistics' (NCES) Common Core of Data (CCD) lists 119 charter schools operating in New York during the 2008-09 school year. Of these, eighty-two were located in New York City and thirty-seven outside of the city. Of those outside, twenty-two were listed as NYSTRS participating employers. Unfortunately, TRS NYC was unwilling to share its participating employer data with us even after repeated requests.³⁷ Thus, we calculated a lower-bound participation rate of 18 percent (twenty-two out of 119) for the state as a whole (see Table 10). Undaunted by TRS NYC's rebuff, we proceeded to call each of the eighty-two charter schools in New York City in operation during 2008-09. Out of the sixty-three schools that responded to our inquiry, nine reported opting in to TRS NYC. We used these data to calculate an adjusted participation rate of 14 percent for the city and 28 percent for the state.³⁸

Total number of charter schools	119
Number of NYSTRS opt-in schools	22
Lower Bound Participation Rate	18%
Estimated NYSTRS participation rate for NYC charters, based on survey	14%
Adjusted Participation Rate	28%

36. 8 Official Compilation of Codes, Rules, and Regulations of the State of New York §119.2, <http://www.p12.nysed.gov/psc/csreg119.2.html>.

37. We attempted to obtain the TRS NYC participating employer data by contacting the agency without success; we also reached out to individuals at charter school associations in the state and city who, despite their best efforts, were also unable to help us obtain the necessary data. As a last resort, we submitted a FOIA request (Freedom of Information Act) to the agency, which also went unanswered.

38. The participation rate was adjusted according to the following formula: $Adjusted\ Opt-In\ Rate = (NYSTRS + c)(NYC) / TOT$, where NYSTRS = the total number of charter schools listed as participating employers in NYSTRS, c = the proportion of New York City charter schools that we discovered were TRS NYC participating employers, NYC = the total number of charter schools in New York City, and TOT = the total number of charter schools in the state.

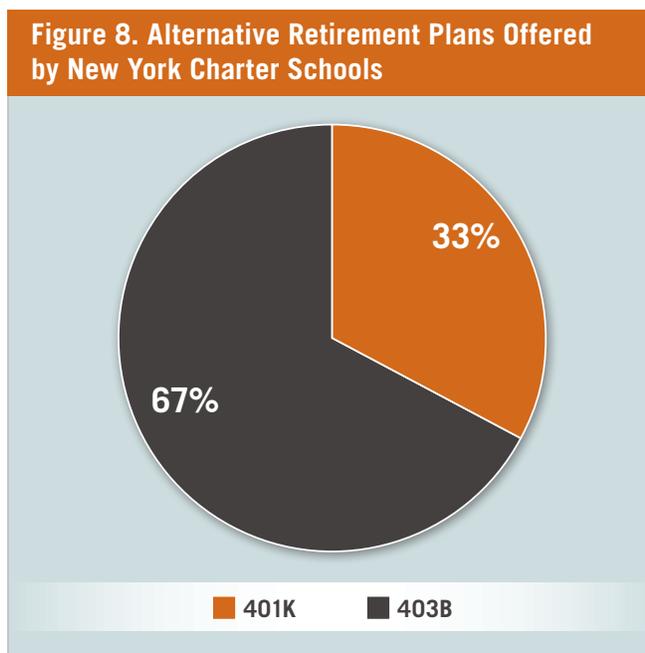
Why Opt Out?

Charter schools that choose *not* to opt in to NYSTRS or TRSNYC cite the high cost of employer contributions. In 2009, the annual employer contribution rate to NYSTRS was 6.19 percent of an employee's annual salary, and the annual employer contribution rate to TRSNYC was astonishingly higher, at 30.8 percent.³⁹ New York state law requires charter schools to pay in to Social Security regardless of whether or not they participate in the state or New York City retirement system. If a charter school refrains from opting in, it can reduce payroll costs by offering a 401(k) or 403(b) retirement plan with a contribution rate lower than NYSTRS or TRSNYC (which shouldn't be too hard in the latter case).

Alternative Retirement Plans

A random 20 percent sample of charter schools in New York that were not listed as participating employers in NYSTRS in 2008-09 yielded nineteen schools. Fourteen responded to our survey, for a 74 percent response rate. Of those, eight offer 403(b) retirement plans and four offer 401(k) plans (see Figure 8).⁴⁰

Employer contribution rates vary among the 401(k) and 403(b) plans. Most employer contributions are matches offered on employee contributions; they generally range up to 6 percent of the employee's salary, although we found one school offering a graduated match that increased all the way up to 15 percent for employees who had worked fifteen years or more at the school. The vesting periods range from immediate vesting to five-year vesting schedules.



39. New York State Teachers' Retirement System, *Comprehensive Annual Financial Report 2009* (Albany, NY: NYSTRS, 2009), <http://www.nystrs.org/main/library/AnnualReport/2009CAFR.pdf>; and Teachers' Retirement System of the City of New York, *92nd Annual Report: Fiscal Year ended June 30, 2009* (New York, NY: TRSNYC, 2009), <https://www.trsnyc.org/WebContent/tools/brochure/annualReport.pdf>.

40. Two schools reported operating as participating employers in TRSNYC and were removed from the sample without being replaced.