

STATE OF NEW YORK

3598

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. BICHOTTE HERMELYN, ABINANTI, COOK, DINOWITZ, GALEF, GOTTFRIED, M. MILLER, SIMON, OTIS, McDONOUGH, HYNDMAN -- Multi-Sponsored by -- M. of A. GLICK, RAMOS, THIELE -- read once and referred to the Committee on Education

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraphs (h) and (j) of subdivision 2 of section 2851 of
2 the education law, as added by chapter 4 of the laws of 1998, are
3 amended to 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 title.

12 (j) (i) Information regarding the facilities to be used by the school,
13 including the location of the school, if known, and the means by which
14 pupils will be transported to and from the school. If the facilities to
15 be used by the proposed school are not known at the time the application
16 is submitted, the applicant shall notify the charter entity and, if
17 applicable, the board of regents within ten business days of acquiring
18 facilities for such school; provided, however, that the charter school
19 must obtain a certificate of occupancy for such facilities prior to the
20 date on which instruction is to commence at the school.

21 (ii) Notwithstanding the provisions of subparagraph (i) of this para-
22 graph, an applicant to establish a charter school to be located in New

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

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York city shall include the specific community school district such proposed charter school will be located within and whether such applicant will request co-location or private space for the facilities to be used by the school. If the application is approved, such charter school shall not be located within any community school district other than such district provided on such application.

§ 2. Paragraph (c) of subdivision 4 of section 2851 of the education law, as added by chapter 4 of the laws of 1998, is amended and a new paragraph (f) is added to read as follows:

(c) Copies of each of the annual reports of the charter school required by ~~[subdivision]~~ subdivisions two and six of section twenty-eight hundred fifty-seven of this article, including the charter school report cards and the certified financial statements.

(f) Notwithstanding the provisions of subdivision two of section twenty-eight hundred fifty-three of this article, an audit report by an independent certified public accountant or independent public accountant on the operations of the charter school, including compliance with the applicable provisions of this chapter and the not-for-profit corporation law, and with all other applicable laws, regulations and charter provisions.

§ 3. Section 2851 of the education law is amended by adding a new subdivision 6 to read as follows:

6. Notwithstanding the provisions of subdivision four of this section, no charter shall be renewed if the charter school has failed to:

(a) meet the student achievement goals for the school educational program, as required in the application;

(b) improve student learning and achievement;

(c) materially further the purposes set forth in subdivision two of section twenty-eight hundred fifty of this article; or

(d) maintain enrollment, suspension and attrition rates of either all students or specifically students who are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities, as reported pursuant to subdivision six of section twenty-eight hundred fifty-seven of this article, which are within five percent of such rates for the school district in which such charter school is located. For the purposes of a charter school located within a city with a population of one million or more the school district used for comparison shall be the community school district in which such charter school is located; or

(e) pass an audit, carried out pursuant to subdivision six of section twenty-eight hundred fifty-seven of this article, which finds such charter school has been encouraging students to leave or pushing students out of the school for illegitimate reasons; or

(f) to follow the provisions of articles six and seven of the public officers law.

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

(d) A student may withdraw from a charter school at any time pursuant to a written form created by the department in which the parent or legal guardian of the student certifies that the parent or legal guardian is willingly and knowingly withdrawing the student from the charter school without any undue pressure or influence by any owner or employee of the charter school, and enroll in a public school. 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

1 public school has expired, consistent with the requirements of due proc-
2 ess.

3 § 5. Section 2854 of the education law is amended by adding three new
4 subdivisions 4, 5 and 6 to read as follows:

5 4. Suspension of a student. (a) A charter school shall suspend an
6 enrolled student pursuant to subdivisions two-a and three of section
7 thirty-two hundred fourteen of this chapter, and only in accordance with
8 the procedures set forth in this subdivision.

9 (b) The principal of the charter school where the student attends
10 shall have the power to suspend the student for a period not to exceed
11 five school days pursuant to the due process procedures set forth in
12 paragraph b of subdivision three of section thirty-two hundred fourteen
13 of this chapter. The student or the person in parental relation to such
14 student may appeal the final decision of the principal to the board of
15 trustees of the charter school.

16 (c)(i) No student enrolled in a charter school may be suspended for a
17 period in excess of five school days unless such student and the person
18 in parental relation to such student shall have had an opportunity for a
19 hearing, upon reasonable notice, at which such student shall have the
20 right of representation by counsel, with the right to question witnesses
21 against such student and to present witnesses and other evidence on his
22 or her behalf.

23 (ii) Where a student has been suspended in accordance with this para-
24 graph, the charter school shall, within five days of the suspension,
25 inform the superintendent of the school district or, in the city school
26 district of the city of New York, of a community school district, where
27 the charter school is located shall, upon being notified of the suspen-
28 sion, who shall forthwith designate a hearing officer to hear and deter-
29 mine the proceeding. The hearing officer shall be authorized to adminis-
30 ter oaths and to issue subpoenas in conjunction with the proceeding
31 before him or her. A record of the hearing shall be maintained, but no
32 stenographic transcript shall be required and a tape recording shall be
33 deemed a satisfactory record. The hearing officer shall make findings of
34 fact and a recommendation on the appropriate measure of discipline to
35 the chief executive officer of the charter school. The chief executive
36 officer may reject, confirm or modify the conclusions of the hearing
37 officer. A parent may appeal the decision of the chief executive officer
38 to the board of trustees of the charter school.

39 (d) A student with a disability as such term is defined in section
40 forty-four hundred one of this chapter or a student presumed to have a
41 disability for discipline purposes, may be suspended or removed from his
42 or her current educational placement for violation of school rules only
43 in accordance with the procedures established in paragraph g of subdivi-
44 sion three of section thirty-two hundred fourteen of this chapter, the
45 regulations of the commissioner implementing such paragraph, and
46 subsection (k) of section 1415 of title 20 of the United States code and
47 the federal regulations implementing such statute, as such federal law
48 and regulations are from time to time amended.

49 (e) Any teacher shall have the power and authority to remove a disrup-
50 tive student pursuant to the procedures set forth in subdivision three-a
51 of section thirty-two hundred fourteen of this chapter.

52 (f) Where a student has been suspended pursuant to this subdivision
53 and such student is of compulsory attendance age, immediate steps shall
54 be taken for his or her attendance upon instruction at home or else-
55 where. A charter school shall provide full-time alternative instruction
56 for the time period that the student is suspended. The student and the

1 parents or guardians of such student shall be provided notice of the
2 time and location of the alternative instruction.

3 5. Posting of charter and policies. (a) A charter school shall post
4 its charter, including its disciplinary policies, conspicuously on its
5 website, and make such charter and policies available to the parents or
6 guardians of the students upon request free of charge within five days
7 of such request.

8 (b) A charter school shall develop and post conspicuously on its
9 website a clear and simple process for parents or guardians of students
10 to file complaints and appeals. Such process posted shall include at a
11 minimum, contact information, including but not limited to an e-mail
12 address, a description of how to file a complaint and/or appeal a
13 suspension, and a schedule of deadlines for responses by such charter
14 school to complaints and appeals.

15 6. Parent or guardian representation. Within three years from the
16 effective date of this subdivision, half of the membership of the board
17 of a charter school shall be composed of parents or guardians of
18 students enrolled at such charter school. Such parent or guardian board
19 positions shall be elected directly by the parents and guardians of
20 students enrolled at such charter school. The commissioner shall promul-
21 gate rules and regulations regarding the timing and conducting of such
22 elections.

23 § 6. Paragraphs (c), (d) and (e) of subdivision 1 of section 2854 of
24 the education law, paragraph (c) as amended by section 10-b of part A of
25 chapter 56 of the laws of 2014, and paragraphs (d) and (e) as added by
26 chapter 4 of the laws of 1998, are amended to read as follows:

27 (c) A charter school shall be subject to the financial audits, the
28 audit procedures, and the audit requirements set forth in the charter,
29 and shall be subject to audits of the comptroller of the city school
30 district of the city of New York for charter schools located in New York
31 city, and to the audits of the comptroller of the state of New York for
32 charter schools located in the rest of the state, at his or her
33 discretion, with respect to the school's financial operations. Any such
34 audits shall include an audit to determine whether the financing
35 received by the charter school pursuant to section twenty-eight hundred
36 fifty-six of this article is consistent with the number of qualified
37 students who are eligible to enroll, and are actually enrolled in such
38 charter school, including whether such enrolled students meet the resi-
39 dency requirements for enrollment. In the event of an overpayment, the
40 office of the state comptroller shall be authorized to recover the
41 excess in payment by deducting from any state funds which become due to
42 such charter school or refer the matter to the state attorney general to
43 initiate a civil action against the charter school to recover the over-
44 payment. Such procedures and standards shall be consistent with general-
45 ly accepted accounting and audit standards. Independent fiscal audits
46 shall be required at least once annually.

47 (d) A charter school shall design its educational programs to meet or
48 exceed the student performance standards adopted by the board of regents
49 and the student performance standards contained in the charter. Students
50 attending charter school shall be required to take regents examinations
51 to the same extent such examinations are required of other public school
52 students. A charter school shall utilize the same methods as used by
53 the school district such charter school is located in to ensure blind
54 scoring of the mandated state exams, including in New York city, cooper-
55 ative grading sites, and shall also be subject to any other methods the
56 state or district may use to ensure integrity of results, including, but

1 not limited to, independent monitors and erasure analysis. A charter
2 school offering instruction in the high school grades may grant regents
3 diplomas and local diplomas to the same extent as other public schools,
4 and such other certificates and honors as are specifically authorized by
5 their charter, and in testimony thereof give suitable certificates,
6 honors and diplomas under its seal; and every certificate and diploma so
7 granted shall entitle the conferee to all privileges and immunities
8 which by usage or statute are allowed for similar diplomas of corre-
9 sponding grade granted by any other public school. A charter school
10 shall be subject to performance audits, the audit procedures, and the
11 audit requirements set forth in the charter, and shall be subject to
12 audits of the comptroller of the city school district of the city of New
13 York for charter schools located in New York city, and to the audits of
14 the comptroller of the state of New York for charter schools located in
15 the rest of the state, at his or her discretion, with respect to the
16 school's performance.

17 (e) (i) A charter school shall be subject to the provisions of arti-
18 cles six and seven of the public officers law.

19 (ii) Notwithstanding any other law to the contrary, the board meetings
20 of a charter school, its networks and charter management organization
21 shall be subject to the provisions of article seven of the public offi-
22 cers law, and shall publicly post in a prominent place on its website
23 the time and location of meetings at least seventy-two hours in advance.
24 A charter school shall also retain a mailing list of persons who request
25 notification of its meetings and send such information to the persons on
26 such list at least seventy-two hours in advance of any meeting.

27 (iii) A charter school and its board shall keep a public archive of
28 all such announcements required under subparagraph (ii) of this para-
29 graph. Board meeting minutes shall be posted online and be available in
30 print upon request.

31 (iv) Notwithstanding any other law to the contrary, any contract
32 between a charter school and a charter management organization shall be
33 subject to the provisions of article six of the public officers law.

34 (v) No charter school shall include a non-disclosure agreement as part
35 of a contract with any employee except in regards to specific curricular
36 proprietary information.

37 § 7. The opening paragraph and paragraphs (a) and (e) of subdivision 1
38 of section 2855 of the education law, the opening paragraph and para-
39 graph (a) as amended and paragraph (e) as added by chapter 101 of the
40 laws of 2010, are amended and three new paragraphs (f), (g) and (h) are
41 added to read as follows:

42 The charter entity, or the board of regents, ~~may~~ shall terminate a
43 charter upon any of the following grounds:

44 (a) When a charter school's outcome on student assessment measures
45 adopted by the board of regents equals or falls below the level that
46 would allow the commissioner to revoke the registration of another
47 public school, and student achievement on such measures has not shown
48 improvement over the preceding three school years;

49 (e) ~~[Repeated failure]~~ Failure to comply with the requirement to meet
50 or exceed enrollment and retention targets of students with disabili-
51 ties, English language learners, and students who are eligible appli-
52 cants for the free and reduced price lunch program pursuant to targets
53 established by the board of regents or the board of trustees of the
54 state university of New York~~[, as applicable]~~ pursuant to subparagraph
55 (i) of paragraph (b) of subdivision nine-a of section twenty-eight
56 hundred fifty-two of this article. 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[~~7~~]; or

(f) Failure to maintain enrollment, suspension and attrition rates of either all students or specifically students who are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities, as reported pursuant to subdivision six of section twenty-eight hundred fifty-seven of this article, which are within five percent of such rates for the school district in which such charter school is located. For the purposes of a charter school located within a city with a population of one million or more the school district used for comparison shall be the community school district in which such charter school is located; or

(g) When an audit, carried out pursuant to subdivision six of section twenty-eight hundred fifty-seven of this article, finds such charter school has been encouraging students to leave or pushing students out of the school for illegitimate reasons; or

(h) Repeated failure to follow the provisions of articles six and seven of the public officers law.

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

(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, the total number of openings for new students at the beginning of the school year, by grade; the total number of applicants for each such opening; the total number of students accepted for the school year; the number of students accepted for enrollment who are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities; the number of students who were dismissed, expelled, dropped out or withdrew during the school year, including the reasons for the dismissal or withdrawal, and including the number of such students who were suspended, dismissed, expelled, dropped out or withdrew or are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities; graduation rates[~~7-dropout rates,~~]; performance of students on standardized tests[~~7~~]; college entry rates[~~7~~]; the total number of teachers and administrators employed at the school at the beginning of the school year and the number of teachers and administrators who were terminated, dismissed or resigned during the reporting period, and the reasons therefor; the annual salary paid to each teacher and administrator of the school; and 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 and the commissioner 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, posting it on the department's website and making it available for distribution at board of trustee meetings.

4. The board of regents shall review the educational effectiveness of the charter school approach authorized by this article and the effect of charter schools on the public and nonpublic school systems. Not later than December thirty-first, two thousand ~~[three]~~ twenty-two, and every two years thereafter, the ~~[board of regents]~~ commissioner shall report to the governor, the temporary president of the senate, the speaker of the assembly and the board of regents with recommendations to modify, expand, or terminate that approach. Such report shall include, for each charter school, a copy of the school's mission statement~~[7]~~; attendance statistics~~;~~ dismissal, expulsion and dropout rates~~[7]~~; student performance on standardized assessment tests~~[7]~~; projections of financial stability~~[7]~~; the number of students with disabilities, English language learners and students who are eligible for the free and reduced price lunch program; the total amount spent for administrative expenses; and, wherever practicable, comparisons to other public schools located in the same school district or, in the city school district of New York, the same community school district.

5. The ~~[board of regents]~~ commissioner shall on an annual basis review and make available to school districts best educational practices employed by charter schools. If the commissioner fails to identify any best practices employed by charter schools, the commissioner shall report such absence or lack of best practices in the report required pursuant to subdivision four of this section.

6. (a) Each charter school shall submit to the department an annual report on or before the first day of August each year for the preceding school year. Such report shall be in such form as shall be prescribed by the commissioner and shall at a minimum include:

(i) enrollment, suspension and attrition rates of all students, including the reasons for the suspension, dismissal or withdrawal.

(ii) enrollment, suspension and attrition rates of students who are English language learners, are eligible for the free or reduced price lunch program or are students with disabilities, including the reasons for the suspension, dismissal or withdrawal.

(b) Reporting of suspension rates as required pursuant to paragraph (a) of this subdivision shall specify the number of out-of-school suspensions and in-school suspensions, and shall include both the total number of suspensions and the number of individual students who receive suspensions.

(c) Not later than December thirty-first, annually, the commissioner shall submit a report to the governor, the temporary president of the senate, the speaker of the assembly and the board of regents containing the information received pursuant to paragraph (a) of this subdivision and such report shall include a comparison of the rates reported by a charter school to such rates of the school district in which such charter school is located.

(d) Not later than December thirty-first, two thousand twenty-two, and every two years thereafter, the comptroller shall audit the information reported by each charter school pursuant to paragraph (a) of this subdivision, provided, however, that for a charter school located in New York city, such audit shall be carried out by the New York city comptroller. A component of such audit shall include selecting a sample of students who were dismissed or withdrew from such charter school and assess the accuracy of the reported reasons for such dismissal or withdrawal.

7. The department shall appoint an ombudsperson whose responsibilities shall be to support and advise parents and guardians of charter school students who have specific issues and complaints, and to investigate and

1 resolve such complaints. Such ombudsperson shall regularly report to
2 the board of regents the number of complaints received, the types of
3 complaints, and if and how such complaints were resolved.

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

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

11 (d) in a school district where the total enrollment of resident
12 students attending charter schools in the base year is greater than five
13 percent of the total public school enrollment of the school district in
14 the base year (i) granting the application would have a significant
15 educational benefit to the students expected to attend the proposed
16 charter school or (ii) the school district in which the charter school
17 will be located consents to such application[~~+~~]; and

18 (e) the charter school described in the application has received the
19 approval of the local board of education where such proposed charter
20 school shall be located prior to submitting such application, provided,
21 however, that in the case of a proposed charter school to be located in
22 New York city, such approval shall be from the community education coun-
23 cil of the district in which such proposed school shall be located.

24 § 10. Severability clause. If any clause, sentence, paragraph, subdi-
25 vision, section or part of this act shall be adjudged by any court of
26 competent jurisdiction to be invalid, such judgment shall not affect,
27 impair, or invalidate the remainder thereof, but shall be confined in
28 its operation to the clause, sentence, paragraph, subdivision, section
29 or part thereof directly involved in the controversy in which such judg-
30 ment shall have been rendered. It is hereby declared to be the intent of
31 the legislature that this act would have been enacted even if such
32 invalid provisions had not been included herein.

33 § 11. This act shall take effect immediately.