STATE OF NEW YORK

781

2017-2018 Regular Sessions

IN ASSEMBLY

January 9, 2017

Introduced by M. of A. PRETLOW -- read once and referred 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:

Section 1. Legislative intent. New York's charter school law was enacted 14 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. Fourteen 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.

§ 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 article, or operate or manage a charter school for a charter issued pursuant to subdivision nine-a of section twenty-eight hundred fifty-two~~

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

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~~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~~], and provided that under no circumstances shall an application to establish a charter school or approval to operate a charter school be granted to a for-profit business or corporate entity authorized to do business in this state nor in any manner whatsoever shall they have an involvement in the management and operation of a charter 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.

§ 3. Paragraphs (d), (h), (p) and (v) of subdivision 2 of section 2851 of the education law, paragraphs (d) and (h) as added by chapter 4 of the laws of 1998 and paragraphs (p) and (v) as amended by chapter 101 of the laws of 2010, are 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.

(h) The rules and procedures by which students may be disciplined, including but not limited to expulsion or suspension from the school, which shall be consistent with the requirements of due process and with federal laws and regulations governing the placement of students with disabilities. Such rules and procedures shall include the provision of educational services to any student on long term suspension or expulsion.

(p) The term of the proposed charter, which shall not exceed five years during which instruction is provided to pupils; provided however, in the case of charters issued pursuant to subdivision nine-a of section twenty-eight hundred fifty-two of this article the term of such proposed charter shall not exceed five 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.

(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 be in compliance with section eight hundred six of the general municipal law.

§ 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.

§ 5. Paragraphs (c) and (d) of subdivision 2 of section 2852 of the education law, paragraph (c) as amended and paragraph (d) as added by section 2 of part D-2 of chapter 57 of the laws of 2007, are amended and two new paragraphs (e) and (f) are added to read as follows:

(c) granting the application is likely to improve student learning and achievement and materially further the purposes set out in subdivision two of section twenty-eight hundred fifty of this article; [~~and~~]

(d) in a school district where the total enrollment of resident students attending charter schools in the base year is greater than five percent of the total public school enrollment of the school district in the base year [~~(i)~~] granting the application would have a significant educational benefit to the students expected to attend the proposed charter school [~~or (ii) the school district in which the charter school will be located consents to such application~~]. **For purposes of this paragraph, in a city having a population of one million or more, the school district shall be the community school district;**

(e) the application for the charter school is approved by the board of education of the school district where the charter school is to be located; and

(f) the charter entity shall not approve an application that would have the effect of increasing the racial isolation of a school district.

§ 6. Subdivision 5-b of section 2852 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

5-b. If the board of regents returns a proposed charter to the charter entity pursuant to the provisions of subdivision five-a of this section, such charter entity shall reconsider the proposed charter, taking into consideration the comments and recommendation of the board of regents. Thereafter, the charter entity shall resubmit the proposed charter to the board of regents with modifications, provided that the applicant consents in writing to such modifications, resubmit the proposed charter to the board of regents without modifications **with an explanation why the modifications are not being made**, or abandon the proposed charter. The board of regents shall review each such resubmitted proposed charter in accordance with the provisions of subdivision five-a of this section[~~; provided, however, that it shall be the duty of the board of regents to approve and issue a proposed charter resubmitted by the charter entity described in paragraph (b) of subdivision three of section twenty-eight hundred fifty-one of this article within thirty days of the resubmission of such proposed charter or such proposed charter shall be deemed approved and issued at the expiration of such period~~].

§ 7. 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.

§ 8. Subdivision 10 of section 2852 of the education law, as added by section 3 of part D-2 of chapter 57 of the laws of 2007, is amended to read as follows:

10. Except in the case of a charter school formed by a school district as a charter entity pursuant to paragraph (a) of subdivision three of section twenty-eight hundred fifty-one of this article, a charter school formed by approval of the regents or by operation of law on or after [~~March~~] **January** fifteenth in any school year shall not commence instruction until July of the second school year next following.

§ 9. Subdivision 2 of section 2853 of the education law, as added by chapter 4 of the laws of 1998, is amended to read as follows:

2. The board of regents and charter entity shall oversee each school approved by such entity, and may visit, examine into and inspect any charter school, including the records of such school, under its oversight. Oversight by a charter entity and the board of regents shall be sufficient to ensure that the charter school is in compliance with all applicable laws, regulations and charter provisions. **The department shall include charter schools in any review or audit of state assessment administration or scoring.**

§ 10. 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, 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**. 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. A charter school may own, lease or rent its space.

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

(f) Notwithstanding any law to the contrary, any capital facility, or other improvements made in public school buildings or equipment with a period of probable usefulness of five or more years, with public or private funds, to accommodate charter schools, shall require matching or comparable improvements be made for other district schools located in the same building.

(g) 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.

§ 12. Paragraphs (c) and (e) of subdivision 1 of section 2854 of the education law, paragraph (c) as amended by section 10-b of part A of chapter 56 of the laws of 2014 and paragraph (e) as added by chapter 4 of the laws of 1998, are 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**~~] **may** be subject to audits of the comptroller of the city school district of the city of New York for charter schools located in New York city, [~~**and**~~] to the audits of the comptroller of the state of New York for charter schools located in the rest of the state, [~~**at his or her discretion**~~] **or the charter entity**, with respect to the school's financial operations. Such procedures and standards shall be consistent with generally accepted accounting and audit standards. Independent fiscal audits shall be required at least once annually.

(e) A charter school shall be subject to the provisions of articles six and seven of the public officers law **in the same manner as public school districts**.

§ 13. Subdivision 1 of section 2854 of the education law is amended by adding a new paragraph (g) to read as follows:

(g) A charter school shall be subject to the provisions of section eight hundred six of the general municipal law.

§ 14. Subdivision 2 of section 2854 of the education law, as added by chapter 4 of the laws of 1998, paragraph (a) as amended by chapter 101 of the laws of 2010, and paragraph (b) as amended by section 3 of subpart A of part B of chapter 20 of the laws of 2015, 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 **when the charter school is located within one mile of the pupils' residence, 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 lunch, and students**

with disabilities, and students with limited English proficiency. Preference may also be provided to children of employees of the charter school or charter management organization, provided that such children of employees may constitute no more than fifteen percent of the charter school's total enrollment. 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 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.

§ 15. Paragraphs (b-1), (c) and (c-1) of subdivision 3 of section 2854 of the education law, paragraph (b-1) as amended by section 6 of part D-2 of chapter 57 of the laws of 2007, and paragraphs (c) and (c-1) as added by chapter 4 of the laws of 1998, are amended to read as follows:

(b-1) The employees of a charter school [~~that is not a conversion from an existing public school~~] shall [~~not~~] be deemed members of [~~any~~] the existing collective bargaining unit representing employees of the school district in which the charter school is located, and the charter school and its employees shall [~~not~~] be subject to any existing collective bargaining agreement between the school district and its employees. [~~Provided, however, that (i) if the student enrollment of the charter school on the first day on which the charter school commences student instruction exceeds two hundred fifty or if the average daily student enrollment of such school exceeds two hundred fifty students at any point during the first two years after the charter school commences student instruction, all employees of the school who are eligible for representation under article fourteen of the civil service law shall be deemed to be represented in a separate negotiating unit at the charter school by the same employee organization, if any, that represents like employees in the school district in which such charter school is located; (ii) the provisions of subparagraph (i) of this paragraph may be waived in up to ten charters issued on the recommendation of the charter entity set forth in paragraph (b) of subdivision three of section twenty-eight hundred fifty-one of this article; (iii) the provisions of subparagraph (i) of this paragraph shall not be applicable~~

~~to the renewal or extension of a charter; and (iv) nothing in this sentence shall be construed to subject a charter school subject to the provisions of this paragraph or its employees to any collective bargaining agreement between any public school district and its employees or to make the employees of such charter school part of any negotiating unit at such school district. The charter school may, in its sole discretion, choose whether or not to offer the terms of any existing collective bargaining to school employees.~~] **Provided, however, that a majority of the members of a negotiating unit within a charter school may modify, in writing, a collective bargaining agreement for the purposes of employment in the charter school with the approval of the board of trustees of the charter school.**

(c) The employees of the charter school [~~may~~] **shall** be deemed employees of the local school district for the purpose of providing retirement benefits, including membership in the teachers' retirement system and other retirement systems open to employees of public schools. The financial contributions for such benefits shall be the responsibility of the charter school and the school's employees. The commissioner, in consultation with the comptroller, shall develop regulations to implement the provisions of this paragraph in a manner that allows charter schools to provide retirement benefits to its employees in the same manner as other public school employees.

(c-1) Reasonable access. (i) If employees of the charter school are not represented, any charter school chartered pursuant to this article must afford reasonable access to any employee organization during the reasonable proximate period before any representation question is raised **in the same manner as any public employer**; or

(ii) If the employee organization is a challenging organization, reasonable access must be provided to any organization seeking to represent employees beginning with a date reasonably proximate to a challenge period. Reasonableness is defined, at a minimum, as access equal to that provided to the incumbent organization.

§ 16. 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~~] **shall** 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~~] **has not 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 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[~~.~~]**; or**

(f) Failure to enroll a comparable percentage of students qualifying for free lunch, students with disabilities and English language learners for two consecutive years.

§ 17. Paragraph (b) of subdivision 1 of section 2856 of the education law, as amended by chapter 378 of the laws of 2007, is amended and a new paragraph (a-1) is added to read as follows:

(a-1) For the two thousand seventeen--two thousand eighteen school year and each school year thereafter the state shall reimburse school districts for the local share of the charter school tuition payment of any students attending a charter school in the June payment required by section three thousand six hundred nine-a of this chapter. Such local share shall be calculated by deducting from the charter school tuition payment the per pupil foundation aid amount attributable to such pupil.

(b) The school district shall also pay directly to the charter school any federal or state aid attributable to a student with a disability attending charter school in proportion to the level of services for such student with a disability that the charter school provides directly or indirectly. Notwithstanding anything in this section to the contrary, amounts payable pursuant to this subdivision from state or local funds may be reduced pursuant to an agreement between the school and the charter entity set forth in the charter. Payments made pursuant to this subdivision shall be made by the school district in six substantially equal installments each year beginning on the first business day of July and every two months thereafter. Amounts payable under this subdivision shall be determined by the commissioner. Amounts payable to a charter school in its first year of operation shall be based on the projections of initial-year enrollment set forth in the charter until actual enrollment data is reported to the school district by the charter school. **Such actual enrollment shall be reported to the school district prior to each payment following the initial July payment which shall be based on projected enrollment.** Such projections shall be reconciled with the actual enrollment as actual enrollment data is so reported and at the end of the school's first year of operation and each subsequent year based on a final report of actual enrollment by the charter school, and any necessary adjustments resulting from such final report shall be made to payments during the school's following year of operation.

§ 18. Subdivisions 2 and 3 of section 2857 of the education law, subdivision 2 as amended and paragraph (a-1) of subdivision 3 as added by chapter 101 of the laws of 2010 and subdivision 3 as amended by section 7 of part D-2 of chapter 57 of the laws of 2007, are 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 provided to the school district where the charter school is located for display on the school district website,** and shall be made publicly available by such date and shall be posted on the charter school's website. 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 **disaggregated for sub-groups**, 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 **from all sources** and expenditures **including the salary of the school leader and any other salaries in excess of the reporting requirements for public school districts contained in section sixteen hundred eight of this title and contracts with consultants and vendors** for the preceding school year, including a copy of the most recent independent fiscal audit of the school and any audit conducted by the comptroller of the state of New York.

(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 meet or exceed enrollment and retention targets set by the board of regents or the board of trustees of the state university of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program established pursuant to paragraph (e) of subdivision four of section twenty-eight hundred fifty-one of this article.

3. The board of regents shall report annually **by December first** to the governor, the temporary president of the senate, and the speaker of the assembly **and the public** the following information:

(a) The number, distribution, and a brief description of new charter schools established during the preceding year;

(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;

(b) The department's assessment of the current and projected programmatic and fiscal impact of charter schools on the delivery of services by school districts;

(c) The academic progress of students attending charter schools, as measured against comparable public and nonpublic schools with similar student population characteristics [~~**wherever practicable**~~];

(d) A list of all actions taken by a charter entity on charter application and the rationale for the renewal or revocation of any charters; and

(e) Any other information regarding charter schools that the board of regents deems necessary **including information on best practices of charter schools that improve student performance**.

The format for this annual report shall be developed in consultation with representatives of school districts and charter school officials.

§ 19. Subparagraph (v) of paragraph a of subdivision 7 of section 1608 of the education law, as amended by section 4 of part A of chapter 97 of

the laws of 2011, is amended and a new subparagraph (vi) is added to read as follows:

(v) the projected amount of the unappropriated unreserved fund balance that will be retained if the proposed budget is adopted, the projected amount of the reserved fund balance, the projected amount of the appropriated fund balance, the percentage of the proposed budget that the unappropriated unreserved fund balance represents, the actual unappropriated unreserved fund balance retained in the school district budget for the preceding school year, and the percentage of the school district budget for the preceding school year that the actual unappropriated unreserved fund balance represents[~~.~~]**; and**

(vi) the projected amount of payments to be made to charter schools in the next school year.

§ 20. Subparagraph (v) of paragraph a of subdivision 7 of section 1716 of the education law, as amended by section 5 of part A of chapter 97 of the laws of 2011, is amended and a new subparagraph (vi) is added to read as follows:

(v) the projected amount of the unappropriated unreserved fund balance that will be retained if the proposed budget is adopted, the projected amount of the reserved fund balance, the projected amount of the appropriated fund balance, the percentage of the proposed budget that the unappropriated unreserved fund balance represents, the actual unappropriated unreserved fund balance retained in the school district budget for the preceding school year, and the percentage of the school district budget for the preceding school year that the actual unappropriated unreserved fund balance represents[~~.~~]**; and**

(vi) the projected amount of payments to be made to charter schools in the next school year.

§ 21. Paragraph t of subdivision 1 of section 3602 of the education law is amended by adding a new closing paragraph to read as follows:

Notwithstanding any other provisions of law to the contrary, in computing approved operating expense pursuant to this paragraph for city school districts of those cities having a population in excess of one hundred twenty-five thousand but less than one million; an amount equal to (i) the amount computed for the school district for the two thousand six--two thousand seven school year pursuant to former subdivision thirty-seven of this section as this section existed on June thirtieth, two thousand seven, (ii) the state funds which such district received in the two thousand six--two thousand seven school year for magnet school grants to public schools, and (iii) the state funds which such district received in the two thousand six--two thousand seven school year for teacher support, shall be accounted for in the same way as state funds received for such purpose in the two thousand six--two thousand seven school year.

§ 22. This act shall take effect immediately; provided, however, that the amendments to subdivision 1 of section 2856 of the education law made by section seventeen of this act shall not affect the expiration of such subdivision and shall expire therewith; provided further that the amendments to paragraph a of subdivision 7 of section 1608 of the education law made by section nineteen of this act shall not affect the expiration of such paragraph and shall expire therewith; and provided further that the amendments to paragraph a of subdivision 7 of section 1716 of the education law made by section twenty of this act shall not affect the expiration of such paragraph and shall expire therewith.