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

4838

2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to the location and management of charter schools and the enrollment of students at charter schools

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

Section 1. Legislative intent. New York's charter school law was enacted eleven years ago in an effort to create new learning opportunities for all students, to encourage different and innovative teaching methods and to provide parents and students with expanded choice within the public schools. Eleven years provides the state with enough information to make judgments about changes that are needed in the law to ensure the public knows how their tax dollars are being spent and to ensure public schools serving the majority of students have the resources needed to provide a quality education to all students. This legislation is intended to clarify the transparency and accountability of charter schools and provide fiscal relief to the school districts where charter schools are located.

S 2. Subdivision 1 of section 2851 of the education law, as amended by chapter 101 of the laws of 2010, is amended to read as follows:

1. An application to establish a charter school may be submitted by teachers, parents, school administrators, community residents or any combination thereof. Such application may be filed in conjunction with a college, university, museum, educational institution, not-for-profit corporation exempt from taxation under paragraph 3 of subsection (c) of section 501 of the internal revenue code or for-profit business or corporate entity authorized to do business in New York state. Provided however, for-profit business or corporate entities shall not be eligible to submit an application to establish a charter school pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this

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

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article, or operate or manage a charter school for a charter issued pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article. For charter schools established in conjunction with a for-profit business or corporate entity, the charter shall specify the extent of the entity's participation in the management and operation of the school. THE APPLICATION SHALL INCLUDE THE AMOUNT OF ANY MANAGEMENT FEE TO BE PAID TO ANY NOT-FOR-PROFIT CORPORATION WORKING IN CONJUNCTION WITH THE APPLICANTS. SALARIES OF THE EMPLOYEES OF SUCH NOT-FOR-PROFIT CORPORATION MAY NOT EXCEED THE SALARIES FOR COMPARABLE POSITIONS IN THE SCHOOL DISTRICT OF LOCATION.

S 3. Paragraph (d) 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:

(d) Admission policies and procedures for the school, which shall be consistent with the requirements of subdivision two of section twenty-eight hundred fifty-four of this article. FOR CHARTER RENEWALS, SUCH POLICIES AND PROCEDURES SHALL INCLUDE PLANS FOR ENSURING THE STUDENT ENROLLMENT OF THE CHARTER SCHOOL INCLUDES A COMPARABLE PERCENTAGE OF STUDENTS ON FREE LUNCH, STUDENTS WITH DISABILITIES AND ENGLISH LANGUAGE LEARNERS AS THE SCHOOL DISTRICT IN WHICH THE CHARTER SCHOOL IS LOCATED.

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

(a) A report of the progress of the charter school in achieving the educational objectives set forth in the charter. SUCH REPORT SHALL INCLUDE DISAGGREGATED STUDENT PERFORMANCE DATA FOR ALL STUDENT SUBGROUPS.

S 5. Subdivision 7 of section 2852 of the education law is amended by adding a new paragraph (c) to read as follows:

(C) WHEN A REVISION OF A CHARTER INVOLVES AN INCREASE IN ENROLLMENT WHICH BRINGS TOTAL ENROLLMENT IN CHARTER SCHOOLS IN THE SCHOOL DISTRICT OF LOCATION ABOVE FIVE PERCENT, THE REVISION SHALL BE DENIED UNLESS THE SCHOOL DISTRICT OF LOCATION APPROVES THE REVISION OR THE RESIDENTS OF THE SCHOOL DISTRICT APPROVE THE REVISION THROUGH A REFERENDUM OF THE ELIGIBLE VOTERS TO BE HELD IN CONJUNCTION WITH THE ANNUAL BUDGET VOTE. FOR PURPOSES OF THIS PARAGRAPH IN A CITY HAVING A POPULATION OF ONE MILLION OR MORE, THE SCHOOL DISTRICT OF LOCATION SHALL BE THE COMMUNITY SCHOOL DISTRICT WHERE THE CHARTER SCHOOL IS LOCATED.

S 6. Paragraph (a) of subdivision 3 of section 2853 of the education law, as amended by chapter 101 of the laws of 2010, is amended to read as follows:

(a) A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building or in any other suitable location. Provided, however, before a charter school may be located in part of an existing public school building, the charter entity shall provide notice to the parents or guardians of the students then enrolled in the existing school building and shall hold a public hearing for purposes of discussing the location of the charter school AND PROVIDED FURTHER THAT, A CHARTER SCHOOL SHALL NOT BE LOCATED IN ANY PART OF AN EXISTING SCHOOL BUILDING WHEN SUCH SHARING WOULD IMPACT THE PUBLIC SCHOOL'S ABILITY TO MEET THE CLASS SIZE TARGETS ESTABLISHED PURSUANT TO SECTION TWO HUNDRED ELEVEN-D OF THIS CHAPTER. A charter school may own, lease or rent its space.

S 7. Subdivision 3 of section 2853 of the education law is amended by adding two new paragraphs (e) and (f) to read as follows:

(E) NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY CAPITAL FACILITY, OR OTHER IMPROVEMENTS MADE IN PUBLIC SCHOOL BUILDINGS, WITH PUBLIC OR PRIVATE FUNDS, TO ACCOMMODATE A CHARTER SCHOOL, SHALL REQUIRE MATCHING OR COMPARABLE IMPROVEMENTS BE MADE FOR OTHER DISTRICT SCHOOLS LOCATED IN THE SAME BUILDING.

(F) NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY CONSTRUCTION OR CAPITAL IMPROVEMENT MADE IN ACCORDANCE WITH THIS ARTICLE SHALL BE MADE IN ACCORDANCE WITH AND SUBJECT TO THE PROVISIONS OF ARTICLES EIGHT AND NINE OF THE LABOR LAW.

S 8. Subdivision 2 of section 2854 of the education law, as added by chapter 4 of the laws of 1998, paragraphs (a) and (b) as amended by chapter 101 of the laws of 2010, is amended to read as follows:

2. Admissions; enrollment; students. (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 students with disabilities and 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, English language learners, and students who are eligible applicants for the free and reduced price lunch program when compared to the enrollment figures for such students in the school district in which the charter school is located. IF A CHARTER SCHOOL IS NOT SUCCESSFUL IN ATTRACTING A COMPARABLE OR GREATER ENROLLMENT OF STUDENTS WITH DISABILITIES AND LIMITED ENGLISH PROFICIENT STUDENTS AS COMPARED TO THE ENROLLMENT FIGURES FOR SUCH STUDENTS IN THE SCHOOL DISTRICT IN WHICH THE CHARTER SCHOOL IS LOCATED, SUCH CHARTER SCHOOL SHALL PROVIDE THE CHARTERING ENTITY WITH A PLAN FOR IMPROVING THE ENROLLMENT OF SUCH STUDENTS IN THE FOLLOWING YEAR. FAILURE TO COMPLY WITH THIS REQUIREMENT FOR TWO CONSECUTIVE YEARS SHALL BE SUBJECT TO REVOCATION IN ACCORDANCE WITH SUBDIVISION ONE OF SECTION TWENTY-EIGHT HUNDRED FIFTY-FIVE OF THIS ARTICLE. 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 predominately 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 AND STUDENTS ON FREE AND REDUCED PRICE LUNCH, AND STUDENTS WITH DISABILITIES, AND STUDENTS WITH LIMITED ENGLISH PROFICIENCY. 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 (a) 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] ATTENDANCE ZONE in which the charter school is located. THE CHARTER ENTITY IS RESPONSIBLE FOR ENSURING THE SELECTION PROCESS IS CONDUCTED IN ACCORDANCE WITH THIS PARAGRAPH. IF THE CHARTER ENTITY DETERMINES THE PROCESS IS NOT IN COMPLIANCE WITH THIS PARAGRAPH, THE CHARTER ENTITY SHALL CONDUCT THE PROCESS.

(c) A charter school shall serve one or more of the grades one through twelve, and shall limit admission to pupils within the grade levels served. Nothing herein shall prohibit a charter school from establishing a kindergarten program.

(d) A student may withdraw from a charter school at any time and enroll in a public school. A CHARTER SCHOOL MUST PROVIDE A REPORT TO THE CHARTERING ENTITY EACH YEAR INDICATING THE NUMBER OF STUDENTS LEAVING THE CHARTER SCHOOL, THE MONTHS IN WHICH THE STUDENTS LEAVE THE SCHOOL, THE REASON THE STUDENTS LEAVE THE SCHOOL AND THE SCHOOL THE STUDENT IS CURRENTLY ATTENDING. A charter school may refuse admission to any student who has been expelled or suspended from a public school until the period of suspension or expulsion from the public school has expired, consistent with the requirements of due process.

S 9. Subdivision 1 of section 2855 of the education law, as amended by chapter 101 of the laws of 2010, is amended to read as follows:

1. The charter entity, or the board of regents, may terminate a charter upon any of the following grounds:

(a) When a charter school's outcome on student assessment measures adopted by the board of regents falls below the level that would allow the commissioner to revoke the registration of another public school, and student achievement on such measures has not [shown improvement] MET ANNUAL YEARLY PROGRESS over the preceding three school years;

(b) Serious violations of law;

(c) Material and substantial violation of the charter, including fiscal mismanagement AND FAILURE TO MEET STUDENT PERFORMANCE TARGETS;

(d) When the public employment relations board makes a determination that the charter school demonstrates a practice and pattern of egregious and intentional violations of subdivision one of section two hundred nine-a of the civil service law involving interference with or discrimination against employee rights under article fourteen of the civil service law; or

(e) [Repeated failure] FAILURE FOR TWO CONSECUTIVE YEARS, to comply with the requirement to meet or exceed enrollment and retention targets of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program pursuant to targets established by the board of regents or the board of trustees of the state university of New York, as applicable. Provided,

however, if no grounds for terminating a charter are established pursuant to this section other than pursuant to this paragraph, and the charter school demonstrates that it has made extensive efforts to recruit and retain such students, including outreach to parents and families in the surrounding communities, widely publicizing the lottery for such school, and efforts to academically support such students in such charter school, then the charter entity or board of regents may retain such charter.

S 10. This act shall take effect immediately.