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I N S E N A T E

May 12, 2016

Introduced by Sens. MONTGOMERY, PERKINS -- 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 charter schools

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

1 Section 1. Paragraph (h) of subdivision 2 of section 2851 of the  
2 education law, as added by chapter 4 of the laws of 1998, is amended to  
3 read as follows:

4 (h) The rules and procedures by which students may be disciplined,  
5 including but not limited to expulsion or suspension from the school,  
6 which shall be consistent with the requirements of [due process] SECTION  
7 THIRTY-TWO HUNDRED FOURTEEN OF THIS CHAPTER and with federal laws and  
8 regulations governing the placement of students with disabilities, AND  
9 PURSUANT TO SUBDIVISION FOUR OF SECTION TWENTY-EIGHT HUNDRED FIFTY-FOUR  
10 OF THIS ARTICLE. THE APPLICATION SHALL ALSO INCLUDE A CODE OF CONDUCT  
11 CONSISTENT WITH SECTION TWENTY-EIGHT HUNDRED ONE OF THIS CHAPTER.

12 S 2. Subdivision 4 of section 2851 of the education law is amended by  
13 adding a new paragraph (f) to read as follows:

14 (F) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF SECTION TWEN-  
15 TY-EIGHT HUNDRED FIFTY-THREE OF THIS ARTICLE, AN AUDIT REPORT BY AN  
16 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OR INDEPENDENT PUBLIC ACCOUNTANT  
17 ON THE OPERATIONS OF THE CHARTER SCHOOL, INCLUDING COMPLIANCE WITH THE  
18 APPLICABLE PROVISIONS OF THIS CHAPTER AND THE NOT-FOR-PROFIT CORPORATION  
19 LAW, AND WITH ALL OTHER APPLICABLE LAWS, REGULATIONS AND CHARTER  
20 PROVISIONS.

21 S 3. Section 2851 of the education law is amended by adding a new  
22 subdivision 5 to read as follows:

23 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION,  
24 NO CHARTER SHALL BE RENEWED IF THE CHARTER SCHOOL HAS FAILED TO:

25 (A) MEET THE STUDENT ACHIEVEMENT GOALS FOR THE SCHOOL EDUCATIONAL  
26 PROGRAM, AS REQUIRED IN THE APPLICATION;

27 (B) IMPROVE STUDENT LEARNING AND ACHIEVEMENT; OR

28 (C) MATERIALLY FURTHER THE PURPOSES SET FORTH IN SUBDIVISION TWO OF  
29 SECTION TWENTY-EIGHT HUNDRED FIFTY OF THIS ARTICLE.

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

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1 S 4. Paragraph (d) of subdivision 2 of section 2854 of the education  
2 law, as added by chapter 4 of the laws of 1998, is amended to read as  
3 follows:

4 (d) A student may withdraw from a charter school at any time PURSUANT  
5 TO A WRITTEN FORM CREATED BY THE DEPARTMENT IN WHICH THE PARENT OR LEGAL  
6 GUARDIAN OF THE STUDENT CERTIFIES THAT THE PARENT OR LEGAL GUARDIAN IS  
7 WILLINGLY AND KNOWINGLY WITHDRAWING THE STUDENT FROM THE CHARTER SCHOOL  
8 WITHOUT ANY UNDUE PRESSURE OR INFLUENCE BY ANY OWNER OR EMPLOYEE OF THE  
9 CHARTER SCHOOL, and enroll in a public school. A charter school may  
10 refuse admission to any student who has been expelled or suspended from  
11 a public school until the period of suspension or expulsion from the  
12 public school has expired, consistent with the requirements of due proc-  
13 ess.

14 S 5. Section 2854 of the education law is amended by adding a new  
15 subdivision 4 to read as follows:

16 4. SUSPENSION OF A STUDENT. (A) A CHARTER SCHOOL SHALL SUSPEND AN  
17 ENROLLED STUDENT PURSUANT TO SUBDIVISIONS TWO-A AND THREE OF SECTION  
18 THIRTY-TWO HUNDRED FOURTEEN OF THIS CHAPTER, AND ONLY IN ACCORDANCE WITH  
19 THE PROCEDURES SET FORTH IN THIS SUBDIVISION.

20 (B) THE PRINCIPAL OF THE CHARTER SCHOOL WHERE THE STUDENT ATTENDS  
21 SHALL HAVE THE POWER TO SUSPEND THE STUDENT FOR A PERIOD NOT TO EXCEED  
22 FIVE SCHOOL DAYS PURSUANT TO THE DUE PROCESS PROCEDURES SET FORTH IN  
23 PARAGRAPH B OF SUBDIVISION THREE OF SECTION THIRTY-TWO HUNDRED FOURTEEN  
24 OF THIS CHAPTER. THE STUDENT OR THE PERSON IN PARENTAL RELATION TO SUCH  
25 STUDENT MAY APPEAL THE FINAL DECISION OF THE PRINCIPAL TO THE BOARD OF  
26 TRUSTEES OF THE CHARTER SCHOOL.

27 (C)(I) NO STUDENT ENROLLED IN A CHARTER SCHOOL MAY BE SUSPENDED FOR A  
28 PERIOD IN EXCESS OF FIVE SCHOOL DAYS UNLESS SUCH STUDENT AND THE PERSON  
29 IN PARENTAL RELATION TO SUCH STUDENT SHALL HAVE HAD AN OPPORTUNITY FOR A  
30 HEARING, UPON REASONABLE NOTICE, AT WHICH SUCH STUDENT SHALL HAVE THE  
31 RIGHT OF REPRESENTATION BY COUNSEL, WITH THE RIGHT TO QUESTION WITNESSES  
32 AGAINST SUCH STUDENT AND TO PRESENT WITNESSES AND OTHER EVIDENCE ON HIS  
33 OR HER BEHALF.

34 (II) WHERE A STUDENT HAS BEEN SUSPENDED IN ACCORDANCE WITH THIS PARA-  
35 GRAPH, THE CHARTER SCHOOL SHALL, WITHIN FIVE DAYS OF THE SUSPENSION,  
36 INFORM THE SUPERINTENDENT OF THE SCHOOL DISTRICT OR, IN THE CITY SCHOOL  
37 DISTRICT OF THE CITY OF NEW YORK, OF A COMMUNITY SCHOOL DISTRICT, WHERE  
38 THE CHARTER SCHOOL IS LOCATED SHALL, UPON BEING NOTIFIED OF THE SUSPEN-  
39 SION, WHO SHALL FORTHWITH DESIGNATE A HEARING OFFICER TO HEAR AND DETER-  
40 MINE THE PROCEEDING. THE HEARING OFFICER SHALL BE AUTHORIZED TO ADMINIS-  
41 TER OATHS AND TO ISSUE SUBPOENAS IN CONJUNCTION WITH THE PROCEEDING  
42 BEFORE HIM OR HER. A RECORD OF THE HEARING SHALL BE MAINTAINED, BUT NO  
43 STENOGRAPHIC TRANSCRIPT SHALL BE REQUIRED AND A TAPE RECORDING SHALL BE  
44 DEEMED A SATISFACTORY RECORD. THE HEARING OFFICER SHALL MAKE FINDINGS OF  
45 FACT AND A RECOMMENDATION ON THE APPROPRIATE MEASURE OF DISCIPLINE TO  
46 THE CHIEF EXECUTIVE OFFICER OF THE CHARTER SCHOOL. THE CHIEF EXECUTIVE  
47 OFFICER MAY REJECT, CONFIRM OR MODIFY THE CONCLUSIONS OF THE HEARING  
48 OFFICER. A PARENT MAY APPEAL THE DECISION OF THE CHIEF EXECUTIVE OFFICER  
49 TO THE BOARD OF TRUSTEES OF THE CHARTER SCHOOL.

50 (D) A STUDENT WITH A DISABILITY AS SUCH TERM IS DEFINED IN SECTION  
51 FORTY-FOUR HUNDRED ONE OF THIS CHAPTER OR A STUDENT PRESUMED TO HAVE A  
52 DISABILITY FOR DISCIPLINE PURPOSES, MAY BE SUSPENDED OR REMOVED FROM HIS  
53 OR HER CURRENT EDUCATIONAL PLACEMENT FOR VIOLATION OF SCHOOL RULES ONLY  
54 IN ACCORDANCE WITH THE PROCEDURES ESTABLISHED IN PARAGRAPH G OF SUBDIVI-  
55 SION THREE OF SECTION THIRTY-TWO HUNDRED FOURTEEN OF THIS CHAPTER, THE  
56 REGULATIONS OF THE COMMISSIONER IMPLEMENTING SUCH PARAGRAPH, AND

1 SUBSECTION (K) OF SECTION 1415 OF TITLE 20 OF THE UNITED STATES CODE AND  
2 THE FEDERAL REGULATIONS IMPLEMENTING SUCH STATUTE, AS SUCH FEDERAL LAW  
3 AND REGULATIONS ARE FROM TIME TO TIME AMENDED.

4 (E) ANY TEACHER SHALL HAVE THE POWER AND AUTHORITY TO REMOVE A DISRUP-  
5 TIVE STUDENT PURSUANT TO THE PROCEDURES SET FORTH IN SUBDIVISION THREE-A  
6 OF SECTION THIRTY-TWO HUNDRED FOURTEEN OF THIS CHAPTER.

7 (F) PROCEDURE AFTER SUSPENSION. WHERE A STUDENT HAS BEEN SUSPENDED  
8 PURSUANT TO THIS SUBDIVISION AND SUCH STUDENT IS OF COMPULSORY ATTEND-  
9 ANCE AGE, IMMEDIATE STEPS SHALL BE TAKEN FOR HIS OR HER ATTENDANCE UPON  
10 INSTRUCTION AT HOME OR ELSEWHERE.

11 S 6. Paragraph (c) of subdivision 1 of section 2854 of the education  
12 law, as amended by section 10-b of part A of chapter 56 of the laws of  
13 2014, is amended to read as follows:

14 (c) A charter school shall be subject to the financial audits, the  
15 audit procedures, and the audit requirements set forth in the charter,  
16 and shall be subject to audits of the comptroller of the city school  
17 district of the city of New York for charter schools located in New York  
18 city, and to the audits of the comptroller of the state of New York for  
19 charter schools located in the rest of the state, at his or her  
20 discretion, with respect to the school's financial operations. ANY SUCH  
21 AUDITS SHALL INCLUDE AN AUDIT TO DETERMINE WHETHER THE FINANCING  
22 RECEIVED BY THE CHARTER SCHOOL PURSUANT TO SECTION TWENTY-EIGHT HUNDRED  
23 FIFTY-SIX OF THIS ARTICLE IS CONSISTENT WITH THE NUMBER OF QUALIFIED  
24 STUDENTS WHO ARE ELIGIBLE TO ENROLL, AND ARE ACTUALLY ENROLLED IN SUCH  
25 CHARTER SCHOOL, INCLUDING WHETHER SUCH ENROLLED STUDENTS MEET THE RESI-  
26 DENCY REQUIREMENTS FOR ENROLLMENT. IN THE EVENT OF AN OVERPAYMENT, THE  
27 OFFICE OF THE STATE COMPTROLLER SHALL BE AUTHORIZED TO RECOVER THE  
28 EXCESS IN PAYMENT BY DEDUCTING FROM ANY STATE FUNDS WHICH BECOME DUE TO  
29 SUCH CHARTER SCHOOL OR REFER THE MATTER TO THE STATE ATTORNEY GENERAL TO  
30 INITIATE A CIVIL ACTION AGAINST THE CHARTER SCHOOL TO RECOVER THE OVER-  
31 PAYMENT. Such procedures and standards shall be consistent with general-  
32 ly accepted accounting and audit standards. Independent fiscal audits  
33 shall be required at least once annually.

34 S 7. The opening paragraph and paragraphs (a) and (e) of subdivision 1  
35 of section 2855 of the education law, the opening paragraph and para-  
36 graph (a) as amended and paragraph (e) as added by chapter 101 of the  
37 laws of 2010, are amended to read as follows:

38 The charter entity, or the board of regents, [may] SHALL terminate a  
39 charter upon any of the following grounds:

40 (a) When a charter school's outcome on student assessment measures  
41 adopted by the board of regents EQUALS OR falls below the level that  
42 would allow the commissioner to revoke the registration of another  
43 public school, and student achievement on such measures has not shown  
44 improvement over the preceding three school years;

45 (e) [Repeated failure] FAILURE to comply with the requirement to meet  
46 or exceed enrollment and retention targets of students with disabili-  
47 ties, English language learners, and students who are eligible appli-  
48 cants for the free and reduced price lunch program pursuant to targets  
49 established by the board of regents or the board of trustees of the  
50 state university of New York[, as applicable] PURSUANT TO SUBPARAGRAPH  
51 (I) OF PARAGRAPH (B) OF SUBDIVISION NINE-A OF SECTION TWENTY-EIGHT  
52 HUNDRED FIFTY-TWO OF THIS ARTICLE. Provided, however, if no grounds for  
53 terminating a charter are established pursuant to this section other  
54 than pursuant to this paragraph, and the charter school demonstrates  
55 that it has made extensive efforts to recruit and retain such students,  
56 including outreach to parents and families in the surrounding communi-

1 ties, widely publicizing the lottery for such school, and efforts to  
2 academically support such students in such charter school, then the  
3 charter entity or board of regents may retain such charter.

4 S 8. Paragraph (a) of subdivision 2, and subdivisions 4 and 5 of  
5 section 2857 of the education law, paragraph (a) of subdivision 2 as  
6 amended and subdivision 5 as added by chapter 101 of the laws of 2010,  
7 subdivision 4 as added by chapter 4 of the laws of 1998, are amended to  
8 read as follows:

9 (a) a charter school report card, which shall include measures of the  
10 comparative academic and fiscal performance of the school, as prescribed  
11 by the commissioner in regulations adopted for such purpose. Such meas-  
12 ures shall include, but not be limited to, THE TOTAL NUMBER OF OPENINGS  
13 FOR NEW STUDENTS AT THE BEGINNING OF THE SCHOOL YEAR, BY GRADE; THE  
14 TOTAL NUMBER OF APPLICANTS FOR EACH SUCH OPENING; THE TOTAL NUMBER OF  
15 STUDENTS ACCEPTED FOR THE SCHOOL YEAR; THE NUMBER OF STUDENTS ACCEPTED  
16 FOR ENROLLMENT WHO ARE ENGLISH LANGUAGE LEARNERS, ARE ELIGIBLE FOR THE  
17 FREE OR REDUCED PRICE LUNCH PROGRAM OR ARE STUDENTS WITH DISABILITIES;  
18 THE NUMBER OF STUDENTS WHO WERE DISMISSED, EXPELLED, DROPPED OUT OR  
19 WITHDREW DURING THE SCHOOL YEAR, INCLUDING THE REASONS FOR THE DISMISSAL  
20 OR WITHDRAWAL; graduation rates[, dropout rates,]; performance of  
21 students on standardized tests[,]; college entry rates[,]; THE TOTAL  
22 NUMBER OF TEACHERS AND ADMINISTRATORS EMPLOYED AT THE SCHOOL AT THE  
23 BEGINNING OF THE SCHOOL YEAR AND THE NUMBER OF TEACHERS AND ADMINISTRA-  
24 TORS WHO WERE TERMINATED, DISMISSED OR RESIGNED DURING THE REPORTING  
25 PERIOD, AND THE REASONS THEREFOR; THE ANNUAL SALARY PAID TO EACH TEACHER  
26 AND ADMINISTRATOR OF THE SCHOOL; AND total spending per pupil and admin-  
27 istrative spending per pupil. Such measures shall be presented in a  
28 format that is easily comparable to similar public schools. In addition,  
29 the charter school AND THE COMMISSIONER shall ensure that such informa-  
30 tion is easily accessible to the community including making it publicly  
31 available by transmitting it to local newspapers of general circulation,  
32 POSTING IT ON THE DEPARTMENT'S WEBSITE and making it available for  
33 distribution at board of trustee meetings.

34 4. The board of regents shall review the educational effectiveness of  
35 the charter school approach authorized by this article and the effect of  
36 charter schools on the public and nonpublic school systems. Not later  
37 than December thirty-first, two thousand [three] SIXTEEN, AND EVERY TWO  
38 YEARS THEREAFTER, the [board of regents] COMMISSIONER shall report to  
39 the governor, the temporary president of the senate, the speaker of the  
40 assembly and the board of regents with recommendations to modify,  
41 expand, or terminate that approach. Such report shall include, for each  
42 charter school, a copy of the school's mission statement[,]; attendance  
43 statistics; DISMISSAL, EXPULSION and dropout rates[,]; student perform-  
44 ance on standardized assessment tests[,]; projections of financial  
45 stability[,]; THE NUMBER OF STUDENTS WITH DISABILITIES, ENGLISH LANGUAGE  
46 LEARNERS AND STUDENTS WHO ARE ELIGIBLE FOR THE FREE AND REDUCED PRICE  
47 LUNCH PROGRAM; THE TOTAL AMOUNT SPENT FOR ADMINISTRATIVE EXPENSES; and,  
48 wherever practicable, comparisons to other public schools LOCATED IN THE  
49 SAME SCHOOL DISTRICT OR, IN THE CITY SCHOOL DISTRICT OF NEW YORK, THE  
50 SAME COMMUNITY SCHOOL DISTRICT.

51 5. The [board of regents] COMMISSIONER shall on an annual basis review  
52 and make available to school districts best educational practices  
53 employed by charter schools. IF THE COMMISSIONER FAILS TO IDENTIFY ANY  
54 BEST PRACTICES EMPLOYED BY CHARTER SCHOOLS, THE COMMISSIONER SHALL  
55 REPORT SUCH ABSENCE OR LACK OF BEST PRACTICES IN THE REPORT REQUIRED  
56 PURSUANT TO SUBDIVISION FOUR OF THIS SECTION.

1 S 9. Severability clause. If any clause, sentence, paragraph, subdivi-  
2 sion, section or part of this act shall be adjudged by any court of  
3 competent jurisdiction to be invalid, such judgment shall not affect,  
4 impair, or invalidate the remainder thereof, but shall be confined in  
5 its operation to the clause, sentence, paragraph, subdivision, section  
6 or part thereof directly involved in the controversy in which such judg-  
7 ment shall have been rendered. It is hereby declared to be the intent of  
8 the legislature that this act would have been enacted even if such  
9 invalid provisions had not been included herein.

10 S 10. This act shall take effect immediately.