S T A T E O F N E W Y O R K

7987

I N S E N A T E

May 27, 2010

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to the powers and duties of boards of cooperative educational services, to the operation and management of and enrollment at charter schools, and to increasing the cap on the total number of charter schools in the state to four hundred sixty (Part A); and to amend the education law, in relation to the evaluation of teachers and principals (Part B)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act enacts into law major components of legislation which are necessary to enact this chapter of the laws of 2010. Each component is wholly contained within a Part identified as Parts A through B. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

PART A

Section 1. Paragraph h of subdivision 4 of section 1950 of the education law is amended by adding a new subparagraph 8 to read as follows:

(8) TO ENTER INTO CONTRACTS WITH CHARTER SCHOOLS AUTHORIZED BY ARTICLE FIFTY-SIX OF THIS CHAPTER TO PROVIDE SERVICES AS AUTHORIZED BY THIS SECTION.

S 2. Paragraph (c) of subdivision 2 of section 2851 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(c) The proposed governance structure of the school, including a list of members of the initial board of trustees, a description of the quali-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD17558-02-0

fications, terms and method of appointment or election of trustees, the organizational structure of the school, A PROCEDURE FOR CONDUCTING AND PUBLICIZING REGULAR BOARD OF TRUSTEE MEETINGS AT EACH CHARTER SCHOOL, and the processes to be followed by the school to promote parental and staff involvement in school governance.

S 3. Paragraph (p) of subdivision 2 of section 2851 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(p) The term of the proposed charter, which shall not exceed five SCHOOL years IN WHICH INSTRUCTION IS PROVIDED TO PUPILS, PLUS THE PERIOD COMMENCING WITH THE EFFECTIVE DATE OF THE CHARTER AND ENDING WITH THE OPENING OF THE SCHOOL FOR INSTRUCTION.

S 4. Paragraph (v) of subdivision 2 of section 2851 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(v) A code of ethics for the charter school, setting forth for the guidance of its trustees, officers and employees the standards of conduct expected of them INCLUDING STANDARDS WITH RESPECT TO DISCLOSURE OF CONFLICTS OF INTEREST REGARDING ANY MATTER BROUGHT BEFORE THE BOARD OF TRUSTEES. SUCH CODE OF ETHICS SHALL INCLUDE BUT SHALL NOT BE LIMITED TO COMPLIANCE WITH THE PROVISIONS OF SECTIONS EIGHT HUNDRED, EIGHT HUNDRED ONE, EIGHT HUNDRED TWO, EIGHT HUNDRED THREE, EIGHT HUNDRED FOUR, EIGHT HUNDRED FOUR-A, EIGHT HUNDRED FIVE, EIGHT HUNDRED FIVE-A, EIGHT HUNDRED FIVE-B AND EIGHT HUNDRED SIX OF THE GENERAL MUNICIPAL LAW TO THE SAME EXTENT SUCH SECTIONS APPLY TO SCHOOL DISTRICTS.

S 5. Subdivision 4 of section 2851 of the education law is amended by adding a new paragraph (e) to read as follows:

(E) A DEMONSTRATION OF THE EFFORTS TO BE TAKEN BY THE CHARTER SCHOOL TO ATTRACT AND RETAIN HIGH-NEED STUDENTS, INCLUDING STUDENTS AT RISK OF EDUCATIONAL FAILURE OR STUDENTS WHO ARE OTHERWISE IN NEED OF SPECIAL ASSISTANCE AND SUPPORT WHICH SHALL BE CONSIDERED BY THE CHARTER ENTITY PRIOR TO APPROVING AN APPLICATION FOR RENEWAL OF A CHARTER.

S 6. Subdivision 9 of section 2852 of the education law, as amended by section 2 of part D-2 of chapter 57 of the laws of 2007, is amended to read as follows:

9. The total number of charters issued pursuant to this article shall not exceed [two] FOUR hundred SIXTY. [One] TWO hundred THIRTY of such charters shall be issue on the recommendation of the charter entity described in paragraph (b) of subdivision three of section twenty-eight hundred fifty-one of this article, and [one] TWO hundred THIRTY of such charters shall be issued on the recommendation of the other charter entities set forth in subdivision three of section twenty-eight hundred fifty-one of this article, provided that up to [fifty] ONE HUNDRED FIFTEEN of the additional charters authorized to be issued by the chapter of the laws of two thousand [seven] TEN which amended this subdivision [effective July first, two thousand seven] shall be reserved for a city school district of a city having a population of one million or more. The failure of any body to issue the regulations authorized pursuant to this article shall not [effect] AFFECT the authority of a charter entity to propose a charter to the board of regents or the board of regents' authority to grant such charter. A conversion of an existing public school to a charter school or the renewal or extension of a charter shall not be counted toward the numerical limits established by this subdivision. UPON REVOCATION OR TERMINATION OF A CHARTER, SUCH CHARTER SHALL NO LONGER COUNT TOWARD THE NUMERICAL LIMITS ESTABLISHED BY THIS SUBDIVISION.

S 7. Paragraph (a) of subdivision 1 of section 2853 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(a) Upon the approval of a charter by the board of regents, the board of regents shall incorporate the charter school as an education corporation for a term not to exceed five SCHOOL years IN WHICH INSTRUCTION IS PROVIDED TO PUPILS, PLUS THE PERIOD COMMENCING WITH THE EFFECTIVE DATE OF THE CHARTER AND ENDING WITH THE OPENING OF THE SCHOOL FOR INSTRUCTION. Such certificate of incorporation shall not modify or limit any terms of the charter approved by the board of regents. Upon approval of an application to renew a charter, the board of regents shall extend the certificate of incorporation for a term not to exceed five SCHOOL years, PLUS THE PERIOD, IF ANY, COMMENCING WITH THE EFFECTIVE DATE OF THE RENEWAL CHARTER AND ENDING WITH THE FIRST DAY OF THE FIRST FULL SCHOOL YEAR IN WHICH INSTRUCTION IS PROVIDED UNDER THE RENEWAL. Upon termination or nonrenewal of the charter of a charter school pursuant to section twenty-eight hundred fifty-five of this article, the certificate of incorporation of the charter school shall be revoked by the board of regents pursuant to section two hundred nineteen of this chapter, provided that compliance with the notice and hearing requirements of such section twenty-eight hundred fifty-five of this article shall be deemed to satisfy the notice and hearing requirements of such section two hundred nineteen. It shall be the duty of the trustees of the charter school to obtain federal tax-exempt status no later than one year following approval of a charter school by the board of regents. For purposes of this article, "certificate of incorporation" shall mean the provisional charter issued by the board of regents to form the charter school as an educational corporation pursuant to sections two hundred sixteen and two hundred seventeen of this chapter.

S 8. Paragraph (b-1) of subdivision 1 of section 2853 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(b-1) An education corporation operating a charter school shall not be authorized to operate more than one school [or] BUT MAY BE AUTHORIZED TO house any grade at more than one site[, provided that: (A) a]. A CHARTER SCHOOL HOUSING TWO OR MORE GRADES AT MORE THAN ONE SITE SHALL HAVE EACH SUCH ADDITIONAL SITE DEEMED A CHARTER ISSUED FOR THE PURPOSES OF SUBDIVISION NINE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-TWO OF THIS ARTICLE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, APPROVAL OF REVISIONS TO A CHARTER OR CHARTERS TO AUTHORIZE AN EDUCATION CORPORATION TO HOUSE ANY GRADE OR GRADES AT MORE THAN ONE SITE, INCLUDING THE MERGER OR CONSOLIDATION OF EXISTING EDUCATION CORPORATIONS OPERATING CHARTER SCHOOLS TO A SINGLE EDUCATION CORPORATION, SHALL BE MADE IN ACCORDANCE WITH PARAGRAPH (A) OF SUBDIVISION SEVEN OF SECTION TWENTY-EIGHT HUNDRED FIFTY-TWO OF THIS ARTICLE. UPON SUCH MERGER OR CONSOLIDATION, THE SURVIVING OR CONSOLIDATED EDUCATION CORPORATION, PLUS ANY SUCH ADDITIONAL SITES, SHALL CONTINUE TO EACH BE COUNTED AS A CHARTER ISSUED FOR THE PURPOSES OF SUBDIVISION NINE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-TWO OF THIS ARTICLE. IF A CHARTER SCHOOL HAS EMPLOYEES WHO ARE MEMBERS OF A COLLECTIVE BARGAINING ORGANIZATION PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW THAT MERGES OR CONSOLIDATES WITH A CHARTER SCHOOL WHOSE EMPLOYEES ARE NOT MEMBERS OF A COLLECTIVE BARGAINING ORGANIZATION, EMPLOYEES OF THE MERGED OR CONSOLIDATED CHARTER SCHOOL SHALL BE MEMBERS OF THE COLLECTIVE BARGAINING ORGANIZATION THAT REPRESENTED LIKE POSITIONS, IF ANY, PRIOR TO THE MERGER OR CONSOLIDATION. A charter school may operate in more than one building at a single site; and [(B)] a

charter school which provides instruction to its students at different locations for a portion of their school day shall be deemed to be operating at a single site; AND A CHARTER SCHOOL OPERATING AT MORE THAN ONE SITE BUT WHICH HOUSES EACH GRADE AT A SINGLE SITE OR WHICH IS PROVIDING SPECIAL EDUCATION PROGRAMS AND SERVICES TO ITS STUDENTS AT DIFFERENT LOCATIONS PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FOUR OF SECTION TWENTY-EIGHT HUNDRED FIFTY-THREE OF THIS ARTICLE SHALL BE DEEMED TO BE OPERATING AT A SINGLE SITE.

S 9. Paragraph (a) of subdivision 4 of section 2853 of the education law, as amended by chapter 378 of the laws of 2007, is amended to read as follows:

(a) For purposes of sections seven hundred one, seven hundred eleven, seven hundred fifty-one and nine hundred twelve of this chapter, a charter school shall be deemed a nonpublic school in the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider, INCLUDING ANOTHER CHARTER SCHOOL. Where the charter school arranges to have the school district of residence provide such special education programs or services, such school district shall provide services in the same manner as it serves students with disabilities in other public schools in the school district, including the provision of supplementary and related services on site to the same extent to which it has a policy or practice of providing such services on the site of such other public schools. CHARTER SCHOOLS MAY PROVIDE SUCH SERVICES ON SITE AT THE CHARTER SCHOOL OR ARRANGE TO HAVE SUCH SERVICES PROVIDED BY CONTRACT AT ANOTHER SITE INCLUDING BY ANOTHER CHARTER SCHOOL. WHERE A CHARTER SCHOOL PROVIDES OR ARRANGES TO BE PROVIDED SUCH SERVICES AT ANOTHER SITE, IT SHALL BE DEEMED TO BE OPERATING AT A SINGLE SITE PURSUANT TO PARAGRAPH (B-1) OF SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-THREE OF THIS ARTICLE.

S 10. Paragraph (a) of subdivision 4 of section 2853 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

(a) For purposes of sections seven hundred one, seven hundred eleven, seven hundred fifty-one and nine hundred twelve of this chapter, a charter school shall be deemed a nonpublic school in the school district within which the charter school is located. Special education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider, INCLUDING ANOTHER CHARTER SCHOOL. CHARTER SCHOOLS MAY PROVIDE SUCH SERVICES ON SITE AT THE CHARTER SCHOOL OR ARRANGE TO HAVE SUCH SERVICES PROVIDED BY CONTRACT AT ANOTHER SITE INCLUDING BY ANOTHER CHARTER SCHOOL. WHERE A CHARTER SCHOOL PROVIDES OR ARRANGES TO BE PROVIDED SUCH SERVICES AT ANOTHER SITE, IT SHALL BE DEEMED TO BE OPERATING AT A SINGLE SITE PURSUANT TO PARAGRAPH (B-1) OF SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-THREE OF THIS ARTICLE.

S 11. Subdivision 1 of section 2854 of the education law is amended by adding a new paragraph (f) to read as follows:

(F) A CHARTER SCHOOL SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS EIGHT HUNDRED, EIGHT HUNDRED ONE, EIGHT HUNDRED TWO, EIGHT HUNDRED THREE, EIGHT HUNDRED FOUR, EIGHT HUNDRED FOUR-A, EIGHT HUNDRED FIVE, EIGHT HUNDRED FIVE-A, EIGHT HUNDRED FIVE-B AND EIGHT HUNDRED SIX OF THE GENERAL MUNICIPAL LAW TO THE SAME EXTENT SUCH SECTIONS APPLY TO SCHOOL DISTRICTS.

S 11-a. Paragraph (c) of subdivision 1 of section 2854 of the education law, as amended by chapter 265 of the laws of 2005, is amended to read as follows:

(c) A charter school shall be subject to the financial audits, the audit procedures, and the audit requirements set forth in the charter and shall be subject to audits of the comptroller [as set forth in section thirty-three of the general municipal law] OF THE STATE OF NEW YORK AT HIS OR HER DISCRETION. Such procedures and standards shall be consistent with generally accepted accounting and audit standards. Independent fiscal audits shall be required at least once annually.

S 12. Paragraphs (a) and (b) of subdivision 2 of section 2854 of the education law, as amended by section 5 of part D-2 of chapter 57 of the laws of 2007, are amended, and a new paragraph (b-1) is added to read as follows:

(a) A charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations and shall not charge tuition or fees; provided that a charter school may require the payment of fees on the same basis and to the same extent as other public schools. A charter school shall not discriminate against any student, employee or any other person on the basis of ethnicity, national origin, gender, or disability or any other ground that would be unlawful if done by a school. Admission of students shall not be limited on the basis of intellectual ability, measures of achievement or aptitude, athletic ability, disability, race, creed, gender, national origin, religion, or ancestry; provided, however, that nothing in this article shall be construed to prevent the establishment of a single-sex charter school or a charter school designed to provide expanded learning opportunities for students at-risk of academic failure OR PUPILS WHO ARE OTHERWISE IN NEED OF SPECIAL ASSISTANCE AND SUPPORT, INCLUDING BUT NOT LIMITED TO, PUPILS WITH DISABILITIES AND PUPILS WHO ARE ENGLISH LANGUAGE LEARNERS; and provided, further, that the charter school shall demonstrate good faith efforts to attract and retain a comparable or greater enrollment of students with disabilities and [limited] English [proficient students] LANGUAGE LEARNERS when compared to the enrollment figures for such students in the school district in which the charter school is located. A charter shall not be issued to any school that would be wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine would be taught.

(b) Any child who is qualified under the laws of this state for admission to a public school is qualified for admission to a charter school. APPLICATIONS FOR ADMISSION TO A CHARTER SCHOOL SHALL BE SUBMITTED ON A UNIFORM APPLICATION FORM CREATED BY THE DEPARTMENT AND SHALL BE MADE AVAILABLE BY A CHARTER SCHOOL IN LANGUAGES PREDOMINANTLY SPOKEN IN THE COMMUNITY IN WHICH SUCH CHARTER SCHOOL IS LOCATED. The school shall enroll each eligible student who submits a timely application by the first day of April each year, unless the number of applications exceeds the capacity of the grade level or building. In such cases, students shall be accepted from among applicants by a random selection process,

provided, however, that an enrollment preference shall be provided to pupils returning to the charter school in the second or any subsequent year of operation and pupils residing in the school district in which the charter school is located, and siblings of pupils already enrolled in the charter school; PROVIDED FURTHER, HOWEVER, THAT PUPILS WITH DISABILITIES AND PUPILS WHO ARE ENGLISH LANGUAGE LEARNERS SHALL BE PROVIDED ENROLLMENT PREFERENCE PURSUANT TO PARAGRAPH (B-1) OF THIS SUBDIVISION AFTER PUPILS RETURNING TO THE CHARTER SCHOOL AND SIBLINGS OF PUPILS ALREADY ENROLLED IN THE CHARTER SCHOOL. THE COMMISSIONER SHALL ESTABLISH REGULATIONS TO REQUIRE THAT THE RANDOM SELECTION PROCESS CONDUCTED PURSUANT TO THIS PARAGRAPH BE PERFORMED IN A TRANSPARENT AND EQUITABLE MANNER AND TO REQUIRE THAT THE TIME AND PLACE OF THE RANDOM SELECTION PROCESS BE PUBLICIZED IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF SECTION ONE HUNDRED FOUR OF THE PUBLIC OFFICERS LAW AND BE OPEN TO THE PUBLIC. For the purposes of this paragraph and [paragraph] PARAGRAPHS (a) AND (B-1) of this subdivision, the school district in which the charter school is located shall mean, for the city school district of the city of New York, the community district in which the charter school is located EXCEPT THAT FOR CHARTER HIGH SCHOOLS THE SCHOOL DISTRICT IN WHICH THE CHARTER SCHOOL IS LOCATED SHALL MEAN THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK. NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION, CHARTER SCHOOLS SERVING STUDENTS IN KINDERGARTEN THROUGH EIGHTH GRADE THAT ARE LOCATED IN THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK SHALL HAVE THE OPTION TO ADOPT THE ENROLLMENT PROCESS USED BY ZONED, NON-CHARTER SCHOOLS LOCATED IN THE COMMUNITY SCHOOL DISTRICT AND ZONE IN WHICH THE CHARTER SCHOOL IS LOCATED, PROVIDED THAT THE ENROLLMENT PROCESS MANDATES THAT THE SCHOOL SERVE ALL STUDENTS RESIDING IN THE RELEVANT COMMUNITY SCHOOL DISTRICT AND ZONE UNTIL IT REACHES FULL CAPACITY AT WHICH POINT IT MAY EMPLOY THE SAME LOTTERY SYSTEM AS ZONED SCHOOLS.

(B-1) IN THE EVENT THAT THE CHARTER ENTITY OR THE BOARD OF REGENTS, BASED ON INFORMATION PROVIDED TO THE CHARTER ENTITY OR THE BOARD OF REGENTS BY THE CHARTER SCHOOL REGARDING THE ENROLLMENT OF PUPILS WITH DISABILITIES AND PUPILS WHO ARE ENGLISH LANGUAGE LEARNERS, HAS MADE A DETERMINATION AT ANYTIME AFTER THE SCHOOL'S FIRST YEAR OF OPERATION THAT THE CHARTER SCHOOL HAS NOT ATTRACTED A PERCENTAGE OF PUPILS FROM EACH OF THOSE GROUPS IN EACH GRADE OF THE CHARTER SCHOOL IS AT LEAST FIFTY PERCENT OF THE AVERAGE PERCENTAGE, AS CALCULATED BY THE SCHOOL DISTRICT WHERE THE CHARTER SCHOOL IS LOCATED, OF PUPILS IN EACH GRADE FROM EACH OF THOSE GROUPS IN ALL NON-CHARTER PUBLIC SCHOOLS IN THE SCHOOL DISTRICT, OR, FOR ELEMENTARY AND MIDDLE SCHOOLS LOCATED WITHIN THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, IN THE COMMUNITY SCHOOL DISTRICT WHERE THE CHARTER IS LOCATED, STUDENTS SHALL BE ACCEPTED IN SUBSEQUENT YEARS FROM AMONG APPLICANTS BY THE FOLLOWING PROCESS, PROVIDED, HOWEVER, IN MAKING THAT DETERMINATION THE BOARD OF REGENTS AND THE CHARTER ENTITY SHALL TAKE INTO ACCOUNT THE FACILITY CONSTRAINTS IF ANY THAT AFFECT ENROLLMENT AND SERVICE OF PUPILS WITH DISABILITIES:

(I) FIRST, THE SCHOOL SHALL ACCEPT APPLICATIONS FOR EACH GRADE SUBMITTED BY PUPILS WITH DISABILITIES AND PUPILS WHO ARE ENGLISH LANGUAGE LEARNERS UNTIL THE PERCENTAGE OF STUDENTS FROM EACH OF THOSE GROUPS IN EACH GRADE OF THE CHARTER SCHOOL IS AT LEAST SEVENTY-FIVE PERCENT OF THE AVERAGE PERCENTAGE, AS CALCULATED BY THE SCHOOL DISTRICT WHERE THE CHARTER SCHOOL IS LOCATED, OF STUDENTS IN EACH GRADE FROM EACH OF THOSE GROUPS IN ALL NON-CHARTER PUBLIC SCHOOLS IN THE SCHOOL DISTRICT, OR, FOR ELEMENTARY AND MIDDLE SCHOOLS LOCATED WITHIN THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, IN THE COMMUNITY SCHOOL DISTRICT WHERE THE CHARTER

IS LOCATED, OR UNTIL ALL APPLICATIONS SUBMITTED BY STUDENTS WITH AN INDIVIDUALIZED EDUCATION PROGRAM AND ENGLISH LANGUAGE LEARNERS HAVE BEEN ACCEPTED. IF ACCEPTING ALL APPLICATIONS SUBMITTED BY PUPILS WITH DISABILITIES AND PUPILS WHO ARE ENGLISH LANGUAGE LEARNERS WOULD CAUSE THE PERCENTAGE OF SUCH STUDENTS IN ANY GRADE AT THE CHARTER SCHOOL TO EXCEED SEVENTY-FIVE PERCENT OF THE AVERAGE PERCENTAGE OF PUPILS FROM EACH OF THOSE GROUPS IN THE SAME GRADE AT THE RELEVANT NON-CHARTER PUBLIC SCHOOLS, FOR EACH GRADE THE CHARTER SCHOOL SHALL ACCEPT APPLICANTS FROM EACH OF THOSE GROUPS BY A RANDOM SELECTION PROCESS UNTIL THE PERCENTAGE OF STUDENTS IN EACH GRADE FROM EACH OF THOSE GROUPS IS EQUAL TO THE SEVENTY-FIVE PERCENT OF THE PERCENTAGE OF STUDENTS IN EACH GRADE FROM EACH OF THOSE GROUPS IN THE RELEVANT NON-CHARTER PUBLIC SCHOOLS.

(II) ONCE ALL APPLICATIONS SUBMITTED BY PUPILS WITH DISABILITIES AND PUPILS WHO ARE ENGLISH LANGUAGE LEARNERS HAVE BEEN ACCEPTED, OR ONCE THE REQUIRED PERCENTAGE OF STUDENTS FROM THOSE GROUPS IN EACH GRADE HAS BEEN REACHED AS SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE SCHOOL SHALL ACCEPT STUDENTS FROM AMONG ALL UNACCEPTED APPLICATIONS INCLUDING APPLICATIONS FROM PUPILS WITH DISABILITIES AND PUPILS WHO ARE ENGLISH LANGUAGE LEARNERS BY RANDOM SELECTION PROCESS, PROVIDED, HOWEVER, THAT AN ENROLLMENT PREFERENCE SHALL BE PROVIDED TO PUPILS RETURNING TO THE CHARTER SCHOOL IN THE SECOND OR ANY SUBSEQUENT YEAR OF OPERATION, SIBLINGS OF PUPILS ALREADY ENROLLED IN THE CHARTER SCHOOL AND PUPILS RESIDING IN THE SCHOOL DISTRICT IN WHICH THE CHARTER SCHOOL IS LOCATED.

S 13. Subdivision 2 of section 2857 of the education law, as amended by section 7 of part D-2 of chapter 57 of the laws of 2007, is amended to read as follows:

2. Each charter school shall submit to the charter entity and to the board of regents an annual report. Such report shall be issued no later than the first day of August of each year for the preceding school year AND SHALL BE MADE PUBLICLY AVAILABLE BY SUCH DATE AND SHALL BE POSTED ON THE CHARTER SCHOOL'S AND CHARTER ENTITY'S WEBSITES. The annual report shall be in such form as shall be prescribed by the commissioner and shall include at least the following components:

(a) a charter school report card, which shall include measures of the comparative academic and fiscal performance of the school, as prescribed by the commissioner in regulations adopted for such purpose. Such measures shall include, but not be limited to, graduation rates, dropout rates, performance of students on standardized tests, college entry rates, total spending per pupil and administrative spending per pupil. Such measures shall be presented in a format that is easily comparable to similar public schools. In addition, the charter school shall ensure that such information is easily accessible to the community INCLUDING MAKING IT PUBLICLY AVAILABLE BY TRANSMITTING IT TO LOCAL NEWSPAPERS OF GENERAL CIRCULATION AND MAKING IT AVAILABLE FOR DISTRIBUTION AT BOARD OF TRUSTEE MEETINGS.

(b) discussion of the progress made towards achievement of the goals set forth in the charter.

(c) a certified financial statement setting forth, by appropriate categories, the revenues and expenditures for the preceding school year, including a copy of the most recent independent fiscal audit of the school.

(D) EFFORTS TAKEN BY THE CHARTER SCHOOL IN THE EXISTING SCHOOL YEAR, AND A PLAN FOR EFFORTS TO BE TAKEN IN THE SUCCEEDING SCHOOL YEAR, TO ATTRACT AND RETAIN HIGH-NEED STUDENTS, INCLUDING STUDENTS AT RISK OF EDUCATIONAL FAILURE OR STUDENTS WHO ARE OTHERWISE IN NEED OF SPECIAL ASSISTANCE AND SUPPORT.

S 14. Subdivision 3 of section 2857 of the education law is amended by adding a new paragraph (a-1) to read as follows:

(A-1) A LIST INCLUDING THE NUMBER OF CHARTER SCHOOLS CLOSED DURING THE PRECEDING YEAR, AND A BRIEF DESCRIPTION OF THE REASONS THEREFOR INCLUDING, BUT NOT LIMITED TO, NON-RENEWAL OF THE CHARTER OR REVOCATION OF THE CHARTER;

S 15. Section 2857 of the education law is amended by adding a new subdivision 5 to read as follows:

5. THE BOARD OF REGENTS SHALL, ON AN ANNUAL BASIS, REVIEW AND MAKE AVAILABLE TO SCHOOL DISTRICTS BEST EDUCATIONAL PRACTICES EMPLOYED BY CHARTER SCHOOLS.

S 16. The education law is amended by adding a new section 211-e to read as follows:

S 211-E. EDUCATIONAL MANAGEMENT ORGANIZATIONS. 1. EACH COMMON, CENTRAL, CENTRAL HIGH SCHOOL, UNION FREE, EXCEPT SPECIAL ACT SCHOOL DISTRICTS AS DEFINED IN SECTION FOUR THOUSAND ONE OF THIS CHAPTER, AND CITY SCHOOL DISTRICT SHALL BE AUTHORIZED TO ENTER INTO CONTRACTS WITH APPROVED EDUCATIONAL MANAGEMENT ORGANIZATIONS FOR THE PURPOSE OF MANAGING INDIVIDUAL SCHOOLS WITHIN THE DISTRICT IN ORDER TO TURN AROUND THE PERSISTENTLY LOWEST-ACHIEVING SCHOOLS. AUTHORITY OVER EMPLOYMENT DECISIONS SHALL REMAIN THE SOLE RESPONSIBILITY OF THE EMPLOYING BOARD. CONTRACTS SHALL BE SOLICITED AND AWARDED PURSUANT TO A COMPETITIVE REQUEST FOR PROPOSALS PROCESS THAT SHALL BE DEVELOPED BY THE BOARD OF EDUCATION IN CONSULTATION WITH THE SUPERINTENDENT OF SCHOOLS IN ACCORDANCE WITH COMMISSIONER'S REGULATIONS PURSUANT TO SUBDIVISION TWO OF THIS SECTION. THE REQUEST FOR PROPOSAL PROCESS SHALL INCLUDE MEASURES TO ENHANCE THE ABILITY OF MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES TO COMPETE FOR CONTRACTS AND TO ENSURE THEIR MEANINGFUL PARTICIPATION IN THE PROCESS. FOR THE PURPOSES OF THIS SECTION, THE TERM "BOARD OF EDUCATION" SHALL MEAN THE TRUSTEE, TRUSTEES OR BOARD OF EDUCATION OF ANY SCHOOL DISTRICT, EXCEPT IN THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK THE TERM "BOARD OF EDUCATION" SHALL MEAN THE PANEL FOR EDUCATION POLICY AND THE "SUPERINTENDENT OF SCHOOLS" SHALL MEAN THE CHANCELLOR.

2. THE DEPARTMENT SHALL ESTABLISH A LIST OF APPROVED EDUCATIONAL MANAGEMENT ORGANIZATIONS. IN ESTABLISHING SUCH LIST, THE COMMISSIONER SHALL MAKE REASONABLE EFFORTS TO ENSURE MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES ARE INCLUDED FOR CONSIDERATION WHERE APPLICABLE. THE COMMISSIONER SHALL BE AUTHORIZED TO PROMULGATE ANY REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION INCLUDING REGULATIONS FOR CONSISTENCY AND COMPLIANCE WITH ANY APPLICABLE FEDERAL OR STATE GUIDELINES, INCLUDING THOSE CONTAINED WITHIN THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.

3. NO CONTRACT ENTERED INTO WITH AN EDUCATIONAL MANAGEMENT ORGANIZATION PURSUANT TO THIS SECTION SHALL BE CONSTRUED TO OVERRIDE OR AMEND ANY COLLECTIVE BARGAINING AGREEMENT BETWEEN THE SCHOOL DISTRICT AND COLLECTIVE BARGAINING ORGANIZATION. ANY CHANGES TO THE COLLECTIVE BARGAINING AGREEMENT OF ANY BARGAINING UNIT DURING THE TERM OF THE CONTRACT WITH THE EDUCATIONAL MANAGEMENT ORGANIZATION SHALL BE NEGOTIATED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

S 17. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of

the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 18. This act shall take effect immediately; provided, however, that:

a. sections three, seven and eight of this act shall take effect July 1, 2010;

b. sections five, twelve, thirteen, fourteen and fifteen of this act shall take effect January 1, 2011; and

c. the amendments to paragraph (a) of subdivision 4 of section 2853 of the education law made by section nine of this act shall be subject to the expiration and reversion of such paragraph pursuant to subdivision d of section 27 of chapter 378 of the laws of 2007, as amended, when upon such date the provisions of section ten of this act shall take effect.

PART B

Section 1. The education law is amended by adding a new section 3012-c to read as follows:

S 3012-C. ANNUAL PROFESSIONAL PERFORMANCE REVIEW OF CLASSROOM TEACHERS AND BUILDING PRINCIPALS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, THE ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF ALL CLASSROOM TEACHERS AND BUILDING PRINCIPALS EMPLOYED BY SCHOOL DISTRICTS OR BOARDS OF COOPERATIVE EDUCATIONAL SERVICES SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. SUCH PERFORMANCE REVIEWS WHICH ARE CONDUCTED ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN, OR ON OR AFTER THE DATE SPECIFIED IN PARAGRAPH C OF SUBDIVISION TWO OF THIS SECTION WHERE APPLICABLE, SHALL INCLUDE MEASURES OF STUDENT ACHIEVEMENT AND BE CONDUCTED IN ACCORDANCE WITH THIS SECTION. SUCH ANNUAL PROFESSIONAL PERFORMANCE REVIEWS SHALL BE A SIGNIFICANT FACTOR FOR EMPLOYMENT DECISIONS INCLUDING BUT NOT LIMITED TO, PROMOTION, RETENTION, TENURE DETERMINATION, TERMINATION, AND SUPPLEMENTAL COMPENSATION, WHICH DECISIONS ARE TO BE MADE IN ACCORDANCE WITH LOCALLY DEVELOPED PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. SUCH PERFORMANCE REVIEWS SHALL ALSO BE A SIGNIFICANT FACTOR IN TEACHER AND PRINCIPAL DEVELOPMENT, INCLUDING BUT NOT LIMITED TO, COACHING, INDUCTION SUPPORT AND DIFFERENTIATED PROFESSIONAL DEVELOPMENT, WHICH ARE TO BE LOCALLY ESTABLISHED IN ACCORDANCE WITH PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

2. A. THE ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED PURSUANT TO THIS SECTION FOR CLASSROOM TEACHERS AND BUILDING PRINCIPALS SHALL DIFFERENTIATE TEACHER AND PRINCIPAL EFFECTIVENESS USING THE FOLLOWING QUALITY RATING CATEGORIES: HIGHLY EFFECTIVE, EFFECTIVE, DEVELOPING AND INEFFECTIVE, WITH EXPLICIT MINIMUM AND MAXIMUM SCORING RANGES FOR EACH CATEGORY, AS PRESCRIBED IN THE REGULATIONS OF THE COMMISSIONER. SUCH ANNUAL PROFESSIONAL PERFORMANCE REVIEWS SHALL RESULT IN A SINGLE COMPOSITE TEACHER OR PRINCIPAL EFFECTIVENESS SCORE, WHICH INCORPORATES MULTIPLE MEASURES OF EFFECTIVENESS RELATED TO THE CRITERIA INCLUDED IN THE REGULATIONS OF THE COMMISSIONER. EXCEPT FOR THE STUDENT GROWTH MEASURES PRESCRIBED IN PARAGRAPHS E, F AND G OF THIS SUBDIVISION, THE ELEMENTS COMPRISING THE COMPOSITE EFFECTIVENESS SCORE SHALL BE LOCALLY DEVELOPED, CONSISTENT WITH THE STANDARDS PRESCRIBED IN THE REGULATIONS OF THE COMMISSIONER, THROUGH NEGOTIATIONS CONDUCTED, PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

B. ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED BY SCHOOL DISTRICTS ON OR AFTER JULY FIRST, TWO THOUSAND ELEVEN OF CLASSROOM TEACHERS OF COMMON BRANCH SUBJECTS OR ENGLISH LANGUAGE ARTS OR MATHEMAT-

ICS IN GRADES FOUR TO EIGHT AND ALL BUILDING PRINCIPALS OF SCHOOLS IN WHICH SUCH TEACHERS ARE EMPLOYED SHALL BE CONDUCTED PURSUANT TO THIS SUBDIVISION AND SHALL USE TWO THOUSAND TEN--TWO THOUSAND ELEVEN SCHOOL YEAR STUDENT DATA AS THE BASELINE FOR THE INITIAL COMPUTATION OF THE COMPOSITE TEACHER OR PRINCIPAL EFFECTIVENESS SCORE FOR SUCH CLASSROOM TEACHERS AND PRINCIPALS.

C. ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED BY SCHOOL DISTRICTS OR BOARDS OF COOPERATIVE EDUCATIONAL SERVICES ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE OF ALL CLASSROOM TEACHERS AND ALL BUILDING PRINCIPALS SHALL BE CONDUCTED PURSUANT TO THIS SUBDIVISION AND SHALL USE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR STUDENT DATA AS THE BASELINE FOR THE INITIAL COMPUTATION OF THE COMPOSITE TEACHER OR PRINCIPAL EFFECTIVENESS SCORE FOR SUCH CLASSROOM TEACHERS AND PRINCIPALS. FOR PURPOSES OF THIS SECTION, AN ADMINISTRATOR IN CHARGE OF AN INSTRUCTIONAL PROGRAM OF A BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL BE DEEMED TO BE A BUILDING PRINCIPAL.

D. PRIOR TO ANY EVALUATION BEING CONDUCTED IN ACCORDANCE WITH THIS SECTION, EACH INDIVIDUAL WHO IS RESPONSIBLE FOR CONDUCTING AN EVALUATION OF A TEACHER OR BUILDING PRINCIPAL SHALL RECEIVE APPROPRIATE TRAINING IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER.

E. FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED IN ACCORDANCE WITH PARAGRAPH B OF THIS SUBDIVISION IN THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR, FORTY PERCENT OF THE COMPOSITE SCORE OF EFFECTIVENESS SHALL BE BASED ON STUDENT ACHIEVEMENT MEASURES AS FOLLOWS: (I) TWENTY PERCENT OF THE EVALUATION SHALL BE BASED UPON STUDENT GROWTH DATA ON STATE ASSESSMENTS AS PRESCRIBED BY THE COMMISSIONER OR A COMPARABLE MEASURE OF STUDENT GROWTH IF SUCH GROWTH DATA IS NOT AVAILABLE; AND (II) TWENTY PERCENT SHALL BE BASED ON OTHER LOCALLY SELECTED MEASURES OF STUDENT ACHIEVEMENT THAT ARE DETERMINED TO BE RIGOROUS AND COMPARABLE ACROSS CLASSROOMS IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER AND AS ARE DEVELOPED LOCALLY IN A MANNER CONSISTENT WITH PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

F. FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION IN ANY SCHOOL YEAR PRIOR TO THE FIRST SCHOOL YEAR FOR WHICH THE BOARD OF REGENTS HAS APPROVED USE OF A VALUE-ADDED GROWTH MODEL, BUT NOT EARLIER THAN THE TWO THOUSAND TWELVE--TWO THOUSAND THIRTEEN SCHOOL YEAR, FORTY PERCENT OF THE COMPOSITE SCORE OF EFFECTIVENESS SHALL BE BASED ON STUDENT ACHIEVEMENT MEASURES AS FOLLOWS: (I) TWENTY PERCENT OF THE EVALUATION SHALL BE BASED UPON STUDENT GROWTH DATA ON STATE ASSESSMENTS AS PRESCRIBED BY THE COMMISSIONER OR A COMPARABLE MEASURE OF STUDENT GROWTH IF SUCH GROWTH DATA IS NOT AVAILABLE; AND (II) TWENTY PERCENT SHALL BE BASED ON OTHER LOCALLY SELECTED MEASURES OF STUDENT ACHIEVEMENT THAT ARE DETERMINED TO BE RIGOROUS AND COMPARABLE ACROSS CLASSROOMS IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER AND AS ARE DEVELOPED LOCALLY IN A MANNER CONSISTENT WITH PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

G. FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED IN ACCORDANCE WITH PARAGRAPH C OF THIS SUBDIVISION IN THE FIRST SCHOOL YEAR FOR WHICH THE BOARD OF REGENTS HAS APPROVED USE OF A VALUE-ADDED GROWTH MODEL AND THEREAFTER, FORTY PERCENT OF THE COMPOSITE SCORE OF EFFECTIVENESS SHALL BE BASED ON STUDENT ACHIEVEMENT MEASURES AS FOLLOWS: (I) TWENTY-FIVE PERCENT OF THE EVALUATION SHALL BE BASED UPON STUDENT GROWTH DATA ON STATE ASSESSMENTS AS PRESCRIBED BY THE COMMISSIONER OR A COMPARABLE MEASURE OF STUDENT GROWTH IF SUCH GROWTH DATA IS NOT AVAILABLE; AND (II)

FIFTEEN PERCENT SHALL BE BASED ON OTHER LOCALLY SELECTED MEASURES OF STUDENT ACHIEVEMENT THAT ARE DETERMINED TO BE RIGOROUS AND COMPARABLE ACROSS CLASSROOMS IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSIONER AND AS ARE LOCALLY DEVELOPED IN A MANNER CONSISTENT WITH PROCEDURES NEGOTIATED PURSUANT TO THE REQUIREMENTS OF ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. THE DEPARTMENT SHALL DEVELOP THE VALUE-ADDED GROWTH MODEL AND SHALL CONSULT WITH THE ADVISORY COMMITTEE ESTABLISHED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION PRIOR TO RECOMMENDING THAT THE BOARD OF REGENTS APPROVE ITS USE IN EVALUATIONS.

H. THE REMAINING PERCENT OF THE EVALUATIONS, RATINGS AND EFFECTIVENESS SCORES SHALL BE LOCALLY DEVELOPED, CONSISTENT WITH THE STANDARDS PRESCRIBED IN THE REGULATIONS OF THE COMMISSIONER, THROUGH NEGOTIATIONS CONDUCTED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW.

I. FOR PURPOSES OF THIS SECTION, STUDENT GROWTH MEANS THE CHANGE IN STUDENT ACHIEVEMENT FOR AN INDIVIDUAL STUDENT BETWEEN TWO OR MORE POINTS IN TIME.

3. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO EXCUSE SCHOOL DISTRICTS OR BOARDS OF COOPERATIVE EDUCATIONAL SERVICES FROM COMPLYING WITH THE STANDARDS SET FORTH IN THE REGULATIONS OF THE COMMISSIONER FOR CONDUCTING ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF CLASSROOM TEACHERS OR PRINCIPALS, INCLUDING BUT NOT LIMITED TO REQUIRED QUALITY RATING CATEGORIES, IN CONDUCTING EVALUATIONS PRIOR TO JULY FIRST, TWO THOUSAND ELEVEN, OR, FOR CLASSROOM TEACHERS OR PRINCIPALS SUBJECT TO PARAGRAPH C OF SUBDIVISION TWO OF THIS SECTION, PRIOR TO JULY FIRST, TWO THOUSAND TWELVE.

4. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, UPON RATING A TEACHER OR A PRINCIPAL AS DEVELOPING OR INEFFECTIVE THROUGH AN ANNUAL PROFESSIONAL PERFORMANCE REVIEW CONDUCTED PURSUANT TO SUBDIVISION TWO OF THIS SECTION, THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES SHALL FORMULATE AND COMMENCE IMPLEMENTATION OF A TEACHER OR PRINCIPAL IMPROVEMENT PLAN FOR SUCH TEACHER OR PRINCIPAL AS SOON AS PRACTICABLE BUT IN NO CASE LATER THAN TEN DAYS AFTER THE DATE ON WHICH TEACHERS ARE REQUIRED TO REPORT PRIOR TO THE OPENING OF CLASSES FOR THE SCHOOL YEAR. SUCH IMPROVEMENT PLAN SHALL BE CONSISTENT WITH THE REGULATIONS OF THE COMMISSIONER AND DEVELOPED LOCALLY THROUGH NEGOTIATIONS CONDUCTED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. SUCH IMPROVEMENT PLAN SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, IDENTIFICATION OF NEEDED AREAS OF IMPROVEMENT, A TIMELINE FOR ACHIEVING IMPROVEMENT, THE MANNER IN WHICH IMPROVEMENT WILL BE ASSESSED, AND, WHERE APPROPRIATE, DIFFERENTIATED ACTIVITIES TO SUPPORT A TEACHER'S OR PRINCIPAL'S IMPROVEMENT IN THOSE AREAS.

5. AN APPEALS PROCEDURE SHALL BE LOCALLY ESTABLISHED IN EACH SCHOOL DISTRICT AND IN EACH BOARD OF COOPERATIVE EDUCATIONAL SERVICES BY WHICH THE EVALUATED TEACHER OR PRINCIPAL MAY ONLY CHALLENGE THE SUBSTANCE OF THE ANNUAL PROFESSIONAL PERFORMANCE REVIEW, THE SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES' ADHERENCE TO THE STANDARDS AND METHODOLOGIES REQUIRED FOR SUCH REVIEWS, PURSUANT TO THIS SECTION, THE ADHERENCE TO THE REGULATIONS OF THE COMMISSIONER AND COMPLIANCE WITH ANY APPLICABLE LOCALLY NEGOTIATED PROCEDURES, AS WELL AS THE SCHOOL DISTRICT'S OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES' ISSUANCE AND/OR IMPLEMENTATION OF THE TERMS OF THE TEACHER OR PRINCIPAL IMPROVEMENT PLAN, AS REQUIRED UNDER THIS SECTION. THE SPECIFICS OF THE APPEAL PROCEDURE SHALL BE LOCALLY ESTABLISHED THROUGH NEGOTIATIONS CONDUCTED PURSUANT TO ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW. AN EVALUATION WHICH IS THE SUBJECT OF AN APPEAL SHALL NOT BE SOUGHT TO BE OFFERED IN EVIDENCE OR PLACED IN EVIDENCE IN ANY PROCEEDING CONDUCTED PURSUANT TO EITHER

SECTION THREE THOUSAND TWENTY-A OF THIS ARTICLE OR ANY LOCALLY NEGOTIATED ALTERNATE DISCIPLINARY PROCEDURE, UNTIL THE APPEAL PROCESS IS CONCLUDED.

6. FOR PURPOSES OF DISCIPLINARY PROCEEDINGS PURSUANT TO SECTIONS THREE THOUSAND TWENTY AND THREE THOUSAND TWENTY-A OF THIS ARTICLE, A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE SHALL BE DEFINED TO MEAN TWO CONSECUTIVE ANNUAL INEFFECTIVE RATINGS RECEIVED BY A CLASSROOM TEACHER OR BUILDING PRINCIPAL PURSUANT TO ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

7. THE REGULATIONS ADOPTED PURSUANT TO THIS SECTION SHALL BE DEVELOPED IN CONSULTATION WITH AN ADVISORY COMMITTEE CONSISTING OF REPRESENTATIVES OF TEACHERS, PRINCIPALS, SUPERINTENDENTS OF SCHOOLS, SCHOOL BOARDS, SCHOOL DISTRICT AND BOARD OF COOPERATIVE EDUCATIONAL SERVICES OFFICIALS AND OTHER INTERESTED PARTIES. THE REGULATIONS SHALL ALSO TAKE INTO ACCOUNT ANY (I) PROFESSIONAL TEACHING STANDARDS; (II) STANDARDS FOR PROFESSIONAL CONTEXTS; AND (III) STANDARDS FOR A CONTINUUM OF SYSTEM SUPPORT FOR TEACHERS AND PRINCIPALS DEVELOPED IN CONSULTATION WITH THE ADVISORY COMMITTEE. REGULATIONS PROMULGATED PURSUANT TO THIS SECTION SHALL BE EFFECTIVE NO LATER THAN JULY FIRST, TWO THOUSAND ELEVEN, FOR IMPLEMENTATION IN THE TWO THOUSAND ELEVEN--TWO THOUSAND TWELVE SCHOOL YEAR.

8. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, RULE OR REGULATION TO THE CONTRARY, ALL COLLECTIVE BARGAINING AGREEMENTS APPLICABLE TO CLASSROOM TEACHERS OR BUILDING PRINCIPALS ENTERED INTO AFTER JULY FIRST, TWO THOUSAND TEN SHALL BE CONSISTENT WITH REQUIREMENTS OF THIS SECTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ABROGATE ANY CONFLICTING PROVISIONS OF ANY COLLECTIVE BARGAINING AGREEMENT IN EFFECT ON JULY FIRST, TWO THOUSAND TEN DURING THE TERM OF SUCH AGREEMENT AND UNTIL THE ENTRY INTO A SUCCESSOR COLLECTIVE BARGAINING AGREEMENT, PROVIDED THAT NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, UPON EXPIRATION OF SUCH TERM AND THE ENTRY INTO A SUCCESSOR COLLECTIVE BARGAINING AGREEMENT THE PROVISIONS OF THIS SECTION SHALL APPLY. FURTHERMORE, NOTHING IN THIS SECTION OR IN ANY RULE OR REGULATION PROMULGATED HEREUNDER SHALL IN ANY WAY, ALTER, IMPAIR OR DIMINISH THE RIGHTS OF A LOCAL COLLECTIVE BARGAINING REPRESENTATIVE TO NEGOTIATE EVALUATION PROCEDURES IN ACCORDANCE WITH ARTICLE FOURTEEN OF THE CIVIL SERVICE LAW WITH THE SCHOOL DISTRICT OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES.

S 2. Subdivisions 1 and 3 and paragraph a of subdivision 4 of section 3020 of the education law, subdivision 1 as added by chapter 691 of the laws of 1994, subdivision 3 as added by chapter 3 of the laws of 2000 and paragraph a of subdivision 4 as added by section 1 of part J of chapter 93 of the laws of 2002, are amended to read as follows:

1. No person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause and in accordance with the procedures specified in section three thousand twenty-a of this article or in accordance with alternate disciplinary procedures contained in a collective bargaining agreement covering his or her terms and conditions of employment that was effective on or before September first, nineteen hundred ninety-four and has been unaltered by renegotiation, or in accordance with alternative disciplinary procedures contained in a collective bargaining agreement covering his or her terms and conditions of employment that becomes effective on or after September first, nineteen hundred ninety-four; provided, however, that any such alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after September first, nineteen hundred ninety-four, must provide for the written election by

the employee of either the procedures specified in such section three thousand twenty-a or the alternative disciplinary procedures contained in the collective bargaining agreement and must result in a disposition of the disciplinary charge within the amount of time allowed therefor under such section three thousand twenty-a; AND PROVIDED FURTHER THAT ANY ALTERNATE DISCIPLINARY PROCEDURES CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT THAT BECOMES EFFECTIVE ON OR AFTER JULY FIRST, TWO THOUSAND TEN SHALL PROVIDE FOR AN EXPEDITED HEARING PROCESS BEFORE A SINGLE HEARING OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (I-A) OF PARAGRAPH C OF SUBDIVISION THREE OF SECTION THREE THOUSAND TWENTY-A OF THIS ARTICLE IN CASES IN WHICH CHARGES OF INCOMPETENCE ARE BROUGHT BASED SOLELY UPON AN ALLEGATION OF A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE AND SHALL PROVIDE THAT SUCH A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE SHALL CONSTITUTE VERY SIGNIFICANT EVIDENCE OF INCOMPETENCE WHICH MAY FORM THE BASIS FOR JUST CAUSE REMOVAL.

3. Notwithstanding any inconsistent provision of law, the procedures set forth in section three thousand twenty-a of this article and subdivision seven of section twenty-five hundred ninety-j of this chapter may be modified or replaced by agreements negotiated between the city school district of the city of New York and any employee organization representing employees or titles that are or were covered by any memorandum of agreement executed by such city school district and the council of supervisors and administrators of the city of New York on or after December first, nineteen hundred ninety-nine. Where such procedures are so modified or replaced: (i) compliance with such modification or replacement procedures shall satisfy any provision in this chapter that requires compliance with section three thousand twenty-a, (ii) any employee against whom charges have been preferred prior to the effective date of such modification or replacement shall continue to be subject to the provisions of such section as in effect on the date such charges were preferred, (iii) the provisions of subdivisions one and two of this section shall not apply to agreements negotiated pursuant to this subdivision, and (iv) in accordance with paragraph (e) of subdivision one of section two hundred nine-a of the civil service law, such modification or replacement procedures contained in an agreement negotiated pursuant to this subdivision shall continue as terms of such agreement after its expiration until a new agreement is negotiated; PROVIDED THAT ANY ALTERNATE DISCIPLINARY PROCEDURES CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT THAT BECOMES EFFECTIVE ON OR AFTER JULY FIRST, TWO THOUSAND TEN SHALL PROVIDE FOR AN EXPEDITED HEARING PROCESS BEFORE A SINGLE HEARING OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (I-A) OF PARAGRAPH C OF SUBDIVISION THREE OF SECTION THREE THOUSAND TWENTY-A OF THIS ARTICLE IN CASES IN WHICH CHARGES OF INCOMPETENCE ARE BROUGHT AGAINST A BUILDING PRINCIPAL BASED SOLELY UPON AN ALLEGATION OF A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE AND SHALL PROVIDE THAT SUCH A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE SHALL CONSTITUTE VERY SIGNIFICANT EVIDENCE OF INCOMPETENCE WHICH MAY FORM THE BASIS FOR JUST CAUSE REMOVAL OF THE BUILDING PRINCIPAL. Notwithstanding any inconsistent provision of law, the commissioner [of education] shall review any appeals authorized by such modification or replacement procedures within fifteen days from receipt by such commissioner of the record of prior proceedings in the matter subject to appeal. Such review shall have preference over all other appeals or proceedings pending before such commissioner.

a. Notwithstanding any inconsistent provision of law, the procedures set forth in section three thousand twenty-a of this article and subdivision seven of section twenty-five hundred ninety-j of this chapter may be modified by agreements negotiated between the city school district of the city of New York and any employee organization representing employees or titles that are or were covered by any memorandum of agreement executed by such city school district and the united federation of teachers on or after June tenth, two thousand two. Where such procedures are so modified: (i) compliance with such modified procedures shall satisfy any provision of this chapter that requires compliance with section three thousand twenty-a of this article; (ii) any employee against whom charges have been preferred prior to the effective date of such modification shall continue to be subject to the provisions of such section as in effect on the date such charges were preferred; (iii) the provisions of subdivisions one and two of this section shall not apply to agreements negotiated pursuant to this subdivision, except that no person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause; and (iv) in accordance with paragraph (e) of subdivision one of section two hundred nine-a of the civil service law, such modified procedures contained in an agreement negotiated pursuant to this subdivision shall continue as terms of such agreement after its expiration until a new agreement is negotiated; AND PROVIDED FURTHER THAT ANY ALTERNATE DISCIPLINARY PROCEDURES CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT THAT BECOMES EFFECTIVE ON OR AFTER JULY FIRST, TWO THOUSAND TEN SHALL PROVIDE FOR AN EXPEDITED HEARING PROCESS BEFORE A SINGLE HEARING OFFICER IN ACCORDANCE WITH SUBPARAGRAPH (I-A) OF PARAGRAPH C OF SUBDIVISION THREE OF SECTION THREE THOUSAND TWENTY-A OF THIS ARTICLE IN CASES IN WHICH CHARGES OF INCOMPETENCE ARE BROUGHT BASED SOLELY UPON AN ALLEGATION OF A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE AND SHALL PROVIDE THAT SUCH A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE SHALL CONSTITUTE VERY SIGNIFICANT EVIDENCE OF INCOMPETENCE WHICH MAY FORM THE BASIS FOR JUST CAUSE REMOVAL.

S 3. Paragraph (c) of subdivision 2 of section 3020-a of the education law, as amended by chapter 691 of the laws of 1994, is amended to read as follows:

(c) Within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges and when the charges concern pedagogical incompetence or issues involving pedagogical judgment, his or her choice of either a single hearing officer or a three member panel, PROVIDED THAT A THREE MEMBER PANEL SHALL NOT BE AVAILABLE WHERE THE CHARGES CONCERN PEDAGOGICAL INCOMPETENCE BASED SOLELY UPON A TEACHER'S OR PRINCIPAL'S PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE. All other charges shall be heard by a single hearing officer.

S 4. Paragraph a of subdivision 3 of section 3020-a of the education law, as amended by chapter 691 of the laws of 1994, is amended to read as follows:

a. Notice of hearing. Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner [of education] shall forthwith notify the American Arbitration Association (hereinafter "association") of the need for a hearing and shall request the association to provide to the commissioner forthwith a list of names of persons chosen by the association from the association's panel of

labor arbitrators to potentially serve as hearing officers together with relevant biographical information on each arbitrator. Upon receipt of said list and biographical information, the commissioner [of education] shall forthwith send a copy of both simultaneously to the employing board and the employee. THE COMMISSIONER SHALL ALSO SIMULTANEOUSLY NOTIFY BOTH THE EMPLOYING BOARD AND THE EMPLOYEE OF EACH POTENTIAL HEARING OFFICER'S RECORD IN THE LAST FIVE CASES OF COMMENCING AND COMPLETING HEARINGS WITHIN THE TIME PERIODS PRESCRIBED IN THIS SECTION.

S 5. Paragraph c of subdivision 3 of section 3020-a of the education law is amended by adding a new subparagraph (i-a) to read as follows:

(I-A)(A) WHERE CHARGES OF INCOMPETENCE ARE BROUGHT BASED SOLELY UPON A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE OF A CLASSROOM TEACHER OR PRINCIPAL, AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE, THE HEARING SHALL BE CONDUCTED BEFORE AND BY A SINGLE HEARING OFFICER IN AN EXPEDITED HEARING, WHICH SHALL COMMENCE WITHIN SEVEN DAYS AFTER THE PRE-HEARING CONFERENCE AND SHALL BE COMPLETED WITHIN SIXTY DAYS AFTER THE PRE-HEARING CONFERENCE. THE HEARING OFFICER SHALL ESTABLISH A HEARING SCHEDULE AT THE PRE-HEARING CONFERENCE TO ENSURE THAT THE EXPEDITED HEARING IS COMPLETED WITHIN THE REQUIRED TIMEFRAMES AND TO ENSURE AN EQUITABLE DISTRIBUTION OF DAYS BETWEEN THE EMPLOYING BOARD AND THE CHARGED EMPLOYEE. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY, NO ADJOURNMENTS MAY BE GRANTED THAT WOULD EXTEND THE HEARING BEYOND SUCH SIXTY DAYS, EXCEPT AS AUTHORIZED IN THIS SUBPARAGRAPH. A HEARING OFFICER, UPON REQUEST, MAY GRANT A LIMITED AND TIME SPECIFIC ADJOURNMENT THAT WOULD EXTEND THE HEARING BEYOND SUCH SIXTY DAYS IF THE HEARING OFFICER DETERMINES THAT THE DELAY IS ATTRIBUTABLE TO A CIRCUMSTANCE OR OCCURRENCE SUBSTANTIALLY BEYOND THE CONTROL OF THE REQUESTING PARTY AND AN INJUSTICE WOULD RESULT IF THE ADJOURNMENT WERE NOT GRANTED.

(B) SUCH CHARGES SHALL ALLEGE THAT THE EMPLOYING BOARD HAS DEVELOPED AND SUBSTANTIALLY IMPLEMENTED A TEACHER OR PRINCIPAL IMPROVEMENT PLAN IN ACCORDANCE WITH SUBDIVISION FOUR OF SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE FOR THE EMPLOYEE FOLLOWING THE FIRST EVALUATION IN WHICH THE EMPLOYEE WAS RATED INEFFECTIVE, AND THE IMMEDIATELY PRECEDING EVALUATION IF THE EMPLOYEE WAS RATED DEVELOPING. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE AS DEFINED IN SECTION THREE THOUSAND TWELVE-C OF THIS ARTICLE SHALL CONSTITUTE VERY SIGNIFICANT EVIDENCE OF INCOMPETENCE FOR PURPOSES OF THIS SECTION. NOTHING IN THIS SUBPARAGRAPH SHALL BE CONSTRUED TO LIMIT THE DEFENSES WHICH THE EMPLOYEE MAY PLACE BEFORE THE HEARING OFFICER IN CHALLENGING THE ALLEGATION OF A PATTERN OF INEFFECTIVE TEACHING OR PERFORMANCE.

(C) THE COMMISSIONER SHALL ANNUALLY INFORM ALL HEARING OFFICERS WHO HAVE HEARD CASES PURSUANT TO THIS SECTION DURING THE PRECEDING YEAR THAT THE TIME PERIODS PRESCRIBED IN THIS SUBPARAGRAPH FOR CONDUCTING EXPEDITED HEARINGS ARE TO BE STRICTLY FOLLOWED. A RECORD OF CONTINUED FAILURE TO COMMENCE AND COMPLETE EXPEDITED HEARINGS WITHIN THE TIME PERIODS PRESCRIBED IN THIS SUBPARAGRAPH SHALL BE CONSIDERED GROUNDS FOR THE COMMISSIONER TO EXCLUDE SUCH INDIVIDUAL FROM THE LIST OF POTENTIAL HEARING OFFICERS SENT TO THE EMPLOYING BOARD AND THE EMPLOYEE FOR SUCH EXPEDITED HEARINGS.

S 6. This act shall take effect July 1, 2010, provided, however, if this act shall become a law after such date it shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2010.

S 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through B of this act shall be as specifically set forth in the last section of such Parts.